DIARY FOR FEBRUARY.

1. Sat. .. Clergymen to make yearly return of Marriages to County Registrar.
2. SUN. . *4th Sunday after Epiphany.*
3. Mon.. Hilary Term begins.
5. Wed.. Meeting of Grammar School Boards.
7. Frid... Paper Day Q.B. ; New Trial Day C.P.
8. Sat. .. Paper Day C.P. ; New Trial Day Q.B.
9. SUN. . *Septuagesima Sunday.*
10. Mon.. Paper Day Q.B. ; New Trial Day C.P.
11. Tues. . Paper Day C.P. ; New Trial Day Q.B.
12. Wed.. Paper Day Q.B. ; New Trial Day C.P. Last day for service in County Court.
13. Thurs. Paper Day C.P.
14. Frid.. *St. Valentine.* New Trial Day Q.B.
15. Sat. .. Hilary Term ends. Last day for County Treasurer to furnish to Clerks of Municipalities in counties lists of lands liable to be sold for taxes.
16. SUN. . *Sexagesima Sunday.*
22. Sat. .. Declare for County Court.
23. SUN. . *Quinquagesima Sunday.*
24. Mon.. *St. Matthias.*
25. Tues. . *Shrove Tuesday.*
26. Wed.. *Ash Wednesday.* Appeals from Chancery Cham.
29. Sat. .. Sub-Treasurer of School Moneys to report to County Auditors. School Reports to be made. Superintendent of Separate Schools to give notice to Clerks of Municipalities.

THE

Canada Law Journal.

FEBRUARY, 1868.

MALICIOUS INJURIES TO THE PERSON.

It may be all very true that there are things more precious to man than the safety of his person, or even the preservation of his life, nor do we at present intend to question the truth of this proposition, nor to cavil at this very proper sentiment; but it will scarcely on the other hand be denied, that the right of personal security is not the least of "the absolute rights of every Englishman."

Blackstone, in speaking of the three principal rights of mankind, classes them thus:—1. The right of personal security. 2. The right of personal liberty; and 3. The right of private property. And in particularising what is comprised under the first head he says:—"The right of personal security consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation." And he further says, that "whatever is done by a man to save either life or member is looked upon as done upon the highest necessity and compulsion."

Now these are views which doubtless most persons are quite prepared to accept without any further reasoning, either by the learned commentator or ourselves, but it is nevertheless, astonishing that so many men have really exceedingly small regard for the enjoyment of the life, limbs, body, health and reputation, of *others.* And here we do not allude to those who maliciously, or in moments of passion inflict injuries, but to those who are appointed by their fellows for the protection of the public in the full enjoyment of those rights.

This is a subject which has lately attracted the attention of some able writers in England, and some of their remarks we have re-produced for the benefit of our readers. The principal ground of complaint there has been the leniency of judges and magistrates in the infliction of sentences for injuries to the person. Complaints of a similar kind have occasionally been made in this country, but it is a different phase of the subject, which has lately directed our attention to it.

Mr. Justice Hagarty, during the recent Assizes for the City of Toronto, in passing sentence on a prisoner who had been found guilty of a common assault, where the evidence was of a most unprovoked and brutal attack with a murderous weapon, deplored the growing tendency of juries to treat the most aggravated and brutal attacks upon men and women as common assaults. In fact it appeared to him, according to their frequent findings, that feloniously stabbing and wounding and half killing a peaceable citizen, was not that which the law of the land looks upon it, a very grave and serious crime, but simply a common assault; the jury thus taking the decision of the law, as well as of the facts, into their own hands.

One of the evil effects of the glaring perversion of justice in the case he alluded to, was not long in shewing itself, for it was only a few days afterwards, that the following scene occurred in the Police Court at Toronto, on an examination into the facts of an aggravated and brutal assault upon an inoffensive old man, from the effect of which he lost the use of his right eye. The close of the case is thus detailed in one of the daily papers:

"Counsel for defence was going to call evidence, when

The Magistrate stated that he was not going to dispose of the case. It was clearly, he said, a case of assault with intent to disfigure or maim; and they have maimed him. It is for a jury to say whether he was accessory either before or

after the fact. His Worship held that the evidence showed Aird to be the principal, and he was therefore responsible for the consequences.

Counsel thought his Worship could dispose of it, as it was only a common assault; he quoted the late assault cases tried in the City Assize Court—a most unfortunate reference.

His Worship said the action of the juries last week in the assault cases, was no rule to go by. These brutal assaults were becoming entirely too numerous of late. He referred to the decided opinions of Judge Hagarty in addressing a jury last week, who, in the case of a peaceable man being dangerously wounded by a loaded stick in the hands of a drunkard, returned a verdict of common assault. He would not like to have been on that jury when his Lordship said—'Thank God, gentlemen, the responsibility of that verdict rests upon you, and not with me.' The action of juries, and especially of such juries, was no guide.

Counsel then asked if bail would be taken.

His Worship said he could not take bail when the evidence was so clear. He would send the evidence over to the County Attorney, where he might succeed in getting an order for bail."

The reference of the counsel for the prisoner to the case at the Assizes was certainly "most unfortunate," and not, by the way, an evidence of very great tact on his part, and it was met as it deserved; and, so far as judges and magistrates are concerned, we may be pretty safe that *they* will not, be guided by what mistaken or stupid jurymen may do. But the evil to be dreaded is of a more serious character, and one likely to spread amongst the masses: — habituating their minds to violence of this kind, and leading them to imagine that the law looks upon depriving a man of the use of his limbs, or members, or destroying his health, as an offence on a par with merely shaking a fist in another's face, or committing a petty larceny; and if this idea once becomes prevalent who can tell what will be the end thereof.

The words put in the mouth of a philosophic detective by a clever novelist, a lawyer, are so apropos, that we may be excused in quoting them. In speaking to a forger he said: "You may smash a man's skull in, so as you don't quite kill him, for twelve months (and for much less since this book was written), but if you forges his name you catches it hot." It has been said that the only way to bring a railway company to a sense of its duties, in protecting the lives and limbs of their passengers, is by the occasional immolation of one of the directors. Perhaps a somewhat similar mode of cure might be beneficial in arresting the malady which occasionally afflicts judges and juries in the matter alluded to.

The evil however is too serious for jesting, and requires that the public should be impressed with a sense of the injurious results arising from the frequent failure of justice in cases where not only personal injuries of a serious nature have been inflicted, but life itself endangered by the hand of some ruffian, whose only punishment is often the mere infliction of a small fine or a temporary imprisonment.

We trust that the remarks of the learned judge, who has thus by his timely and forcible remarks drawn attention to the evil alluded to, will not be thrown away upon those for whom they were intended, and that those whose duty it may be to adjudicate upon crimes of this nature will in future do so with a full appreciation of the right of personal security, one of those rights which are, as Blackstone proudly says, "in a peculiar and emphatical manner the rights of the people of England."

BLUE BOOKS FOR 1866.

Reading blue books is looked upon somewhat in the same light as reading Johnson's Dictionary—instructive, but if anything a little dry. We have never heard of any one whose courage and endurance carried him through a steady perusal from cover to cover, but at the same time valuable and interesting information may always be gathered even from much abused statistics.

We have approached the subject in the hope of presenting to our readers some facts that may interest them, gleaned from the mass of figures before us. The following table we have compiled from the volume of public accounts for the year ending 30th June, 1866, lately received with a number of other books of the same colour.

The County of Halton does not for some reason appear in the returns.

The table is interesting as shewing the amounts received from the sale of stamps used in law proceedings in all the several courts of civil jurisdiction in Upper Canada, and under three distinct heads, viz.: (1) C. F.

or Consolidated Revenue Fund; (2) F. F. or Fee Fund; (3) L. S. or Law Society.

The stamps of the first and third kind (C. F. and L. S.) being used for payment of fees on business done in the Courts of Queen's Bench, Common Pleas, and Court of Chancery. The stamps of the second kind (F. F.) being for payment of fees on business done in the County Courts, Surrogate and other local Courts, and on proceedings under various statutes before the local judges.

Counties.	Con. Rev. F.	Fee Fund.	Law Society.	Total.
Brant	$466 93	$1,370 85	$419 90	= $2,257 68
Carleton	703 00	1,890 50	386 66	= 2,980 16
Elgin	173 37	471 68	143 45	= 788 50
Essex	116 85	54 63	121 12	= 292 60
Frontenac	495 51	1,233 61	446 33	= 2,175 45
Grey	121 41	1,464 62	83 13	= 1,669 16
Haldimand	114 48	652 47	74 09	= 841 04
Hastings	553 39	1,306 17	366 24	= 2,225 84
Huron and Bruce	430 35	1,827 52	342 47	= 2,600 40
Kent	171 00	707 84	167 68	= 1,046 52
Lambton	207 10	503 50	311 22	= 1,021 82
Lanark and Renfrew	223 11	1,988 56	146 29	= 2,357 96
Lennox and Addington	218 50	1,404 58	137 75	= 1,760 83
Leeds and Grenville	398 53	918 18	242 25	= 1,558 96
Lincoln	278 35	1,298 65	261 25	= 1,838 25
Middlesex	812 25	1,755 13	909 63	= 3,477 01
Norfolk	114 95	720 76	147 73	= 983 44
Northumberland and Durham	579 98	1,679 79	495 23	= 2,754 90
Ontario	181 91	1,279 18	191 91	= 1,653 60
Oxford	237 51	1,247 35	249 37	= 1,734 23
Perth	279 68	1,196 05	308 75	= 1,784 48
Peterboro'	310 17	769 51	264 58	= 1,344 26
Prescott and Russell	40 85	418 72	30 21	= 489 78
Prince Edward	187 15	686 37	133 46	= 1,006 98
Simcoe	275 50	2,682 99	192 85	= 3,151 54
Stormont, Dundas and Glengary	409 00	1,555 16	368 11	= 2,332 27
Victoria	220 40	872 29	194 75	= 1,287 44
Waterloo	101 66	1,049 74	83 60	= 1,235 00
Welland	173 37	525 83	96 90	= 796 10
Wellington	329 65	1,854 40	304 95	= 2,489 00
Wentworth	828 40	1,989 11	847 41	= 3,664 92
York & Peel, including Toronto	19,125 21	6,003 05	6,957 99	= 32,086 25
	$28,879 52	$43,378 79	$15,427 26	= $87,685 57

The figures in the above table show that the stamps sold, to be used in proceedings in the Superior Courts, amount to $44,306 78, and in the County Courts and other Local Courts to $43,378 79, or in other words that the income derived from business in the Superior Courts exceeds that from the Local and Inferior Courts by $927 99. But in reasoning upon these figures it must be borne in mind that the general revenue is not chargeable with the expense of court accommodations for the County and Inferior Local Courts;—that comes from local sources, whereas the fact is otherwise in respect to the Superior Courts of Common Law and Equity, the L. S. (Law Society) stamp collection being applicable to interest upon and redemption of debentures issued by the Law Society to cover the outlay for extension of buildings, &c., necessary to make the accommodation required for the Superior Courts at Toronto; and consequently the sum of $15,427 26, being wholly applicable to the purpose mentioned, and there being a counter outlay in the Local Courts which is not represented in this table, the sum named should be deducted from the aggregate of $44,306 77, leaving $28,879 52 against $43,378 75, and showing a contribution to the General Revenue Fund by the County and other Local Courts of $14,499 27 more than contributed by the Superior Courts. And the disparity is much greater even than these figures exhibit. For the clerks of County, Surrogate and Division Courts (nearly 300 officers) are all remunerated by fees payable by suitors of these courts in money, while the whole staff of officers in the Superior Courts of law and equity in Toronto, and the several deputy clerks of the Crown, are paid by salary from the general revenue. But this opens a large question, one too extensive for a single article, and we leave it for the present.

A great disparity will be observed in the amount of collections from the different counties; a desparity it is not easy to account for. This is especially noticeable in respect to the Fee Fund stamps for the Local and Inferior Courts. Not to speak of York and Peel, which gives a sum of $6,004 05, there is the County of Simcoe giving $2,682 99, the County of Wentworth, $1,989 11, the County of Waterloo, $1,854 40, or a total for these three counties of $6,526 50, as compared to a total of $976 85 (or one-seventh nearly) for the following three counties, viz.: Essex, $54 63, Prescott and Russell, $418 72, Lambton, $503 50. There has been a great falling off in the business of the courts this last year it is true, but a comparison with similar returns ten years back, and before the stamp law came in force, will exhibit somewhat similar results, viz.: $16,748, as compared to $2,500, (one-seventh nearly) in the year 1857. Thus—

Fee Fund for 1857, shows:

Wentworth	$6,878	Essex	$875
Simcoe	5,288	Prescott & Russell	391
Wellington	4,482	Lambton	1,234
	$16,748		$2,500

The statement of the Fee Fund account shows for the whole of Upper Canada a deficit after payment of the salaries of thirty-two County Judges and five Recorders, and $6,400 towards travelling expenses of the County Judges of $47,833 21; and this is the whole deficit, for, as we have already observed, there is nothing left to be paid clerks or other officers. But in other years the fee fund has given a surplus to the general revenue fund. In the year we have already referred to, 1857, there was a surplus of $24,797, contributed by the litigants in the Local Courts (after paying the whole establishment of these courts), to the general revenue of the Province.

So much just now as to law stamps.

The expenses connected with the administration of justice for Upper Canada, as gathered from this volume, would seem to be a large sum, until we come to examine the details, and then it may safely be said that that no public officers are, on the whole, paid with more regard to economy in relation to the amount of work they do (and that work, so far as the judges are concerned of the most exhausting kind), and to the amount of knowledge, intelligence and education required.

The total amount, including the salaries of the county judges already referred to, and all other matters is $340,969.30, classed under the following heads:

For Salaries to Judges of the Courts of Error and Appeal, Queen's Bench, Common Pleas & Chancery	$39,525 55
Salaries to 32 County Court Judges and five Recorders (and including $6,400 allowed for travelling expenses of Judges)	91,131 16
Officers of the Queen's Bench and Common Pleas, and Deputy Clerks of the Crown, and contingencies	25,421 57
Officers of the Court of Chancery and contingencies (including the salary of the Surrogate clerk)	14,008 40
Court of Impeachment (salary of clerk)	200 00
Circuit allowances (common law and equity)	11,200 00
Criminal prosecutions (paid to 40 crown counsel)	10,725 85
Administration of Criminal Justice (amounts paid by Treasurers, &c.)	128,646 89
Miscellaneous items (being principally for the administration of criminal justice and crown suits and prosecutions)	19,101 83

Of course it is impossible to say exactly how much of the total sum is for the administration of criminal justice, but it will easily be seen that a large proportion of the expenditure is for that purpose. Besides the last three items, which have particular reference to the administration of criminal justice, a share of the salaries of the judges of the Queen's Bench, Common Pleas, and the judges of the County Courts as chairmen of the Quarter Sessions and Recorders, and the salaries of the officers of these courts must be charged to the administration of criminal justice. The expenses of the Penitentiary, Reformatories and Prison Inspectors ($190,748 50, less the receipts from Penitentiary and Reformatories, $47,707 69, leaving a balance of $143,040 81), are also of the same nature.

It is curious to compare the figures that to a certain, though very imperfect manner represent the civil and criminal business in the different counties, and to make this more clear we subjoin a statement of the amounts paid to the Treasurers of the different counties for criminal justice:

Brant,	from	June, 1865,	to March, 1866	$6,750 01
Carleton,	"	"	"	4,263 99
Elgin,	"	"	Dec. 1865	4,228 97
Essex,	"	"	March, 1866	2,907 86
Frontenac,	"	"	"	4,434 60
Grey,	"	"	"	3,253 33
Haldimand	"	"	"	2,790 61
Halton,	"	"	Dec, 1865	1,619 76
Hastings,	"	"	March, 1866	3,298 46

Huron and Bruce,	"	"	4,513 04
Kent,	" "	"	1,910 73
Lambton,	" "	"	3,228 48
Lanark and Renfrew,	"	"	3,604 19
Lennox & Addington	"	"	2,243 96
Lincoln,	" "	"	3,985 74
Leeds and Grenville,	"	"	3,780 36
Middlesex,	" "	"	8,362 64
Norfolk,	" "	"	3,367 65
Northumberland,	"	"	4,688 54
Ontario,	" "	"	2,402 27
Oxford,	" "	"	3,242 13
Perth,	" "	"	3,458 85
Peterboro',	" "	"	1,081 75
Prescott and Russell,	"	"	926 54
Prince Edward,	"	"	1,461 19
Simcoe,	" "	Dec. 1865..	3,202 43
Stormont, Dundas & Glengary ...	"	"	4,433 79
Toronto,	" "	Dec. 1865 & balance for Dec. sessions, 1864.....	6,866 64
Victoria, from June, 1865, to March, '66			2,189 42
Waterloo, from Sept.	"	"	3,524 98
Welland, from June	"	"	3,610 00
Wellington,	" "	"	3,191 36
Wentworth,	" "	"	5,706 25
York and Peel,	"	Dec. 1865..	3,350 25
"		March Sessions, 1866	1,312 09
Total....................			$128,646 89

For example, we have seen that the total yield of stamps in the County of Essex was $292 60, whilst the amount paid to the Treasurer of that county for the expenses of criminal justice, was $2,907 86. Compare these figures with the relative returns for the County of Kent, which shew $1,046 52, from stamps, and $1,910 73, for criminal justice. Again, compare Elgin with $788 from stamps, and about $5,000 for criminal justice, with the relative figures of $1,344 26 and $1,081 75, from the County of Peterboro', where the proportion is reversed.

The administration of justice in Lower Canada for 1866 is given at a total of $393,594 19, and therefore considerably exceed that of Upper Canada, which, as we have seen was $340,969 30 for the same period.

We might perhaps be allowed to exercise the birthright of every true Englishman namely, and grumble at this disproportion, particularly as some of the items which swell the larger amount are made up of sums which with us would be paid by municipal corporations, &c., and appear in another place. We may at least, however, hug ourselves with the idea, that we get at least as good worth for our money as our brethren to the east of the Ottawa.

On looking at the "Year Book," for 1868, we find that the "Judiciary Expenses" in Nova Scotia, for the year 1866, are set down at $6,130; and the "Administration of Justice" in New Brunswick, at $22,888. Now as the ordinary expenditure of the four provinces were, for the year preceding their union, Ontario and Quebec, $11.957,053; Nova Scotia, $1, 920, 434; and New Brunswick, $1,349,701, it would seem pretty clear that the figures which would at first sight appear to shew the relative expenses attendant upon the administration of justice in the four provinces, do not in themselves give a correct idea of the comparative amounts, and it is probable that in Nova Scotia at least, items which in the other provinces are placed under this head, are there included under some other general heading; but not having the details from Nova Scotia and New Brunswick before us, we cannot speak at all definitely on this part of the subject. It may be seen, however, from a statement published on the 4th of this month for the use of the Legislature, of the revenue and expenditure of the Provinces from the 1st July to 30th November last, that these expenses are nearly the same in Nova Scotia and New Brnnswick for that period, namely, $5,002 51 and $5,192 00 respectively.

The expenses connected with the codification of the laws of the Lower Canada were, $31,222 87—the printing and distribution of the statutes came to $18,703 78; whilst the total "Expenses of the Legislature," in which are included the above items and all expenses of both Houses, and other items for election expenses, &c., amount to within $86 of the total amount paid for the administration of justice in Lower Canada, being $398,508 94.

ACTION FOR DIVIDENDS.

We draw attention to a late decision under the Insolvent Act, by His Honor Judge Macdonald, of Wellington. It is a subject with which he is familiar, and he is thoroughly competent to express an opinion upon it and the point is in itself interesting and important.

An action was brought by a creditor against the assignee of the insolvent for a dividend on a claim which had been collocated by the assignee and advertised, but unobjected to by any one. It was objected that the assignee could not be sued for a dividend, but the learned judge held that the action could be maintained.

LAW SOCIETY—HILARY TERM, 1868.

CALLS TO THE BAR.

The following are the names of the gentlemen who passed examination for call to the bar, and for admission to practice, in the order in which the examiners placed them, according to their marks.

T. S. Kennedy, Toronto; E. Meredith, London; P. McNulty, Belleville; C. McFayden, Owen Sound; F. E. Burnham, Peterboro'; W. H. Lowe, Bowmanville; W. Mosgrove, Ottawa.

Mr. Kennedy without an oral examination.

ADMISSIONS AS ATTORNEYS.

W. Mulock, Toronto; W. R. Squier, Toronto; A. Dent, Woodstock; P. McNulty, Belleville; N. M. Munroe, Cornwall; F. E. Burnham, Peterboro; E. Meredith. London; H. J. Finkle, Woodstock; J. McCosh, Paris; E. B. Fraleck, Belleville; Colin Macdougall, St. Thomas; R. H. Smith, Woodstock; J. Butterfield. L'Original; D. Scott, Brampton.

Messrs. Mulock, Squier and Dent without an oral examination.

DEATH OF JUDGE SALMON.

We have to record the death of Mr. Salmon, Judge of the County Court of the County of Norfolk, on the 8th instant, aged 63. He was appointed on 26th May, 1845, under Lord Metcalfe's administration.

JUDGMENTS.

ERROR AND APPEAL.

Present—The nine Judges.

Saturday, February 1, 1867.

Widder v. *Buffalo and Lake Huron Railway Co.*—Appeal from Court of Queen's Bench dismissed without costs, and new trial granted without costs.

Thorne v. *Torrance.*—Appeal from Court of Common Pleas dismissed with costs. Adam Wilson, J., dissenting.

Mutchmore v. *Davis.*—Appeal from Court of Chancery dismissed with costs. Adam Wilson, J., and Mowat, V. C., dissenting.

QUEEN'S BENCH.

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

Monday, February 3, 1868.

Cummings v. *Elliot.*—Rule absolute for new trial, costs to abide the event.

Clark v. *Corbett.*—Postea to defendant.

Calvin v. *Provincial Insurance Co.*—Rule absolute to enter nonsuit.

Noble v. *Spencer.*—Rule absolute for new trial without costs.

Fawcett v. *London and Liverpool Insurance Co.*—Rule discharged.

Fields v. *Miller.*—Rule discharged.

Smith v. *Morton.*—Rule discharged.

White v. *Dunlop.*—Rule discharged.

Kerr v. *McEwan.*—Rule discharged. Leave to appeal granted.

Fisher v. *Grace.*—Rule absolute for new trial without costs.

Peck v. *McDougall*—Judgment for defendant on demurrer.

Adams et al. v. *Clark et al.*—Rule discharged.

Deadman v. *Ewan, In re Henry McPherson, Judge of Co Grey.*—Rule absolute for writ of attachment, unless costs paid within a month.

Gourlay v. *Gourlay.*—Rule absolute to set aside judgment without costs.

Morgan v. *Sabourin.*—Rule discharged. Leave to appeal granted.

In re ——— *Gentleman, one, &c.*—Fined five dollars, and to pay costs of application.

Walmsley v. *Walmsley.*—Rule to set aside verdict for tenant, and to enter a verdict for demandant.

Present—Hagarty, J.; Morrison, J. (the Chief Justice being absent from indisposition.)

Saturday, Feb 15, 1868.

Great Western Railway Co. v. *Rogers*—Replevin. Judgment for the defendant, on demurrer.

Thompson v. *Rutherford.*—Appeal from County Court of Waterloo. A final discharge by a County Judge under Insolvent Act, if not appealed against, and if no fraud or corrupt bargain in obtaining it, is a final bar; but if there be, it is no bar. Appeal dismissed, with costs.

Cain v. *Lancashire Insurance Co.*—Judgment for defendants, on demurrer.

Althouse v. *Haensgen.*—New trial on payment of costs in three weeks from end of Term.

Mellen v. *Nicolls.*—An insolvent was a foreigner; and the question was, whether the Insolvent Acts applied to him; but the court, feeling a reluctance to decide this, on motion, suggested a mode of bringing the point properly before the court. Defendant to have two weeks further time to plead.

Bank of British North America v. *Baxter.*—New trial on payment of costs, on condition of defendant giving security for $1,000.

Re Iredale.—Rule refused.

Present—Richards, C. J.; A. Wilson, J.; J. Wilson, J.

Tuesday, Feb. 4, 1868.

Pennymore v. *McGrogan.*—Stands at present.

McGregor v. *Calcutt.*—Rule discharged.

City of Hamilton v. *Morrison.*—Rule discharged.

Walsh v. *Brown.*—Stands at present.

Woods v. *Rankin.* — Appeal allowed. Court below to issue a rule for new trial, without costs.

Tiffany v. *Bullen.*—Rule absolute, without costs. *Held*, that the affidavit to found a garnishing order must be made by the judgment creditor or his attorney. An affidavit by an agent insufficient.

Welsh v. *Leaky.*—Judgment for defendant on demurrer.

Hyland v. *Scott.*—Rule discharged, with costs.

Gore Bank v. *McWhirter.*—Rule discharged

Forgie v. *Reynolds.*—Rule discharged.

COMMON PLEAS.

Present—Richards, C. J., C. P.; Adam Wilson, J.; John Wilson, J.

Saturday, February 15, 1868.

Winckler (administrator) v. *Great Western Railway Co.*—Rule absolute to enter non-suit.

Winckler v. *Great Western Railway Co.*—Rule absolue for non-suit without costs.

Cline v. *Great Western Railway Co.*—Rule refused. Leave to appeal allowed in these three cases.

Hope v. *White.*—Stands.

McWhirter v. *Learnmouth.* — Appeal from County Court dismissed with costs.

Laur v. *White.*—New trial, with costs to abide event

Ball v. *Town of Niagara.*—Stands.

Ball v. *Town of Niagara.*—Stands.

Hopkins v. *Provincial Insurance Co.*— New trial without costs.

McDougall v. *Covert.*—Rule discharged.

SELECTIONS.

OUR JUDGES, OUR PERSONS, AND OUR PURSES.

If the judge is to be a terror to evil-doers the administration of the criminal law must be vigorous, effective, and consistent. The latter property is perhaps the most important, and indeed the most excellently framed law loses all efficacy when inconsistently administered.

Common sense and common law agree in the principles regulating the penalties against life and limb, and crimes against mere inert property. Coke, Hale, and Blackstone all recognize the superiority of the former's claim to protection, and such claim was recognized by the ancient Anglo-Saxon code. Property may be recovered or reinstated in validity; life never can, and limbs but seldom if ever in their pristine vigour. It is in highest degree essential that health and strength of body and members, the health and strength on which depends the acquisition of property, should be guarded with the greatest vigilance, and all injuries to them punished with the sternest and sharpest retribution. And if the reader is astonished at the enunciation of such trite truths, such mere elementary truisms, a perusal of many cases lately adjudicated on in the criminal courts will remove all cause for astonishment, and prove the need there is that some of our judicial functionaries should be awakened from the lethargy or hallucinations respecting the several rights of person and property into which they have fallen.

The evil of leniency in cases of injury to the person is one of those that has attained enormous proportion of late. It is one whose fruits are seen in the savage assaults and bloody affrays which must be checked, if it need be, by the bitterest pains of servitude and the lash. The next Session of Parliament will not have fulfilled all its duties if it ends without the enactment of a brief measure, fixing severer punishments for specified acts of violence. What such an Act should be will presently be shown.

Here let us consider the present code of criminal law and the various cases of misplaced "discretion" which are culled from a file of newspapers. They deserve the most earnest consideration from every judge and member of Parliament who may happen to see them, and their lamentable effect is to produce that curse to any system of law—*a belief in its hazards and its chances as dependent on individul administrators.*

The Consolidation Act, 24 & 25 Vic. cap. 100, is the present code regulating the punishment dealt out by the law of England to the commission of crimes against the person. The annexed table shows the penalties attached to the different species of violence which it is the aim of this paper to discuss.

Summary Convictions.	
Common assault......	£5 fine or two months' hard labour.
Aggravated assault on women........	£20 fine or six months' hard labour.
Indictable Offences.	
Grevious bodily harm...	Penal servitude for life.
Common assault......	12 months' imprisonment.

Now there is no exaggeration in saying that dozens of cases are adjudicated on by magistrates under the first of these two headings which ought to be tried under the second. And, when so adjudicated, not even the full summary penalty—often not even half of it—is inflicted. Indeed, it is enough to provoke the most phlegmatic person into anger, to see the kind of apathy with which some of the London magistrates regard the cases of assault brought before them, and the ridiculously slight fines with which they punish them. The larceny of petty articles is visited with months of hard labour, while (to give instances reported in the newspapers) knocking a womans's tooth out and cutting her face, pulling a handful of hair out by the roots, indecently assaulting a servant, striking a woman with a rake in the face, and wounding her that she faints, and

other similar brutalities, have all been punished of late by the infliction of trumpery fines.

What is the consequence?—The savage spirit animating the ruffianism of London, and fostered by the Forcible Feebles at some of the courts, has full swing. Eyes blackned, noses broken, ears bitten off, frightful wounds, contusions, and locerations are the fruits of the magisterial leniency. One magistrate in particular seems, since his appointment, to be utterly blind and deaf to the complaints made for mere bodily injuries. In his court have been reported shocking assaults, not one of which has been visited with that bitter imprisonment which alone cures brutality.

Is it that the air of a London magistrate's has some enervating effect? Are the scenes and instances of shameful assaults and savage ferocity so numerous as to deaden the magisterial sensibility? Why is not the two months' penalty rigidly enforced in every assault where any bodily disfigurement or laceration—aye, be it the slightest—results, and why is not a minium of fourteen days given to every other proved savage attack? *Because the magistrates forget the precious value of limb and bone while perceiving that of watches and purses.!*

Of the strange perversity of judgement in this matter, which distinguishes many of the London magistrates, enough has been said in a former number, under the title "Crimes of Violence and their Punishment." Rather is it intended in this paper to point out the pernicious leniency which extends to some courts of far higher than Metopolitan police courts. Not merely at the Middlesex Sessions have have the heavy sentences passed off for offences against property, and the light ones for offences against the person. A sentence of four months for manslaughter with the knife was passed by an eminent judge not long since. Such a manslaughter is divided by the thinnest line from murder, and how paltry does it seem when compared with the heavy sentences of penal servitude inflicted at every assize and quarter sessions for robberies of articles of property.

Manslaughter, rape, assaults with intent, infliction of grevious bodily harm, and assaults resulting in *any* personal mutilation, ought by every rule of common sense to meet with most exemplary punishment. Yet they only seem to rank, in the minds of many administrators of the criminal law, with robberies, thefts, and forgeries, and generally *below* these last in heniousness. A lamentable perversion of judgment this, and most terrible in its consequences. The brutal violence of our English savages is, in effect, a result more or less of a pernicious idea that the person may be injured with little risk, while the pocket is guarded by the most terrible rigour of the law. Unless this idea is forthwith exploded by the infliction of very heavy punishment (with no remission) for violence, the lawlessness which has temporarily grown up among the dangerous classes will have terrible results. Already rowdyism and ferocity seem to have infected the mobs in many places in an unusual degree, and the sooner the lesson is taught that the Law is above all in England, the better for everyone's welfare.

Property is as nothing compared with life and limb. Who does not regard the robber of his watch as a far less culpable offender than the villian who stabs or beats him to death's door. The sharp sting of the lash, the terrors of the hulks, and the rigour of prison life are the only fit reprisals for crimes of brutal violence committed for mere savagery and love of inflicting pain. The wife beater, the villains who offer violence to women, the smashers of bones with pokers and hobnailed boots, the cannibals who bite off ears and noses, the ruffians who use quart pots as lethal weapons, and the vitriol throwers, are the worst criminals in England. By their side, the shoplifter, the watch stealer, the pickpocket, and the swindler are trifling offenders. And until the judges and the magistrates adopt this classification, we shall continue to shudder and sicken at the devilish brutality and cruelty which crop up at every gaol delivery.

It cannot be denied that the London stipendiary magistrates have done much, by their leniency towards mere acts of violence, in deadening the minds of criminals towards the nature of ruffianism; and one or two whom we could name, to judge from the *Times* reports of their courts, to show the most ridiculous ignorance of their functions as repressive agents of brutality as well as of theft. At one court several savage assaults have been punished with trumpery fines. It makes one regret that the option of a fine was ever retained in the 42nd section of the 24 & 25 Vic. c. 100, which rules common assaults. It is a source of miserable weakness in some magisterial decisions.

The moment the dreadful theory gains distinct shape, that the integrity of life and limb are little valued by the law, all security and cohesion of society ceases. Mercy, or rather weakness, in such cases is very cruel to the criminal classes as well as to their victims, because sooner or later it engenders a fierce and pitiless reaction; and more than that, leniency to offences of this class intensifies more than ever the commercial taint which runs so much through English law. Every consideration must point towards the far severer punishment of offences against person than of those against property.

What then are the suggestions for ameliorating the misplaced lenity which sows such dragon's teeth:—

1. (As before advised) a circular from the Home Office pointing out the imprisoning powers of the Act regulating offences against the person. This applies to magistrates' courts only.

2. A short and tersely drawn Act, punishing every common assault with any *wilful*

mutilation with a maximum two years hard labour, and in the case of a male, twenty lashes. Committal for trial *peremptory*.

3. Intensified punishments on proof of previous convictions for assaults.

Severity is needed. The lash has been so admirable a medicine for the disease of garotting, that we cannot doubt its efficacy in that of the brutal assault and battery. *And the lash has terrors for the brute.* Let a little consideration for the wives beaten almost to death, and the bitten, smashed, and kicked victims temper the philantrophy which looks after the perpretators and shudders at the cat-o-nine-tail's name.

To sum up the events of the case briefly, it is only necessary to reiterate that property can be fully reinstated; life, limbs, and teeth cannot. Attacks on the purse injure the bank-book, attacks on the body injure the constitution; and while offences against property shorten only the assets, attacks on the person often shorten life.

One word more. Every proved assault, either with intent or indecent, and every proved rape, ought to meet with the full terms of punishment. Nothing more demonstrates a weakness in a State than the insecurity of its women's safety, and nothing can be a bitterer satire on civilization than to see women unable to walk alone on the high road.

The sooner the judges, chairmen of Quarter Sessions, and magistrates decide on punishing greivously all crimes of unredeemed brutality the better for our national character and our social and individual safety. Not only for our own benefits but for those of the weak and defenceless in the lowest classes in the great town, ought we swiftly, sternly, and surely to teach the lesson that all violence ensures the heaviest retribution from the law. Impossible it is to overrate the importance of such a lesson, and it is earnestly hoped that the considerations imperfectly pointed out in this paper may at once find some place in the minds of those who have the great and awful responsibility of the just administration of the criminal law.

William Reade.

PROFIT COSTS of SOLICITOR MORTGAGEE WHO ACTS ON HIS OWN BEHALF.

In *Sclater* v. *Cottam*, apparently a suit to carry the trusts of a settlement in execution, 5 W. R. 744, 3 Jur. N. S. 630, Vice-Chancellor Kindersley refused to allow the mortgagee of a life estate under the settlement, and who had acted as his own solicitor, the costs which he had incurred in defending his title other than costs out of pocket. The Vice-Chancellor observed "Now, one principle is, that the mortgagee is entitled, as between him and the mortgagor, to have taken into account, on a suit to redeem, any costs which he has incurrred in protecting his title to the mortgaged property. Another principle is that the mortgagee, though he may be entitled to certain expenses properly incurred in relation to the mortgaged property, as the expenses of employing a collector, cannot himself charge for his own trouble. For instance, he may employ a collector, but if he himself takes the trouble of doing it, although it would not be a greater burthen to allow him the remuneration, the principle is, that he shall not be allowed it in his accounts. Putting these two principles together, my opinion is, that I must come to the conclusion that the certificate of the chief clerk is right, and that these costs cannot be allowed."

From the statement of the case, it seems that the mortgagee had under his security been in receipt of rents amounting to £1,100, from which he claimed to deduct, among other moneys, his costs, including profit costs, and it is observable that a mortgagee in possession is constructively a trustee of the rents and profits which he receives (see Lewin, p. 155); but, as the Vice-Chancellor observes, "it is not the same as the case of a trustee being allowed (query disallowed?) his costs," it may be questionable whether he rested his decision on the mortgagee's possession.

In *Price* v. *McBeth*, 12 W. R. 818, 10 Jur. N. S. 579, a puisne mortgagee filed his bill against the prior mortgagees and the mortgagor for redemption and foreclosure. A decree was made in the useful form, directing an account of what was due to the prior mortgagees for principal interest and the costs of their suit They had not however been in possession of the mortgaged property. On taxation, the plaintiff objected that they ought not to be allowed profit costs, but the taxing-master allowed them *the same costs as he would have allowed them if they had employed other solicitors to act for them.*

Mr. Wainwright, the taxing-master, in his reason for decision, stated, that a solicitor acting for himself, as plaintiff or defendant in a suit, had always been allowed his profit costs as if he had acted for others, except in the case of a a solicitor acting for himself as trustee; that a mortgagee, until he was repaid, was not a trustee, but a creditor; that, up to the case of *Sclater* v. *Cottam*, (*ubi sup*)., the cases in which a mortgagee was not allowed to charge for his time and trouble, seemed to have been cases of a mortgagee in possession receiving his own rents, and doing his own business as other individuals might do, and seemed not to have applied to the privilege of a solicitor acting for himself in a suit, and charging his fees in that suit. In *Sclater* v. *Cottam* the decision was not that the solicitor-mortgagee should not have his profit costs in that suit, but that he should not have profit costs for defending two other suits, which costs he claimed in the nature of just allowances to him as a mortgagee.

A motion was made on behalf of the plaintiff that the taxing-master might be ordered to review his taxation. The items to which ob

jection was taken were "all such items as either wholly or partially had been allowed," whereby the prior mortgagees would derive any pecuniary profit over and above the money out of pocket.

Vice-Chancelor Stuart stated that he did not intend to decide *whether* or not a solicitor as mortgagee in a suit for redemption and acting for himself; was as a matter of course to have his ordinary full costs of the suit; that was a question to be decided *at the hearing*. If any reason could be suggested why a solicitor's costs should be merely costs out of pocket, it ought then to be stated and the decree ought so to direct, but as the decree in question had not done so, he held that the taxing-master was "bound to proceed in the usual manner, and ought not to take upon himself the trial of questions which went beyond the decree. The Vice-Chancellor therefore refused the motion, without costs.

In Morgan & Davey's Costs in Chancery, p. 283, the authors, after citing *Price* v. *McBeth*, add, "but see *ante*, p. 281," apparently referring to *Cradock* v. *Piper*, 1 M. & G. 664, there cited, as if it were inconsistent with the ruling in the former case. In *Cradock* v. *Piper*, 1 M. & G. 664, there cited, as if it were inconsistant with the ruling in the former case. In *Cradock* v. *Piper*, Lord Cottenham, C. had held (contrary to his impresssion, see p. 675) that under an order to tax costs generally or to tax costs as between solicitor and client, the taxing masters were at liberty to take notice of the fact that the solicitor is also a trustee, and accordingly in that case to disallow costs, except those out of pocket. His Lordship, however, founded his conclusion on the *practice* of the taxing-master, and even then he thought that there was "a little difficulty in reconciling so large a discretion with what appeared to him to be its proper and legitimate exercise." See p. 676. The inference from *Cradock* v. *Piper* would rather seem to be, that the *practice* in the taxing-master's office has a very material bearing on the question. It is noticeable, that in *Sclater* v. *Cottam*, no reference appears to have been made to this practice.

We understand the practice of the taxing-master's office to be—that a solicitor-mortgagee is allowed his costs of suit (coinciding with the rule laid down by Master Wainwright), and this exception to the usual rule, that a party suing in person is entitled only to charge costs out of pocket, may be justified as well on the ground of public policy as upon the principle that a solicitor, as an officer of the Court of Chancery, is, by virtue of his privilege as such, entitled to his fees. Upon general grounds it is certainly advisable that a solicitor-mortgagee should be allowed his profit costs. If this were otherwise, the inevitable result must be either that he would complicate matters by taking the security in the name of a third party (so as not to disclose the fact that he, the solicitor, was himself the real lender), or else he would employ some other solicitor at a possibly increased expense, inasmuch as the previous knowledge possessed by another solicitor of the title and circumstances of the mortgaged property would probably be less than that of the solicitor, mortgagee himself. Hence it may well be for the mortgagee's own advantage, that this rule should be followed, and this the rather as the costs can be taxed; and the taxing-master would doubtless be ready to tax as strictly when the mortgagee was *his own* solicitor as when he acted by *another*.

The question we have been noticing has been frequently raised of late in the taxing-masters offices, but in no case has it been adjourned into court. At present the practice may be taken to be as we have said, and we believe the present practice to be the best for all parties. The subject is certainly an important one to the profession.

A BOOK ABOUT LAWYERS.*

This is verily the gossip of the bar. Lawyers pass their lives in discussing the affairs of others: here there own are minuted. The legal profession entails upon its members an intimated knowledge of the virtues, the vices, the foibles, the weaknesses, the habits, at home and abroad, of the rest of the world. They are even called on to become familiar with the little peculiarities and eccentricities of laymen, who come to them for advice, and intrust to them their family secrets,—who, unlocking their closets, invite an inspection of the skeletons within. Now, the profession, of course, has no skeletons; for it is forced to see so many belonging to others, that it finds better things to lock up, whether in its closets at home, or safes at the office: but it has its history, little as well as great, with a strong and a weak side; and little, odd nooks and corners and by-ways, alleys and back doors, as well as the great, broad stone front of solid grandeur and respectability, which it presents to an admiring public. Mr. Jeaffreson has chosen to make these smaller matters the subject of his book. The title-page tells us he is a "barrister-at-law:" whether he has attempted greater themes, and so Apollo, pinching his ear, has admonished him, and sent him to his humbler page, we know not. Enough to say, he has treated this subject quite cleverly, and has managed to fill two volumes, of nearly four hundred pages each, with entertaining and amusing talk about English lawyers. They are presented in almost every conceivable circumstance, from the cradle to the grave. "Lawyers in Arms" is the title of one of his chapters; and such is the comprehensiveness of the work, that one is rather surprised to find, that it is the arms of Mars, and not those of Lucina, that are referred to. Lawyers in the bar and on the bench, on foot and in the saddle, at home and abroad,

* By John Cordy Jeaffreson, Barrister-at-Law. In two volumes. London: Hurst and Blackett. 1867.

at their tables, in their chambers, in the House of Commons; lawyers in love, lawyers on the stage, married lawyers, henpecked lawyers; lawyers pleading, singing, fighting, jesting, dying. We are even told what they wore, what they ate and drank, when they rose, and when they went to bed. A curious entertainment this. The muse is not great and high and inspiring. There are no battles, and statesmanship, and things of nations; less heroic, perhaps because the sight is from a valet-de-chambre's standpoint. Those with the fine black eyes and full-bottomed wigs, have removed these tedious coverings with their flowing robes, or perhaps their collars of ss. My Lord High Chancellor Eldon becomes "handsome Jack Scott," and elopes with pretty Miss Bessie Surtees, of Newcastle. Lord Thurlow is no longer the savage old peer, with overhanging white eyebrows, giving from the woolsack that justly celebrated democratic reproof to the Duke of Grafton, which American schoolboys delight to declaim; but "lazy, keen-eyed, loquacious Ned Thurlow," perplexed where to find a horse on which to ride his first circuit, taking the animal on trial, riding him the circuit, and returning him on its completion, "because the animal, notwithstanding some good points, did not altogether suit him."

So Mr. Jeaffreson leads the reader through the book. The chapters are aptly designated; and, if one topic tires, the reader can skip to another, or, taking up the book at any point, cannot fail to find much that is clever, curious, and amusing. For let us be as studious as we may of the dignity of history, and let our reverence for the fountain-heads and sages of the law be however so deep, there is for all this a lurking—nay, rather an eager—curiosity to know what clothes these fine historic personages wore, what wine they liked best, how their wives treated them, and how many dollars or pounds they left behind to their descendants. Is gossip any the less amusing because it is of the great? Rather the contrary; and the appetite increases in proportion as its subject is higher in the world. Let others give the philosophical reason for this. Suffice it for the present that the fact exists; and that those students who have pored with diligence over the learned judgments of Mansfield and Ellenborough,, and read with admiration the eloquence of Erskine, will be none the less likely to be amused by a narrative of the dress, the manners, the foibles, or the wit of these great lawyers.

Anecdotes of the bench and bar have been published in considerable numbers before this. Lord Campbell's works on the Lord Chancellors and Chief Justices abound with them. The author of "Law and Lawyers," Mr. Polson, has given many; and they are to be found strewn here and there through the memoirs of the distinguished men and histories of the periods; but it is thought that there has been nowhere so full, so well assorted, and so readable a collection as that of Mr. Jeaffreson. As a matter of course, there is much to be found here that is by no means new, and not a little that is familiar, and almost hackneyed. Still this is necessary, from the nature of the book; for, in a work that pretends to completeness, the omission of these familiar histories would detract from its value, and constitute a serious defect. For one who desires an agreeably written compendium of the familiar life and manners of English lawyers of the past, there is no more readable book than the one "at bar."

While this "Book about Lawyers" contains some topics of a local nature which the English profession would feel more essentially its own, there are many matters which are calculated to give it a peculiar interest to the American lawyer. The separation for two centuries of our courts from those of the mother country, one of which has been that of divorce, together with the dissimilar natures of institutions and society, has produced in the courts and professions essential difference of practice and etiquette. Our early colonial courts were modelled on the English; our early lawyers were bred in the English inns. The English courts were their models in practice. Where, then, is the change? Not, as one might think, entirely in the new, but in the mother country. Mr. James Russel Lowell, in the preface to his "Biglow Papers," has conclusively shown, that a very large number of words and phrases, which are commonly regarded as provincial Yankeeisms, are in fact of ancient English origin, from which the modern English speech has varied, and which are preserved in this country in the true vernacular form. Indeed, any one in the habit of reading the older English poets, and especially Spenser, will readily observe how often he happens upon phrases which he has hitherto thought the native fruit of "down East." So the student of the ancient customs of the English profession will find in them quite as many resemblances to American, as to modern English, practice and etiquette. To give some of these. It is the leading principle of English professional etiquette, that the client must consult the barrister only through the medium of an attorney; but in the days of Sir Matthew Hale, and even afterwards, this was far from being the case. At this time clients were in the habit of addressing their counsel personally, and taking their advice; and, in the seventeenth century, almost always insisted on having personal interviews; and though their attorney or solicitors usually conducted them to the counsel's chambers, and were present during the conference, no member of the inferior branch of the profession deemed himself affronted or ill used if a client chose to confer with his advocate without the presence of a third person. Long, too, in the eighteenth century, barristers were in the habit of acting without the co-operation of attorneys, in cases where no process required the employment of the latter. "They were accustomed," says Mr. Jeaffreson, "to receive

their lay clients in the coffee-houses fast by Westminster Hall and Inns of Court; just as the eighteenth century physician used to sit at an appointed hour of each day in his public coffee-room, and write prescriptions for such patients as came to consult him, while he drank his wine." The reader will recollect, that, in one of the series of Hogarth's pictures of "Marriage à la Mode," the young barrister, afterwards the lover and seducer of the wife, sits by and superintends the execution of the marriage-settlement: an office which professional etiquette would debar an English barrister from performing at the present time. So, too, as to interviews with the witnesses, whose testimony the English lawyer of the present day knows only from his brief. Roger North says he has heard Sergeant Maynard say, that "no attorney made breviate of more than the pleadings, but that the counsel themselves perused and note the evidences,—if deeds, by perusing them in his chamber; if witnesses, by examining them there also before the trial: and so," North very sensibly remarks, "were never deceived in the expected evidence, as now the contrary happens; the evidence seldom or never comes up to the brief, and counsel are forced to ask which is the best witness. But the abatement of such industry and exactness, with a laziness also, or rather superciliousness, whereby the practice of law forms is slighted by counsel, the business, of course, falls into the hands of attornies."

Fees and retainers, also, which it is now unprofessional in England to receive directly from the client, were, in Sir Matthew Hale's time, paid to the barrister from the client's own hand. Indeed, the modern English fashion, strictly subdividing legal labor and controlling the relation of lawyers and clients, did not come into vogue until the latter part of the eighteenth century. Lord Harwick studied in an attorney's office, and Lord Thurlow in a solicitor's. The ancient English bar, in this respect, resembled more closely the American than that of modern England.

Wigs, the distinctive adornment of both judges and bar of modern times, are but an innovation, and were imported from France at the restoration of Charles II.; and, though society in general afterwards dropped them, the profession, with its love for precedent, has retained this French fashon to the present day. Our green bags are a relic of ancient times. They are now never carried by English lawyers; but on the stage of the theatres, in the seventeenth century, they were always borne by them. In Wycherly's "Plain Dealer," Widow Blackacre upbraids the barrister, who declines to argue for her, with "Gadsbodkins! you puny upstart in the law, to use me so; you *green-bag carrier*, you murderer of unfortunate causes, the clerk's ink is scarce off your fingers." It appears too, that, in Queen Anne's time, these green bags were carried by attorneys and solicitors as well; for Ned Ward, in "The London Spy," observes of a dishonest attorney, that "his learning is commonly as little as his honesty, and his conscience much larger than his green bag." Whether, in any or all these innovations on the ancient practice, any improvement has been made, may be a matter of divided opinion; but, in respect to another change, there can be but one. "In the seventeenth century," says Mr. Jeaffreson, "an aged judge, worn out by toil and length of days, was deemed a notable instance of royal generosity if he obtained a small allowance on relinquishing his place in court." Now the English people pay liberal pensions to those faithful servants and who have served them long and well. We still retain the ungenerous fashion of the seventeenth century.

The great rewards given to successful members of the profession in England, renders the lives of their distinguished lawyers the history of the country. Mr. Jeaffreson says the life of a lawyer comprises three distinct periods; first, the useful but inglorious labors of an overworked barrister; second, a term in which the more lucrative achievements of a popular leader are diversified by the triumphs of parliamentary warfare; third, the honors and emoluments of the woolsack or the bench. Including those peerages which have been won by persons whose families were first made noteworthy by great lawyers, as well as those won by actual lawyers, there were in the English House of Lords, at the time of the elevation of Lord Campbell to the peerage, three dukedoms, seven marquisates, thirty-two earldoms, one viscounty, and thirty-five baronies, held by "peers who, or whose ancestors, have filled the judicial seat in England;" and the number is constantly increased by the ennoblement of successful men, the last of whom is Sir Hugh Cairns. In the reply of Lord Thurlow to the Duke of Grafton, already alluded to, he says, "The noble duke cannot look before him, behind him, or on either side of him, without seeing some noble peer who owes his seat in this house to successful exertions in the profession to which I belong." It would be foreign to the purpose of this book about lawyers, to give any thing like a detailed history of these men; but a curious and entertaining story is told of the Great Seal of England, and the vicissitudes to which it has been subjected. The seals, of which one may see the counterparts in any book of ancient English customs, are certainly not flattering portraits. Edward the Confessor, who is supposed to have set the fashion, appears to have been taken seated on a low stool, so that his legs, for the length of which he was noted, have scarcely that grace which might be desirable; and his knees are brought in painful proximity to his chin, making him resemble a trussed fowl rather than the "Lord's anointed." The conservative spirit of later kings probably induced them to copy their predecessors down to the middle of the eighteenth century, with some few exceptions

—such as the Conqueror, who appears mounted; and Queen Bess, whose expanse of stiff petticoat modestly leaves the position of her knees to the imagination.

(*To be continued.*)

ONTARIO REPORTS.

PRACTICE COURT.

(*Reported by* Henry O'Brien, Esq., *Barrister-at-Law, Reporter in Practice Court and Chambers.*)

Ross et al. v. Grange.

Practice Court—No jurisdiction to rescind Chamber order.

Held, 1. That a judge sitting in Practice Court has not power in this country to set aside an order made in Chambers; an appeal from such order lies only to the Court *in banc*.
2. That if there be any objection to the mode of compliance with an order, application should be made to the judge who made it (following *Rennie* v. *Beresford et al.*, 3 D. & L. 467.)

[Practice Court, M. T., 1867.]

The plaintiff obtained a rule *nisi* in this Court as follows:

"Upon reading the order made in this cause on the 5th day of October, A.D. 1866, by the Honourable Mr. Justice John Wilson (a copy of which order is filed on this application), setting aside the judgment on demurrer signed in this cause, and giving the defendant leave to plead a plea, it is ordered that the defendant do, upon notice to be given to him or his attorney of this rule, shew cause why the said order of October 5th, 1866, and all proceedings taken thereunder, should not be set aside or rescinded with costs, on the ground that a judge in Chambers had no power to set aside a judgment on demurrer regularly signed in pursuance of a rule of court in that behalf, and that there could be no amendment of a pleading, as ordered in said order, after rule of Court giving judgment on demurrer, and not reserving leave to amend; and why all the proceedings after such order should not be set aside, and why the amendment pleaded should not be set aside with costs, on the ground that no leave was given by the order to defendant to amend, and that his only power was to add a plea."

C. Robinson, Q. C. (*Palmer* with him) shewed cause and made the following preliminary objections:

1. That the rule does not refer to the affidavits as having been previously filed or used in Chambers.

2. That the only affidavits filed on application for the rule are those of the plaintiff, and not *all* the affidavits used in Chambers, and the practice requires that all the material used in Chambers should be produced on moving against the rule.—Citing Ch. Pr. 1580, 1610, 1611; *Small* v. *Eccles*, 1 U. C. L. J., N. S., 122; *Needham* v. *Bristow*, 1 Dowl. N. S. 700; *Bennett* v. *Benham*, 15 C. B. N. S. 616; *Dickey* v. *Mulholland*, 2 Prac. Rep. 69; *Mitchell* v. *Harding*, 5 L.T. N.S. 348; *Warman* v. *Halahan*, 30 L. J. Q. B. 48; *Hall* v. *Featherstone*, 4 Jur. N. S. 813.

3. That a judge sitting in Practice Court has no power to set aside an order made by a judge in Chambers. There is no appeal from Chambers to Practice Court. The practice here is regulated by statute (Con. Stat. U. C. cap. 10, secs. 9, 10), and differs in that respect from the practice in England.

As to costs, see *Croft* v. *Lumley*, 25 L. J. Q. B. 81; *Phillips* v. *Masson et al.*, 9 U. C. Q. B. 28.

McMichael supported his rule, citing *King* v. *Meyers*, 5 Dowl. 686.

Morrison, J.—It was admitted at the bar that the objection here taken had been raised for the first time; that applications to rescind and reverse judges' orders had been frequently made in this Court without question, but as the want of jurisdiction is now urged it becomes necessary to see whether any authority is conferred upon the Practice Court to hear and determine an application of this nature.

The various writers of the books of practice say that the jurisdiction of a judge in Chambers is partly conferred by statute, and partly has grown up by immemorial usage, the origin being obscure. In England the statutes 11 Geo. IV. and 1 Wm. IV. cap. 70, and 1 & 2 Vic. cap. 45, give other judges of the respective courts there, when sitting in Chambers, a general and concurrent jurisdiction in the transaction of business, the same as if they were judges of the court in which the business or action is pending, the language used being similar and to the like effect as that used in the 10th section of our Con. Stat. U. C. cap. 10, with the exception that to the end of the 10th section of our Act, these words are added: "subject to the right of appeal to, and of revision by the full court in which the matter may be depending."

Previous to the establishment of the Bail Court in England under the 1 Wm. IV., already cited, (a court corresponding to our Practice Court) it is quite clear that if parties were dissatisfied with the order of a judge made in Chambers, they had to apply to the Court *in banc* either to rescind or review it; and since the 1 Wm. IV. it has been held in England that a single sitting in the Bail Court could reverse the decision of a judge in Chambers. I refer to the case of *King* v. *Meyers*, 5 Dowl. 686. It was there contended that it was not competent for a judge sitting in the Bail Court to reverse the decision of a judge at Chambers, when Coleridge, J., said "it was the continual practice of that Court to entertain such motions, and that the judges would be extremely sorry if anything which passed at Chambers could not be reversed in the Bail Court."

Upon the strength of that authority, I would have held that this court had authority to deal with this motion, were it not for the proviso already referred to, appended to sec. 10 of our act, providing that Chambers business transactions by a single judge out of Court are subject to the right of appeal to and of review by the *full* court in which the matter may be depending.

The Legislature by the previous section (sec. 9) established the Practice Court with very general powers, and I think we may presume that their attention was drawn to the point, and when enacting the provisions respecting the transacting of business in Chambers, they reserved the right of reviewing a judge's order to the full court, using the word "full" for the purpose of distinguishing the court, or the court *in banc*,

from the Practice Court, authorised by the previous section.

I am therefore of opinion that I must sustain the objection as to jurisdiction.

It was also contended by Mr. McMichael that if I had no authority to rescind the decision of my brother Wilson, that that part of his rule which asked to set aside the amendment pleaded under the judge's order should be made absolute, as the only power given by the order was to add a plea, and not to amend; but I think the proper course in such a case is that pointed out in *Rennie et al.* v *Beresford et al.*, 3 D. & L. 467, where Alderson, Baron, said: "If there be any objection to the mode of compliance with the order I made at Chambers, that is a proper matter to go to Chambers again, for application should be made to the judge to enforce his own order. It is only proper to come to the Court when you deny the exercise of the judge's discretion at Chambers."

The rule will be discharged, and there can be no costs; and, as plaintiff desires it, all proceedings will be stayed until the first four days of next term.

Rule discharged without costs.

COMMON LAW CHAMBERS.

(*Reported by* Henry O'Brien, Esq., *Barrister-at-Law, Reporter in Practice Court and Chambers.*)

McInnes v. Davidson.

Insolvent acts—Order by judge to produce books—Insufficient compliance—Contempt—Punishment, nature of.

An insolvent was ordered by a county judge to produce certain books and papers. These were at the time at Bruce Mines, and the insolvent did not feel called upon to go there for them, and an order was made *ex parte* for his committal for disobedience of the order. The insolvent had, however, in the meantime, taken the books to Montreal and given them to one H. to hand to the assignee. He was then arrested, and subsequently applied for his discharge, which was refused. The books were afterwards handed over to proper person, though in a mutilated condition, which the insolvent said must have been done at Montreal. He then again applied for his discharge on the ground that he had complied with the order, and that the imprisonment was for compulsory purposes only. The county judge, however, made an order refusing the application, and the insolvent then appealed from this last order to a Judge in Chambers in Toronto.

It was urged that the warrant of arrest was insufficient on its face; that no demand was made of the books, or refusal to give them shewn, and therefore no contempt; and that the power of imprisonment was only to enforce compliance with the order, and not *in pœnam*.

Held, 1. That the judge at Toronto had no right to enquire into the legality or propriety of the warrant for arrest, or as to the nature or object of the imprisonment authorised by the statute, or whether the warrant was an order and so an appealable matter under the acts.

2. That the last order of the county judge was not improperly made, and the appeal was merely an appeal from that order.

The purposes for which imprisonment is imposed enumerated.

Quære, whether in this case the imprisonment was coercive or punitive.

[Chambers, November 15 1867.]

Notice of appeal, dated the 10th of October, 1867, was served by the defendant (*an insolvent*) that he would appeal to one of the judges of Common Law at Toronto against the order and decision of the judge of the County Court of the County of Wentworth, made on the 16th of September last, refusing and discharging the petition of the insolvent, wherein he prayed to be discharged from further imprisonment under the warrant of the said judge of the County Court of the 17th August last; and, the appeal having been allowed, notice was further given that the insolvent would present a petition to the presiding judge in Chambers at Osgoode Hall, and that the insolvent would (amongst other things) insist on the following ground of appeal, namely, that he had complied with the order of the said judge of the County Court, on the 26th of June last, fully, or as fully as it was in his power to do, and therefore should have been discharged by the said judge—the power of imprisonment conferred on the said judge being intended for compulsory purposes only, and not for purposes of punishment.

The petition stated that the insolvent, who had been carrying on business as a country merchant at the Bruce Mines, assigned on the 16th of November, 1866, all his property and assets to John Whyte, an official assignee, then and now of Montreal, in trust for the payment of his debts, and his estate having been subsequently placed in compulsory liquidation, such proceedings were had that the appointment of John Whyte as such assignee was confirmed:

That on the 26th of June, 1867, the said judge of the County Court, acting in Insolvency, made an order requiring the insolvent to deliver to the said assignee, or such agent as he should name, all letters, books containing copies of letters in any way connected with his late business, and all letters, vouchers, notes, deeds and documents relating thereto, which order was served on the insolvent, in Hamilton, on the same day:

That at the time of serving the said order the insolvent had only some letter books, some registered deeds for lands, and a bundle of old letters, retired notes and accounts, or invoices of no use in ascertaining the state of his affairs, all of which at that time were at Bruce Mines, some hundreds of miles from Hamilton, and much further from Montreal, where the assignee lived:

That the insolvent was never after the service of the said order asked for the said books and documents by the assignee, or by any one professing to be authorized by him to receive them, but nevertheless, on the 17th of August, 1867, a warrant was issued by the said judge of the County Court, on the *ex parte* application of the plaintiff, ordering the insolvent to be committed to the common gaol of the county of Wentworth for six months, under which warrant he was arrested in Montreal, and conveyed thence to Hamilton, and lodged in the common gaol, where he is now incarcerated under the said warrant:

That on the 24th of August, 1867, the insolvent applied to the said judge of the County Court to be discharged from imprisonment under the said warrant, which application was refused by the judge:

That the insolvent did not understand that the order for the delivery of the books and documents imposed on him the obligation of going or sending to Bruce Mines for them, or of carrying or conveying them to the assignee at Montreal, as the insolvent was informed the said judge in effect held in refusing the application of the insolvent: and that if it did impose upon him

such an obligation, it was absolutely beyond his power to comply with it, having not a dollar of his own, nor any means of defraying the expenses thereof, the assignee having received all his property and assets; but having been gratuitously provided by some relatives with the means of going to Bruce Mines, no part of which was furnished either by his creditors or by the assignee, he conveyed the said books and papers to Montreal, and left them at the counting house of Messrs. Hingston, Telfer & Co. in Montreal, and the assignee received notice thereof, and the books and papers were shortly after, as the insolvent has been informed and believes, offered to the assignee by Mr. James Hingston, of the firm of Hingston, Telfer & Co., but he declined to receive them:

That after the refusal of the application of the insolvent to be discharged, he procured the said books and papers to be forwarded from Montreal and delivered to Miles O'Reilly, Esq., who, as the insolvent, was informed delivered them to Messrs. Burton & Bruce, the assignee having, as the insolvent was informed, authorized such delivery to them as a delivery to himself:

That on the 30th of August, 1867, the insolvent applied to the said judge to be discharged from further imprisonment, setting forth in his petition for that purpose the previous sentiments, which application was refused on the 16th of September last:

That the insolvent complied with the said order of the 26th of June last to the utmost of his power before making the last-mentioned application, and his further imprisonment can be of no use to any one, except thereby to coerce some of his friends or connections into assuming the payment of his debts, but, on receiving the said letter books from Montreal (which contained the insolvent's private as well as his business letters), he found that some leaves had been removed from the one of most recent date, and although he was unable to set forth what was contained on the said missing leaves, he is able to say, and does say, that they did not contain any matter of any use to the assignee or his creditors in ascertaining the state of his affairs or otherwise howsoever; and that he is unable to say how the missing leaves were removed, but they were removed without the insolvent's knowledge or consent, and against his will; and until he received the affidavit of James Hingston, of the 11th of September, and of Edward J. Lindsay, of the 10th of September, he was under the belief that they were removed while the said books were lying in the counting house of Hingston, Telfer & Co., in Montreal.

The insolvent, therefore, prayed that he might be allowed to appeal from the last-mentioned decision of the said judge, and that the said decision might be reversed, and he discharged from further imprisonment under the said warrant, being fully persuaded that he could not live the said six months if retained in his present place of confinement.

W. Sydney Smith shewed cause.

The warrant of imprisonment is not an order appealable by the statute, and the sentence of imprisonment when awarded cannot be remitted. *Ward* v. *Armstrong*, 4 U. C. Prac. Rep. 60; Insolvent Act of 1864, sec. 8, sub-sec. 7; Insolvent Act of 1865, sec. 29.

Jas. Patterson and *Curran* supported the petition.

The insolvent may proceed in case of a wrongful imprisonment either by way of appeal under the statute, or by *habeas corpus* at the common law; Deacon's Law of Bankruptcy, 727; *Ex parte Jones*, 1 Mont. D. & D. 145.

The warrant should have stated that the insolvent had the books and documents in his possession which he was committed for not delivering; *Crowley's case*, 2 Swan. 1.

No jurisdiction is shown on the face of the warrant.

No demand of books was ever made of the insolvent, nor was any refusal by him to deliver them shown. There was therefore no contempt. It is not mere disobedience that is punished—it is *wilful* disobedience, and none is shewn here; *Miller* v. *Knox*, 4 B. N. C. 574.

That the power of imprisonment is conferred only to enforce compliance with the orders of the Court, and when that has been secured the imprisonment should no longer be continued. It was not intended strictly to be a proceeding in *pœnam: Ex parte Oliver*, 1 Rose 407, 2 V. & B. 245; *Ex parte James*, 3 Jur. 538.

Adam Wilson, J.—The clause under which the original order of the 26th of June, 1867, for the delivery by the insolvent of his letter books to the assignee or to any agent he might name, is sec. 29 of the Act of 1865. But the judge must have possessed such power, independently of that clause, under sec. 3, sub-secs. 9, 11, 22, of the Act of 1864, although what his power of punishment would have been in the absence of the express provision contained in the act of 1865 is not quite certain.

No complaint has been made in this present appeal against the order of the 26th of June, for the delivery up of the letter books, nor has any complaint been made against the warrant of commitment dated the 17th of August last, imposing six months' imprisonment upon the insolvent, "or until this Court (the County Court judge) shall make order to the contrary." Nor is any complaint made that the petition of the insolvent to the judge of the County Court, dated the 22nd of August last, praying to be discharged from custody under the warrant of commitment was improperly disposed of, the judge having been of opinion "that the insolvent was disobeying the order of the 26th of June," and "refusing to rescind or set aside the order for commitment, or to make any order for discharge of the insolvent, unless he complied with the order requiring him to deliver up these books and papers."

The appeal is merely against the order of the Judge of the County Court of the 16th of September last, refusing to grant the application of the insolvent, of the 30th August, to be discharged from further imprisonment, because he had complied with the order for the delivery up of the letter books, &c., so far as it was in his power to do.

In disposing of that application, the learned judge said that he considered sec. 29 of the Act of 1865 both compulsory and punitive, because the time fixed by it was definite and not

"until further order:" that the term of imprisonment awarded under the Con. Stat. U. C. ch. 24, sec. 41, was of the same nature, and the punishment under it had been considered as final when it had been ordered: That he had before thought the insolvent had wilfully disobeyed the order of the 26th of June, and he was not satisfied the insolvent had done all in his power since to comply with it. "It was his duty to hand the books and letters to the assignee, but instead of doing so he hands them to the person whose claim upon the estate is, apparently with good reason, disputed by the assignee, and whose interest it was to destroy any letters tending to shew that his account is incorrect. Certain letters have been removed apparently by Mr. Hingston, for the insolvent swears that the letters were in the book when it was handed to him. He also says that the books and letters were handed to Mr. Hingston to be delivered to the assignee; he was therefore the agent of the insolvent for the purpose of delivery, and the insolvent is bound for his acts and omissions. For all that appears, these missing letters may still be in the hands of his agent, Mr. Hingston, and until the insolvent shews how these letters were abstracted and what has become of them, or produces them, he does not come into Court with clean hands to ask for his discharge. . . . I refuse to grant the prayer of the petition for the discharge of the insolvent." In pursuance of this, the order of the 16th of September now appealed from was drawn up.

As I have before stated, I do not consider I have to determine on the regularity, legality, or propriety of any of the proceedings prior to the application of the 30th August, and the order made thereon, unless so far as the grounds of appeal necessarily extend to them, and bring them within the operation of the appeal—and a ground of appeal, that the judge should have discharged the insolvent because the insolvent, as he maintained and now maintains, had complied with the order of June, so far as it was in his power to do so, will not, in my opinion, let in objections to the validity or invalidity of the warrant because it was *ex parte*, or because it does not set out a full enough cause for commitment, nor because the insolvent could not or should not have been required to go to the Bruce Mines without a tender of his expenses for the purpose of getting the books and taking them to the assignee. Nor have I to consider whether the warrant is an order, and so appealable or not, because the warrant has not been appealed from. Nor am I required to determine whether the 29th section of the Act of 1865 makes the imprisonment unconditional for the term awarded, or whether its purpose and object are not just as the warrant in this case is, in fact punishment in substance, but determinable on submission made—"six months imprisonment or until this court shall make order to the contrary."

Imprisonment is imposed for different purposes—for *prevention*, as by a constable to hinder a fray, or by any person to restrain a misdemeanor or prevent a felony: for *security*, as in cases for debt or other civil demand before judgment: or in criminal cases before investigation or trial, or until sureties for the peace are given, by way of satisfaction as upon a *capias ad satisfaciendum*: in *coercion*, to ensure the performance of some particular act, as in cases of actual contempt, until the contempt be purged; and in cases of supposed contempt, as for not making a return of legal process: or for not paying over monies raised by such process by officers of the court, until return or payment is made, and to enforce the payment of pecuniary fines: and *punitive*, as in criminal sentences.

In cases of contempt the warrant of commitment is properly expressed, that the party be kept until further order; *Green* v. *Elgie*, 5 Q. B. 99.

Whether the imprisonment here is coercive or punitive it is not for me at present to express an opinion, nor is it for me to say which it is in cases arising under ch. 24, sec. 41, before referred to.

When a party is "recommitted to close custody for any period not exceeding twelve months and to be then discharged," under the Con. Stat. U. C. ch. 26, sec. 11, because it appears to the court or judge that the debt was contracted by fraud, &c., is a case, I should think, of plain and direct punishment, nothing can be done or is to be done compensatory or in mitigation of it. Whether the same can be said where the principal purpose is to procure the delivery of books, or the giving of full information which may benefit the creditors, and when the refusal is sure to be persisted in if the imprisonment is to be maintained, is not very clear; that it may be till answer made or until further order is perhaps quite probable: *The King* v. *Jackson*, 1 Q. B. 653; *Groome* v. *Forrester*, 5 M. & R. 61.

The reason I am not called upon to consider what the nature of the imprisonment which has been awarded under the 29th section before mentioned is, that on the merits of the application, assuming the judge could review and alter his former decision, I think the learned judge was quite right in treating the delivery over of the books in a mutilated form, and which mutilation to some extent might not unfairly be attributed to the insolvent, and at any rate that it had not been satisfactorily accounted for or explained, or what had become of the missing leaves, was not conduct which amounted to a compliance by him of the order of the 26th of June, so far as it was in his power to comply with the same.

If I had been of opinion that the insolvent had truly complied with the order referred to, I should have been obliged to have considered whether it was or was not within the jurisdiction of the learned judge to have re opened the question and term of imprisonment.

Because I conceive the order of the learned judge of the 16th of September was not improperly made discharging the application of the insolvent of the 30th of August, I must dismiss the appeal with costs, to be paid by the appellant to the present plaintiff.

Appeal dismissed with costs.

CHANCERY CHAMBERS.

(*Reported by* Mr. Charles Moss, *Student-at-Law.*)

Bennett v. Sprague.

Next friend—Married woman—Stay of proceedings.

A defendant in a suit cannot act as the next friend of the plaintiff, a married woman. Proceedings were stayed until another next friend should be appointed.

[Chambers, 22nd March, 1867.]

The bill was filed by the plaintiff, a married woman, by J. W. M., her next friend, against several defendants, one of whom died intestate during the progress of the suit. J. W. M. obtained letters of administration to the deceased's estate, and was added as a party defendant to the suit, by order of revivor.

Another defendant thereupon moved for an order to stay all further proceedings in the cause until the plaintiff appointed another and proper next friend.

Moss, in support of the motion, cited *Payne* v. *Little*, 13 Beav. 114; *Anon.* 11 Jur. 258, and argued that the former case was exactly in point and must govern this.

Hodgins, for the plaintiff, relied upon the language of Lord Cranworth in *Elliot* v. *Ince*, 7 DeG. McN. & G. 475; 3 Jur. N. S. 597; and also cited Jarman's Pr. 20. He asked leave to sue in *forma pauperis*, if the present application should be granted.

The Judges' Secretary.—I think I must follow *Payne* v. *Little*, and stay proceedings until the plaintiff appoints a new next friend. The application for leave to sue in *forma pauperis*, must be the subject of an independent motion.

Rogers v. Crookshank.

Affidavit on production—Insufficiency of.

[Chambers, Nov. 29, 1867.]

This was an application to take an affidavit on production off the files for insufficiency. The affidavit was a printed copy of the form in Schedule K. to the orders, and referred to documents in the various schedules annexed, but no documents were set out in the schedules.

The Judges' Secretary.—I direct the affidavit to be taken off the files with costs. I cannot but disapprove of the want of care evinced in its preparation. No solicitor ought to have permitted his client to swear to it. The late V. C. Esten on several occasions expressed his strong disapprobation of the use of printed forms where the facts are not easily capable of being adapted to them.

Same v. Same.

Omission of addition or description of deponent in affidavit—Irregularity—Costs.

An affidavit should contain the description or addition of the deponent, or, if made by a plaintiff or defendant, should show that he is such plaintiff or defendant.

An affidavit on production made by W. R., not stating any description or addition or otherwise shewing that he was a party to the suit, was ordered to be taken off the files, but as the omission was a mere slip, the order was made without costs, and leave was granted to re-file the affidavit.

[Chambers, Dec. 11, 1867.]

T. H. Spencer moved to take the affidavit of the plaintiff William Rogers, on production of documents, off the files for irregularity, on the grounds:

1. That it did not appear that defendant was the plaintiff.

2. That there was no addition or description to deponent's name.

He referred to 1 Dan'ls Prac. p. 827; Taylors Orders, p. 132; and *Crockett* v. *Bishton*, 2 Mad. 446.

Bain, contra, contended that the affidavit having been made and filed in obedience to the order to produce served by defendant, must be presumed to have been made by plaintiff. The third paragraph of the affidavit shewed that it must have been made by a party. There was only one William Rogers a party to the suit, and the bill shews his residence and description. There was no case in point cited in support of the application, and in the case of *Sprague* v. *Henderson* (unreported upon this point) V. C. Esten overruled a similar objection. He cited *Fisher* v. *Coffey*, 1 Jur. N. S. 956, and asked leave in case the affidavit was held bad to re-file it.

The Judges' Secretary.—The affidavit must be taken off the files, but the omission being a mere slip, the order is without costs. I grant leave to re-file the affidavit.

Bolster v. Cochrane.

Motion by plaintiff to reinstate bill—Plaintiff residing out of jurisdiction—Security for costs of motion.

[Chambers, Dec. 9, 1867.]

This was a motion by the plaintiff to set aside a consent to the dismissal of the bill, and the order of dismissal made thereon, on the ground that the consent was obtained by fraud. The plaintiff resided out of the jurisdiction of the court.

S. H. Blake for the defendant, asked that the plaintiff might be ordered to give security for the costs of the motion before it was entertained by the court.

The Judges' Secretary ordered that security to the amount of $100 should be given before the plaintiff could be allowed to proceed with his motion.

Denison v. Denison.

Entitling papers on motion to set aside bond for security for costs of appeal—Prior irregularity by party objecting to irregularity—Estoppel.

The papers and affidavits used on a motion to set aside a bond for security for costs of appeal from the Court of Chancery, should be entitled in that court.

The fact that a party objecting to an irregularity has himself committed a similar irregularity, which in a measure led to that objected to, does not estop him from taking the objection.

[Chambers, January 7, 1868.]

F. Holmested moved the disallowance of the bond for security for costs of appeal filed by the plaintiff.

R. Sullivan, contra, objected that the notice of motion and the affidavits proposed to be read on the motion were entitled in the Court of Error and Appeal, whereas they ought to have been entitled in the Court of Chancery. Until the

petition in appeal was filed there was no cause in the Court of Error and Appeal. He cited *Weir* v. *Matheson*, 1 Cooper's Chan. Cham. R. p. 81, and *Harvey* v. *Smith*, 2 E. & A. Reports.

Holmested in reply stated that the notice of filing the bond was entitled in the same way, and the style of cause had been copied from it, and therefore, he contended, the plaintiff was estopped from raising the objection.

The Judges' Secretary.—I think the objection to the entitling of the affidavits and notice of motion is fatal. The fact that the notice of filing the bond is styled in the Court of Error and Appeal, is no answer. The motion must be refused with costs.

INSOLVENCY CASE.

(Before His Honor Alexander Macdonald, Esq., Judge of the County of Wellington.)

Simpson v. Newton.

Insolvent Act 1864, *sec.* 5, *sub-sec.* 10—*Action against assignee for dividend.*

Held, that an action may be brought against an assignee in insolvency for a dividend on a duly collocated and advertised claim which has not been objected to.

[Guelph, January, 1868.]

This was an action brought in the Division Court at Guelph, against the defendant as official assignee of the estate of Hockin & Hockin.

The particulars of the plaintiff's claim were for $100 (abandoning the excess of $117.50 over the sum of $100) proved before the assignee in due form of law, for three months arrears of wages due from the insolvents to him, for money payable by the defendant, as such assignee, to the plaintiff, for money received by the defendant as assignee for the use of the plaintiff, &c.

From the evidence it appeared that the plaintiff had made and filed an affidavit on the 2nd of March, 1867, with the defendant, official assignee of Hockin & Hockin, in which he stated that the insolvents were indebted to him in the sum of $117.50, for work done by him as their hired servant.

The plaintiff's claim was collocated in the dividend sheet as a privileged claim for $117.50 for wages under the 10th sub-section of section 5 of the Insolvent Act, 1864. This dividend sheet was duly advertised. No objection was made by any creditor under the Insolvent Act.

The assignee objected to the claim, but he did nothing further than to inform the plaintiffs that it was objected to, until the plaintiffs applied for the amount of his claim, which was after the expiration of six days from the last publication of the advertisement, when the assignee required further particulars respecting the claim. A second affidavit was then furnished by the plaintiff, sworn on the 3rd of October. The assignee made an appointment in writing dated the 19th October, for the 21st October, to hear and examine the parties, and hear evidence as to the claim of the plaintiff. The plaintiff's solicitor, upon whom the appointment was served, attended and acted for him; but without further notice to the assignee this action was commenced.

It was objected for the defendant at the trial, that the defendant, as assignee, could not be sued for a dividend.

But it was held by the learned judge that such an action could be maintained, as the plaintiff had complied with the Act in proving his claim before the assignee, who collocated it on the dividend sheet as a privileged claim, and it having been duly advertised, and unobjected to by any creditor.

Evidence was taken to shew that the plaintiff was not entitled to hold his claim, subject to the plaintiff's objection that the assignee could not dispute it under the circumstances.

Macdonald, Co. J., having taken time to consider, delivered the following judgment:—

Sub-section 10 of section 5 of the Insolvent Act provides "that clerks and other persons in the employ of the insolvent, in and about his business or trade, shall be collocated in the dividend sheet by special privilege for any arrears of salary or wages due and unpaid to them at the time of the execution of the deeds of assignment, &c., not exceeding three months of such arrears."

Sub-section 11 provides that "as soon as a dividend sheet has been prepared, notice thereof shall be given by advertisement, and after the expiry of six judicial days from the day of the last publication of such advertisement, *all dividends* which have not been objected to within that period *shall be paid.*"

By the 16th sub-section of section 4, assignees are made subject to the summary jurisdiction of the court or judge in the same manner as other officers of the court are made subject to its jurisdiction, but a creditor's remedy by action is not taken away, as under the Bankruptcy Acts in England, wherein the remedy by petition for redress against an assignee who refuses to pay a dividend is substituted for the former remedy by action. It is there expressly provided that no action for any dividend shall be brought against assignees by a creditor who has proved under a commission.

By the interpretation clause the word "collocated" means ranked or placed in the dividend sheet for some dividend or sum of money, so that the amount for which the plaintiff was collocated for wages is included in the term dividend, and is subject to objection like any other dividend, and if not objected to by a creditor in the words of the Act "must be paid."

As there is nothing in our Insolvent Act to deprive a creditor of his action of debt for a dividend, in the face of the positive enactment that all dividends not objected to shall be paid, my opinion is that an assignee cannot resist the payment of a dividend on the ground that the debt was not due or entitled to rank as collocated on the dividend sheet.

In *Ex p. Hodges*, Buck. 524, it was held that an application by petition against an assignee could only be resisted by the assignee, on the same grounds that he might have availed himself of, as a defence to an action before the remedy by petition was instituted for the former remedy by action. On such a petition the assignee cannot dispute the debt, but he might under the Bankruptcy Acts make it the subject

matter of a distinct petition to impeach the creditor's proof and debt. See *Ex p. Loxly*, Buck. 456, and *Ex. p Whitside*, 1 Rose, 319.

In *Ex p. Alexander*, 1 Deacon & Chitty, 514, in which the creditor petitioned the Court to compel the official assignee to pay his dividend, which the assignee disputed on the ground that the creditor had funds of the estate, Sir G. Rose said: "It appears impossible to contend that an official assignee can remit an *order* for the payment of a dividend. It is unquestionable that before the 39 Geo. III. c. 121 (the first statute which took away the right of action from a debtor against assignees for the recovery of his dividends), a creditor at his own option might bring an action for the recovery of a dividend, or present a petition to the Lord Chancellor, and that it was enough for him to shew the order of the commissioners for the payment of the dividend, the amount of which was considered as so much money had and received to the creditor's use. In an action of assumpsit brought against the assignee it was not competent to him to shew that the debt ought to be expunged. An improvement was made in this branch of the bankrupt law, and now no action will lie against an assignee for a dividend, but all claims of this description were transferred to the jurisdiction of the Lord Chancellor. "The difficulty we have to contend with is, that the resistance is made to the payment by a party who has no right to come into Court to litigate that question. An official assignee is an officer purely ministerial, and the Act of Parliament holds out no pretence for his coming into Court to dispute the payment of a dividend."

The majority of the Court agreed with that view of the case.

It appears to me that the positive enactment that the dividends not objected to "shall be paid," is quite as forceable and binding as a commissioner's order under the Bankruptcy Act in England, and that an assignee having collocated a claim on the dividend sheet duly advertised, his duty is fulfilled, unless the claim is disputed by a creditor when he becomes the arbitrator between the parties; but if the dividend is not objected to, it must be paid.

There was no objection upon which the assignees appointment of the 19th of October to hear the parties could be founded, the claim not having been objected to by a creditor. The plaintiff was not therefore bound to attend upon that appointment. No doubt the $117.50 was due to the plaintiff. It is not necessary to determine now how much should have been ranked as a privileged claim, having determined that the defendant, as assignee, cannot dispute a claim or dividend collocated by himself in a dividend sheet advertized and unobjected to by a creditor.

Judgment for the plaintiff $100 and costs, to be paid in ten days.

Judgment for plaintiff.

ENGLISH REPORTS.

QUEEN'S BENCH.

Playford v. The United Kingdom Electric Telegraph Company.

Contract — Privity — Negligence — Breach of duty, causing damage—Public duty—Private duty.

The receiver of a telegram cannot maintain an action for a mistake which has caused him damage. The person who pays for the transmission of a message is the only one who has a right of action in case he is damnified by the negligence of the company or its servants.

Semble, that where a telegraph company is required by Statute to send messages, and empowered to make a maximum charge, the company imposing such maximum charge is bound to use reasonable care in the transmission of messages, and cannot, by imposing any condition on the sender of a telegram, escape the obligation to use reasonable care, as such a condition would be inconsistent with their statutable duty, and would be also unreasonable.

[Q. B. Nov. 19, 1867—16 W. R. 219.]

This was an action brought by a person to whom a telegram had been sent from one of the stations of the United Kingdom Electric Telegraph Company, and who, in consequence of a mistake in the transmission of it, was so misled that he was damnified.

The 1st count of the declaration stated, that before and at the time of the grievance hereinafter mentioned, the defendants carried on the business, amongst other things, of transmitting and giving effect, by means of the telegraph and apparatus of the defendants and otherwise, to intelligence and messages, for certain hire and reward in that behalf; and the plaintiff, being the owner of a cargo of ice on board a ship lying off Grimsby, Messrs. Rice & Holbyer, of Hull, instructed the defendants, at their office in Hull, to transmit to the plaintiff, to wit, under the name or style of J. Northcote, at his office in London, a telegraphic message, to the purpose and effect that the said Messrs. Rice & Holbyer could give the plaintiff under the said name 23s. per ton for the said cargo then at Grimsby, and, although the defendants, for certain hire and reward paid to them in that behalf, undertook to transmit the said message to the plaintiff, yet the defendants wholly neglected to, and did not transmit the said message, but they transmitted to the plaintiff a message to the effect that the said Messrs. Rice & Holbyer would give the plaintiff 27s. per ton for the said cargo, and the plaintiff thereupon accepted the said supposed offer of 27s. per ton, which was then the market value thereof, and directed the captain of the said ship containing the said cargo to proceed to Hull to be unloaded by the said Messrs. Rice & Holbyer; and, although the said Messrs. Rice & Holbyer refused to pay more than the price they had offered of 23s. per ton, the cargo being of a perishable quality, the plaintiff was compelled to sell the said cargo at Hull aforesaid at the said price of 23s. per ton, which was below the market value thereof, and the plaintiff lost and was deprived of the difference between the market value of the said ice and the price which the said cargo realised, and was put to further losses and expenses, to wit, £— &c., for demurrage and melting of cargo, by reason of the misfeasance of the defendants aforesaid.

The 2nd count charged that, by the negligence of the defendants in working the telegraph, an untrue message was sent, causing the damage specified in the 1st count.

The 3rd count alleged a contract on the part of the defendants, and its breach, causing the damages alleged in the 1st count.

The 4th count alleged a retainer of the defendants by the plaintiff, creating a duty on their part, and its breach causing the damages alleged.

The defendants pleaded—

1st. That they did not undertake to transmit the said message to the plaintiff, as alleged.

2nd. As to the 1st count, that they undertook to transmit the said message upon and subject to a certain condition, and not otherwise, that is to say, "In order to provide against mistakes, and more effectually to insure delivery, every message of consequence ought to be repeated, by being sent back from the station at which it is to be received to the station from which it is originally sent. Half the usual price for transmission will be charged in addition for repeating the message. The company will not be responsible for mistakes or delays in the transmission of, nor for the non-delivery of unrepeated messages, from whatever cause arising, either upon its own lines or those of any other company or government which may be employed to forward the message to its destination. Nor will the company be responsible for mistakes or delays in the transmission of, nor for the non-delivery of a repeated message to any extent above £5, unless it be insured at the rate of £1 per cent."

Averments:—That the said message was not repeated, and that the alleged grievance was a mistake in the transmission of an unrepeated message.

3. That they were not employed to send and transmit the said message to the plaintiff by the plaintiff.

4. As to the 2nd count, that they undertook to send and transmit the said message to the plaintiff, subject to the condition mentioned in the 2nd plea, and not otherwise (averments as in 2nd plea).

5. As to the 3rd count, that the plaintiff did not become, nor was he a sender of messages, as alleged.

6. As to the same count, that the said message was sent by the plaintiff, and received and transmitted by the defendants subject to the condition in the 2nd plea mentioned, and not otherwise (averments as in the 2nd plea).

7. That they were not retained or employed as alleged.

8. That they were retained and employed subject to the condition in 2nd plea mentioned, and not otherwise (averments as in 2nd plea.)

There was also a demurrer to 1st, 2nd, and 4th counts.

1. Issue taken on the defendants' pleas.

2. Replication as to 2nd and 4th pleas that plaintiff was not privy to the alleged condition, nor did he assent thereto, and as to 2nd, 4th, 6th and 8th pleas that the negligence complained of was gross negligence, and was such that the condition in these pleas set forth did not exonerate nor in any wise protect the defendants from liability in respect thereof.

3. Demurrer to 2nd and 4th pleas as not shewing that the agreement and condition was with the plaintiff.

The defendants demurred to the replications to 2nd and 4th pleas on the ground that it was immaterial whether the plaintiff was privy or assented to the condition; and to the replication to the 2nd, 4th, 6th and 8th pleas, on the ground that the conditions set forth in these pleas exonerated and protected the defendants from liability in respect of gross negligence.

Littler, for the plaintiff.—Though there may be no contract with the plaintiff, yet he has an action for the damage done to him in consequence of the defendants' negligence. There is a public duty cast on the defendants, by the Act of Parliament by which they are incorporated, to convey messages, and a person injured by a breach of that duty sustains both a *damnum* and *injuria*. One section of the Act provides that any telegraphic apparatus erected under its provisions for receiving or sending messages shall be open for the sending and receiving of messages by all persons alike, without favour or preference. This imposes the statutable duty of sending messages with reasonable care, and a person who suffers by a breach of that duty may maintain an action. I contend that, under this Act, the duties of a telegraph company are very like the duties of a railway company. [Cockburn, C. J.—Any one paying the company a reasonable price for sending a telegram can maintain an action in case of mistake; but the duty is only owing to the sender, not to the person to whom it is sent. Suppose a person takes a document to be copied by a stationer, who makes a mistake in copying it, could any one else except the person who engages the stationer maintain an action in case his mistake caused him some damage?] There are many cases where the party injured can maintain an action even in a case arising out of contract, though the contract is not with him, as in the case of a surgical operation. [Lush, J.—In that case there is a consideration on the part of the patient (independently of any consideration moving from some one else) binding the surgeon to show reasonable care and skill. That consideration is the patient's consenting to allow the surgeon to operate on him.] But here there is a duty created by statute to send messages with reasonable care. [Cockburn, C. J.—A duty towards the sender only.] [Mellor, J.—Suppose you send a letter by the mail-train, and it misses its destination, can the person to whom it is sent maintain an action against the railway company?] There a public department intervenes, which complicates the case. As to the condition, it is inconsistent with the statutable obligation and the duty arising out of it. It is, moreover, unreasonable. He cited the following cases:—*Peak*, v. *The North Staffordshire Railway Company*, 10 H. of L. cas. 473; 11 W. R. 1023, 32 L. J. Q. B. 24; *Williams* v. *The Lancashire and Yorkshire Railway Company*, 28 L. J., Ex. 353; *MacAndrew* v. *The Electric Telegraph Company*, 17 C. B. 93; *Batt* v. *The Great Western Railway Company*, 1 C. B. 132; *Alton* v. *The Midland Railway Company*, 13 W. R. 918, 34 L. J. C. P. 299; *Allday* v. *The Great Western Railway Company*, 5 B. & S.; *Godwell* v. *Steggall*, 5 B. N. C.

735; *Langridge* v. *Levy*, 2 M. & W. 519; *Longmeid* v. *Halliday*, 6 Ex. 761.

C. Pollock, Q. C. (*Hannen* with him), was told that he need only address himself to the second point, viz., the reasonableness of the condition. He contended that it was not unreasonable.

Cur. adv. vult.

Nov. 19. COCKBURN, C. J.—We think that we have not the facts of the case sufficiently before us to enable us to give judgment on it, and that it had better be stated in the shape of a special case. At present, we are with the defendants on the first point, and think that the demurrer to those pleas which state the message to have been sent by third parties is supported, because there is no privity of contract between the plaintiff and the company. It was said that, as the Act imposed the duty of sending messages for all persons, subject to certain conditions, any one injured by a breach of this duty sustains an actionable injury. But, though it is true that this duty is imposed by the Act, yet that is only towards those entitled to have messages sent, and does not create any obligation towards a person who is not entitled to have a message sent. Therefore, on these counts, the defendants are entitled to our judgment. But, with regard to the pleas which set up the condition as an answer to the action, a twofold question arises:—1st, whether the condition does not cover gross negligence, and is not, therefore, unreasonable; 2nd, whether, apart from the question of its covering gross negligence, it is unreasonable? As to this it occurs to us that the company is not in the position of companies which exercise powers arising out of ordinary rights of property. They exercise powers granted by statute. The defendants are empowered to erect structures *in solo alieno* without the consent of the owners; and then, apparently in consideration of this, the statute obliges them to keep their stations open for all persons desirous of sending messages, for certain charges, and subject to reasonable regulations. The statute having imposed this duty, which seems to involve that of using reasonable care, and having, in consideration thereof, empowered them to make a maximum charge, they annex a condition, to the effect that they shall not be answerable for negligence; in other words, that they will not observe due care in the performance of a statutable duty. Is that consistent with the statute, as being a reasonable regulation? If there was nothing more than an ordinary contract for the transmission of messages, there would be the ordinary obligation of using reasonable diligence. The statute says they shall transmit messages, and it surely must be understood that the obligation thus imposed carries with it also that of using reasonable care. The defendants say they will transmit messages for the maximum charge, but they will not use reasonable care. I am of opinion that, if the plaintiff were otherwise entitled to maintain this action, this condition would be no impediment to him. But we should prefer to have the facts stated fully, for then we should be better able to determine whether, on these facts, the plaintiff is entitled to recover, having reference chiefly to the condition; and also whether, supposing the company make the maximum charge, the obligation of reasonable care does not necessarily attach to them, so that it cannot be evaded by the imposition of any condition? The facts had better be stated in the form of a special case, in order to enable us to decide these questions.

CHANCERY.

BIRCH v. SHERRATT.

Will—Construction—Annuity—Payment out of capital.

A testator gave the moneys arising from the sale of his real and personal estate to trustees, upon trust to invest, and to stand possessed of the trust moneys and securities upon trust "out of the interest dividends and annual proceeds of the said trust-moneys, stocks, funds, mortgages, and securities," to "levy and raise the annual sum of £100," and pay the same to S. for her life. And "from and after the payment of the said annual sum of £100, and subject thereto," the testator declared that the trustees should "stand possessed of the said trust-moneys, stocks, funds, mortgages, and securities," upon the trusts thereinafter-mentioned. The income of the testator's estate proved insufficient to pay the £100 annuity.

Held (reversing Stuart, V. C.), that the annuitant was entitled to have the annuity made good out of the capital.

[L. J. July 25, 1867.—16 W. R. 30.]

This was an appeal from Vice-Chancellor Stuart.

John Simpson Sherratt by his will, dated the 13th May, 1847, gave devised and bequeathed all his real and personal estate to trustees upon trust to sell the real estate, and to stand possessed of the moneys arising from such sale, and of the testator's personal estate, upon trust to invest in manner therein mentioned, and "as to all such trust moneys, stocks, funds, mortgages, and securities as shall arise and be produced as aforesaid, and also such as shall form any part of my said personal estate at my decease, upon trust that" the trustees "do and shall with and out of the interest, dividends and annual proceeds of the said trust moneys, stocks, funds, mortgages, and securities, levy and raise the annual sum of £100, and pay the same by four equal quarterly instalments to my dear mother or her assigns during her natural life, and from and after the payment of the said annual sum of £100, and subject thereto, I do hereby declare that my said trustees shall stand possessed of the said trust moneys, stocks, funds, mortgages and securities, upon the trusts, intents and purposes hereinafter mentioned, expressed and declared of and concerning the same." Those trusts were as to one third part of the trust fund, upon trust for the testator's brother William Sherratt for life, with remainder to his wife for life, with remainder to his children in equal shares, with remainder over in default of children; as to another third part of the trust funds upon similar trusts in favour of the testator's brother Thomas Henry Sherratt and his wife and children; and as to the remaining third part of the trust funds upon trust for the testator's sister Eliza Sherratt and her children.

The testator died in the month of June, 1847, leaving his mother, his brothers, and his sister, him surviving. In June, 1859, this suit was instituted for the administration of the testator's estate. By the certificate of the Chief Clerk, made in February, 1861, it appeared that no payment in respect of the annuity of £100 a year had been made, but that it was due from the 5th June, 1847. It appeared that the whole clear residue of the testator's estate was insuffi-

cient to pay the arrears of the annuity. Under these circumstances the annuitant contended that the annuity was charged on the *corpus* of the estate and that she was entitled to the whole of the residue. The Vice-Chancellor held that the annuity was only payable out of income, and from this decision the annuitant appealed.

Kay, Q. C., and *Rigby*, for the appellant.

Cole, Q. C., *Cotton*, *Q. C.*, *Lindley*, *Cracknall*, and *Procter*, for the different persons entitled in remainder.

Faber, for the trustees.

The following cases were cited:—*Playfair* v. *Cooper*, 1 W. R. 216, 376, 17 Bea. 187; *Foster* v. *Smith*, 1 Ph. 629; *Baker* v. *Baker*. 6 H. L. C. 618, 6 W. R. 410; *Phillips* v. *Gatteridge*, 11 W. R. 12; *Boyd* v. *Buckle*, 10 Sim. 595; *Wroughton* v. *Colquhoun*, 1 DeG. & S. 36; *Picard* v. *Mitchell*, 14 Beav. 103; *Croly* v. *Weld*, 3 DeG M. & G. 993; *Forbes* v. *Richardson*, 1 W R. 320, 11 Ha. 354; *Torre* v. *Browne*, 5 H. L. C. 577; *Stellfox* v. *Sugden*, Joh. 234; *Perkins* v. *Cooke*, 2 Joh. & H. 393; *Clifford* v. *Arundel*, 1 DeG. F. & J. 307; *Sheppard* v. *Sheppard*, 32 Beav. 194; *Earle* v. *Bellingham*, 24 Beav. 445; *Miller* v. *Huddlestone*, 3 Mac. & G. 513.

July 25.—Lord Cairns, L.J.—As this case has been argued so fully before us, and we have had an opportunity of considering it since yesterday, we need not trouble you, Mr. Kay, in reply.

There is no doubt that the will like every other will, must be judged of by the proper construction of the language the testator has used. The cases which have been cited are of little value except so far as they show that some definite construction has been put upon any word or set of words which may be found in this will as they have been found in other wills before.

Now I quite agree with what has been said, that the first and principal object very probably in the testator's mind was to deal with his income, and having directed the conversion of his estate, and the investment of it, he declared that out of the income £100 a year should be paid to his mother for her life, and it is very possible that the testator may have been perfectly satisged in his own mind that the income would be sufficient, and continue to be sufficient, to pay that sum. And it is also possible, if it had been pointed out to the testator that the income might become deficient, that he might have made arrangements of a different kind from those which he has made in his will. We cannot speculate on any of those matters, but we must take the words he has used. The first words that occur are, "Upon trust that they the trustees do and shall, with and out of the interest dividends and annual proceeds of the said trust moneys, stocks, funds, mortgages, and securities, levy and raise the annual sum of £100 of lawful money of Great Britain and Ireland, and pay the same by four equal quarterly instalments to my dear mother or her assigns during her natural life." Those first words, if the will had stopped there, would not as at present advised appear to me sufficient to constitute a continuing charge upon the income or a charge upon the *corpus* for the payment of this £100 a year. I do not mean to say that there may not be cases in which a direction to pay out of a recurring income or out of rents may not indicate an intention to create a perpetual charge; but taking these words I have read, and judging of them alone, I think if they had stood alone there would have been nothing more than the direction to pay this annuity while the annuity lasted, namely, during the life of the mother, and out of the income, if the income was sufficient. But then come the very important words of the gift over. "From and after the payment of the said annual sum of £100, and subject thereto, I do hereby declare that my trustees for the time being shall stand possessed of the said trust moneys, stocks, funds, mortgages and securities upon trust for the ends, intents, and purposes hereinafter-mentioned. There is, therefore, from and after a certain event, or certain purpose, which I will consider presently, as it were a revesting of the trustees with whatever may be capital or *corpus* of the trust-moneys, stocks, funds, mortgages, and securities for certain further purposes, which were for division among the members of the testator's family as tenants for life and tenants in remainder. Now the view the Vice-Chancellor has taken of those words "from and after the payment of the said annual sum of £100, and subject thereto," is that they are merely referential words, and that they do not in any way go beyond what would be the proper construction of the preceding words, if the preceding words stood alone, and the construction that his Honour has adopted is first, to construe the preceding words and to hold that they indicate payment out of income merely, if the income should be sufficient, and then to construe the words I have referred to "from and after, &c," as referential words, intended to express by way of reference the same idea and no greater idea than the preceding words express. If I were able to satisfy myself that those were referential words merely, I should be satisfied with the construction his Honour has put upon the will, but I cannot satisfy myself that they are referential words. I think we have no right to curtail the natural meaning of the words, or to read, "from and after the payment of the annual sum," as if it were "from and after the *chance* of payment of the annual sum," or the words "subject thereto," that is to say, "subject to the payment of the annual sum of £100," as if they meant subject to the possibility of the payment of £100 if the income were sufficient I think the natural meaning of the words "from and after the payment of the annual sum," is "from and after full and complete payment of the annual sum of £100," and the natural meaning of the words "subject thereto," is "subject to the payment of the annual sum." That is to say "subject to the full and complete payment of the annual sum." Then, if that is so, this is a fresh trust created in favour of the beneficiaries, to take effect as a trust which does not commence until, and is only created subject to, the payment of the preceding gift of the annual sum of £100, which as I said before, must mean the full payment of the annual sum of £100. I, therefore, with great respect to the Vice-Chancellor, cannot arrive at the construction he has done, with every desire to do that which one is in a little danger of leaning too much to, a desire of giving provision to every one beneficially entitled under the

will. No doubt that was the desire which would have been effectuated by the construction which he gave to the will. I should be glad if I could arrive at that conclusion, but I am unable to do so. I think therefore that the annuitant is entitled to an order confirming her right to be paid the annuity of £100 and the arrears, and to have the payment made not merely by the continuing receipt of the income of the money, but by payment out of the *corpus*. I think we are not at all here in the difficulty, which sometimes arises with regard to the rents of real estate, as to whether the sale of the real estate was authorized. I think the tendency of the Court has always been stronger in modern times to say—where it found the purpose to be answered was that which would continue to exhaust the income of the trust fund—that the Court has ample power to apply the *corpus* or trust fund, and I think that is clear here from the words "subject thereto," that is, the *corpus* afterwards given over is subject to the payment of the annuitant.

Rolt, L.J.—Having also had the opportunity (of which I have availed myself) of considering the argument which the counsel for the appellant addressed to us yesterday, and the argument of the leading counsel for the respondent, who also argued yesterday, and having examined all the cases which have been cited, except the cases of *Perkins* v. *Cooke*, *Earle* v. *Bellingham*, and *Miller* v. *Huddlestone*, which were cited this morning, and having had an opportunity of considering the argument raised this morning, I think also that the case may now be disposed of.

If the annuity is given out of rents and profits, or dividends and interest, and if the capital or *corpus* is given intact from and after the annuitants death to another, it is, in the event of the deficiency of the income to pay the annuitant, the case, or the equivalent of the case, of a life interest with remainder over. But if the capital is given over not in terms, "from and after the annuitant's death" but "from and after satisfaction of the annuity, and subject to the annuity," I think then it is the case, or the equivalent of the case, of a legacy and a residuary bequent, especially if the gift of the annuity itself admits of a construction charging it on the capital of the estate or the trust fund. This view of the principle of construction, appears to me, not to be inconsistent with any one of the cases which have been cited.

Now in the present case the capital is in terms given "from and after the payment of the said annual sum of £100," and it is given "subject thereto." But it is said (and the argument is entitled to great weight, it is the whole of the argument on the other side, and it is the judgment of the Vice-Chancellor) that the words "subject thereto" mean subject to the payment of the annuity out of the income. It is, therefore, said that the annual sum is to come out of interest and dividends, that it is only "subject to the payment thereof" out of the interest and dividends, and that the whole capital fund spoken of as "the said trust moneys" is in this case given over. Even if that be the construction of the gift of the annuity, I doubt whether the conclusion drawn from it is well founded. If an annuity for life be given out of the interest of trust funds only, and then the trust funds are given after and subject to the satisfaction of the annuity, I should prefer the construction which gives the annuitant the benefit of the full payment, if necessary, out of the capital. But is it accurate in this case to say that the annuity is only given out of dividends and interest? I think that is very doubtful. What are the trustees to do with the rents and profits of the trust fund? To levy and raise the annual sum of £100, and then the annual sum thus levied and raised is directed to be paid to the annuitant for life. This admits, without any violence to the words, of a construction which makes the annuity a charge on the *corpus* or capital. It is not a mere gift out of the income. It is a direction to levy and raise out of income, the sum of £100, and that sum of £100 is to be paid to the annuitant. I am aware that the direction to levy and raise an annuity out of the rents and profits is to be found in some of the cases which have held the annuity only charged on the income, but the language of the direction in these cases will be found, in comparison with the words here, not to be nearly so strong in favour of a charge on the *corpus*, or capital, as the language before us. On the whole therefore I think that the annuitant is entitled to the capital of the fund, and that the order must be varied in that respect

Costs of all parties out of the estate.

PROBATE.

Smith and others v. Tebbitt and others.

Will—Testamentary capacity—Insanity, its tests—Religious enthusiasm—Its limits.

[August, 1867.—16 W. R. 18.]

The following is, in effect, the judgment of—

The Judge Ordinary.—The law of England permits a larger exercise of volition in the disposal of property after death than any other country, but coupled with this condition, that this volition should be that of a mind of natural capacity not unduly impaired by old age, enfeebled by illness, or tainted by morbid influence. Such a mind as the law calls a "sound and disposing mind."

A person who is the subject of monomania, though apparently sensible on all subjects and occasions other than those which are the special subject of his apparent infirmity is not in law capable of making a will.

Decided cases have established this propositon, that if disease be once shown to exist in the mind of the testator, it matters not that the disease be discoverable only on a certain subject, or that on all other subjects the action of the mind is apparently sound and the conduct even prudent, the testator must be pronounced incapable, even though the particular subjects upon which the disease is manifested have no connection whatever with the testamentary disposition before the Court.

The test of this disease is the existence of mental delusions. A mental delusion has been defined "to be the pertinacious adherence to some delusive in opposition to plain evidence of its falsity."

But if the "delusive idea" concern a subject in which the senses play no part, the "plain evidence" by which it is to be discharged is matter of reasoning and addressed to the intellectual faculty.

No man knows aught of the condition of another's mind except by comparison with his own. In instituting this comparison we recognize the general fact, that all mankind are endowed with the same sense, moved by the like emotions, governed by the same restraints, guided by the same faculties. These vary in their force and action in different individuals or the same individual at different times, but vary within certain limits only. It is when the words and deeds of others, referred to our own standard, and that which by experience is found to be the common standard of the human race appear to transgress those limits, that we suspect those common senses, emotions, and faculties, which we know to exist, to be the subject of disease. Their divergence is the simple rule by which mankind pronounce upon mental disease. But to those who have studied the subject of insanity another method is open. It is the especial business of those who devote themselves to the mitigation or cure of this fearful malady, to study the ways and forms of thought and expression which attend upon it. The physician can reason from the certainly to the probably deceased mind, and can trace in the latter lineaments clearly marked in the former. The world at large contrast the doubtful case with the sane, the physician has at hand the alternative controst with the insane. A consequence of these alternative methods of judgment is that the question of insanity (though it falls to the lot of a legal tribunal) is properly a mixed one, partly within the range of common observation, is so far fit to be considered by a jury, partly within the range of special experience, and in so far the proper subject of medical inquiry.

The Court then must inform itself as far as opportunity permits, of the general results of medical observations, and approach this subject in the opposite sides thus indicated, searching for a fit conclusion, by alternately presenting the parallel between sanity and insanity, to the sayings and doings of the testator.

Hence the will of a testatrix should be set aside who was proved to be labouring under some extraordinary delusions in the matter of religion. She had a large fortune, about a million of money, which was ill husbanded. She quarrelled with her relations without cause, and believed that her sister's family was doomed to everlasting perdition. She conferred extravagant benefits on those about her, though strangers in blood, and lived a secluded life.

It is of the essence of an insane delusion that as it has no basis in reason, so it cannot by reason be dispersed, and is thus capable of being cherished side by side with other ideas with which it is rationally inconsistent.

It is hardly by their mere test of their reasonableness that the wild thoughts of religious enthusiasts can be brought to a standard for judgment of their sanity. But there are limits even on so mystical a subject within which the human mind in a state of health is unreasonable or extravagant, and the common experience of life gives us a sense of those limits sufficient for the formation of judgment in most cases

[The judgment in this case is too lengthy for insertion, but as the digest of it is very full, it is sufficient for present purposes.—Ed. L. J.]

UNITED STATES REPORTS.

SUPREME COURT OF PENNSVLVANIA.

Sitchy v. Hugus.

Attorney and client—Statute of limitations.

The statute of limitations will not begin to run against the claim of an attorney at law until after the termination of *the relation of counsel and client, in the case in which* the services sued for were rendered.

It is a fraud upon counsel for a client to settle suit without his knowledge, to withhold his fees, and then set up the statute of limitations against him.

[Pitts. Leg. Jour., 3 N. S., 170.]

Error to Common Pleas of Somerset county.

Opinion by

Woodward, C. J.—The plaintiff in error has small reason to complain of the answers which the court gave to his points. It surely was not erroneous to say that the statute of limitations would not begin to run against a bill of attorneys fees until the dissolution of the relation betwixt him and his client. If the law were not so, every attorney, to assert the statute, would have to sue his clients once in six years, which would be destructive to the confidence which is essential to the relation. The point was ruled in *Foster* v. *Jack*, 4 W. 334, and is not open to further discussion.

Equally clear is it that the reversal of the first judgment in the Rowan suit did not terminate the professional relation, for there was a remittur with a *venire facias de novo*, which required the further attention of Mr. Hugus. And though it is always competent for parties to compromise their litigation, the learned judge said they could not do it "without the knowledge of their attorneys for the purpose of depriving them of their costs or fees."

The morality of the relation demanded this qualification, for as counsel owe good fidelity to clients, so the client is bound to make fair and reasonable compensation to his counsel, and it is a fraud upon the counsel for the client to settle the suit without his knowledge, to withhold his fees, and then set up the statute of limitations against him. Whether Hugus had notice of the settlement, and whether the relations terminated within six years before suit brought, were fairly submitted as questions of fact to the jury. If the court did not instruct the jury as to what would determine the relation, it is a sufficient answer they were not requested to instruct upon this point. They did, however, sufficiently instruct upon this point when they said that services rendered since the bringing of this suit, if not required by the plaintiff nor for his benefit would not restore the relation, nor avert the effect of the statute. The jury found under the rulings that the relation of counsel and client had not ceased six years before suit brought, and that was decisive against the operation of the statute.

Judgment affirmed.

(*Note by Editor of* Pittsburg Legal Journal.)

In the above case it is expressed broadly in C. J. Woodward's opinion, that the statute of limitations would not begin to run against an attorney's fees until the dissolution of the relation betwixt him and his client: and *Foster* v. *Jack*, 4 Watts, 334, is cited as ruling that point. It has seemed to us that the ruling in *Foster* v. *Jack* was more limited, and merely held that the statute did not run where the relation continued in the particular case for services in which suit was brought, leaving the inference to be drawn that it would run against charges in cases ended six years before suit, though the relation of attorney and client continued in other matters. Such was the view taken of that case in a case recently by the Common Pleas of this county, *Jenks* v. *Mundorf*.

The judgment itself in this case of *Sitchy* v. *Hugus* would seem to go no further than this limited view, as it was found by the jury that the relation in the case in which the service sued for was rendered, had not terminated within six years. But the reasoning of the late Chief Justice should avail to make the rule as extended and comprehensive as he states it. He says:— "If the law were not so, every attorney, to assert the statute, would have to sue his clients once in six years, which would be destructive to the confidence which is essential to the relation.

DIGEST.

NOTES OF LATE DECISIONS IN THE PROVINCE OF QUEBEC AND THE UNITED STATES.

Carrier.

A carrier may by special contract limit his liability, except as against his own negligence.

Where a person delivers goods to a carrier and receives a bill of lading expressing that the goods are received for transportation, subject to the conditions on the back of the bill, by one of which the carrier's liability is limited to a certain rate per lb., this constitutes a special contract by the parties, and the carrier, in the absence of proof of negligence, is only liable at the rate agreed upon.

Goods were received by defendants, a railroad company, under a special contract as set forth in the preceding paragraph, and were safely carried to their wharf in New York, and placed on the wharf ready for delivery, but before the plaintiffs had notice of their arrival, or opportunity to remove them, a fire broke out on board a steamer of the defendants lying at the wharf, which entirely consumed the boat, and also the wharf and the goods thereon. There was no evidence as to the origin of the fire. *Held*, that plaintiffs could not recover more than the special rate agreed upon, without proving negligence of the defendants.—*Farnham, Kirkham & Co.* v. *The Camden and Amboy Railroad Company*, 7 Am. Law Reg. 172.

See Telegraph Company.

Contract.

Where a parol promise is substantially the same as a previous written one, and nothing is done under the latter which the promissor was not already bound to do under the former, no new consideration passing between the parties, the existence or enforcement of the parol contract cannot be set up as a rescission of the former written one.—*Hansbrough et al.* v. *Peck*, (Sup. Court U. S.) 7 Am. Law Reg. 74.

See Carrier—Telegraph Company—Vendor and Purchaser.

Counsel Fee—*See* Retainer.

Error, Writ of.

The issue of a writ of error is illegal where it was allowed and signed by the Crown prosecutor for and in the name of the Attorney General, and not by the Attorney General.—*The Queen* v. *Charles John Dunlop*, 11 L. C. Jur. 271.

Insolvency.

1. A creditor holding security, although he has proved his debt under sec. 22, cannot vote in the election of an assignee.—*The matter of Davis & Son, Bankrupts*, (D. C. Ohio) 7 Am. Law Reg. 30.

2. Under the present bankrupt law of the United States, and the state exemption laws incorporated with it, the exemption of such property, real or personal, of the appraised value of $300, as a bankrupt in Pennsylvania may elect to retain as exempt under the laws of the state, is not included in but is additional to the exemption from the operation of the bankrupt law, of such necessary and suitable articles, not exceeding in value $500, as with due reference, in their amount, to the bankrupt's family, condition and circumstances, may be set apart by the assignee, subject to the court's revision.

But this exception to the full value of $500, ought not to be allowed in all cases, without discrimination or measure.—*In re Ruth, Bankrupt*, 7 Am. Law Reg. 157.

3. An appeal made within the period of eight days from the rendering of a judgment subject to revision, allowed by law (27 and 28 Vict. ch. 39, sec. 22) for the adoption of proceedings to have and obtain a revision, is premature;

and such an appeal should, on motion, be dismissed with costs.—*Beaulieu, appellant* v. *Charlton, respondent*, 11 L. C. Jurist, 297.

4. A voluntary assignment must be made to an official assignee resident in the District in which the insolvent resides and carries on his business; and the amending Act, 1865, makes no change in this respect.—*Douglas* v. *Wright*, 11 L. C. Jurist, 310.

Negligence.

Held, that a party is responsible for the negligence of his contractor, where he himself retains control over the contractor and over the mode of work. The relationship between them is then similar to that of master and servant.—*Harold* v. *The Corporation of Montreal*, 3 L. C. L. J. 88.

See Carriers—Railway Company—Surgeon.

Nuisance.

A tomb erected upon one's own land, is not necessarily a nuisance to his neighbor; but it may become such from locality and other extraneous facts.

Plaintiff proved that defendant's tomb, erected within forty-four feet of the former's dwelling-house, contained, in 1856, nine dead bodies, from which was emitted such an effluvium as to render his house unwholesome; that, after an examination by physicians, the bodies were removed; that the tomb remained unoccupied thereafterwards, until 1865, when another body was therein interred; that the plaintiff's life was made uncomfortable while occupying his dwelling-house, by the apprehension of danger arising from the use of said tomb; and, that the erection and occupation of said tomb had materially lessened the market value of his premises. In an action for damages on the foregoing facts: *Held*, a nonsuit was improperly ordered.—*Barnes* v. *Hathorn*, (S. C., Maine) 7 Am. Law Reg. 81.

Promissory Note.

Where the principals and three sureties signed a promissory note, after which, and before delivery, by an arrangement between the principals and surety who *first* signed the note, his name was erased therefrom without the knowledge or consent of the other sureties; and the note was then delivered to the payee in a condition which shewed upon its face that the name of the surety who *first* signed the same had been erased; whereupon the note was received with knowledge of the relation of principal and surety existing between the makers, it was *held*—1st. That the discharge of the surety released the co-sureties who signed the note when his name was upon it. 2d. That the payee received the note under circumstances which would put a reasonably prudent man upon inquiry, and he was charged with knowledge of the rights of the co-sureties. It was also *held*, that if the makers of the note were all principals the erasure of the name of one would be a discharge of the others only *pro tanto*.—*McCramer* v. *Thompson et al.*, (S. C., Iowa) 7 Am. Law Reg. 92.

Railway Company.

1. Where a passenger on a railway train is injured by the misconduct of a fellow-passenger, the company is liable only in case there was negligence in its officers in not making proper efforts to prevent the injury.

Railroad companies are bound to furnish men enough for the ordinary demands of transportation, but not a police force adequate to extraordinary emergencies, as to quell mobs by the wayside.

It is negligence in a conductor to voluntarily admit improper persons or undue numbers into the cars.

Where the evidence shows that an excited crowd, at a way station, among whom were drunken and disorderly persons, rushed upon the cars in such numbers as to defy the resisting power at the disposal of the conductor, it is error in the court to submit that to the jury as evidence from which they may find negligence in the conductor in admitting in the cars either improper persons or undue numbers.

In case of fighting or disorder in the cars, the conductor must at once do all he can to quell it. If necessary, he should stop the train, call to his aid the engineer, firemen, all the brakesmen and willing passengers, lead the way himself, and expel the offenders, or demonstrate by an earnest experiment that the undertaking is impossible.—*Pittsburgh, Fort Wayne and Chicago Railway Co.* v. *Hinds and Wife.* (S. C., Penn.) 7 Am. Law Reg. 14.

2. Where a person employed for a certain term at a fixed salary payable monthly is wrongfully discharged before the end of the term, he may sue for each month's salary as it becomes due; and the first judgment will not be a bar to another action for salary subsequently coming due.—*Huntington* v. *Ogdensburgh and Lake Champlain Railroad Company*, 7 Am. Law. Reg. 153.

See Carrier.

Retainer.

Held, that an advocate has a right of action for a retainer, but he cannot recover from his client more than the fees fixed by the Tariff,

unless he can prove an agreement with his client that more than the taxable fees should be paid.

Held (per Badgley, J.), that there is no right of action in Lower Canada for a retainer.—*Grimard, appellant* v. *Burroughs, respondent,* 3 L. C. L. J. 85.

Squatter.

The defendant squatted upon land of an absentee (who was represented, however, by an agent), cleared and improved the land, and paid the taxes for three years.

Held, in an action under C. S. L. C. cap. 45, that the defendant was entitled to the value of his improvements, less the estimated value of the rents, issues and profits during his occupation.—*Ellice, appellant* v. *Courtemanche, respondent,* 3 L. C. L. J. 126.

Surgeon.

There is an implied obligation on a man holding himself out to the community as a surgeon, and practising that profession, that he should possess the ordinary skill in surgery of the profession generally. Where, by improper treatment of an injury by a surgeon, the patient must inevitably have a defective arm, the surgeon is liable to action, even though the mismanagement or negligence of those having the care of the patient may have aggravated the case and rendered the ultimate condition of the arm worse than it otherwise would have been. The liability of the surgeon being established, the showing of such mismanagement or negligence only affects the measure and amount of damages. This case distinguished from those where the contributory negligence on the part of the patient entered into the creation of the cause of action, and not merely supervened upon it, by way of aggravating the damaging results. The plaintiff broke his arm, and called upon the defendant, a professed surgeon, to set it, which he did; but the evidence showed that by the improper manner of dressing the arm and subsequent negligence of the defendant, the plaintiff must necessarily have a defective arm, irrespective of the management of those having the care of the plaintiff. *Held*, that the defendant was not entitled to have the court charge the jury that if the damage or injury to the plaintiff's arm resulted in part from the negligence of those having the care and management of the plaintiff, that the plaintiff could not recover, the court having given a full and satisfactory charge upon every other feature and theory of the defence.—*Wilmot* v. *Howard*, 39 Vermont Rep.

Telegraph Company.

Telegraph companies, in the absence of any provision of the statute, are not common carriers, and their obligations and liabilities are not to be measured by the same rules, but must be fixed by considerations growing out of the nature of the business in which they are engaged. They do not become insurers against errors in the transmission of messages, except so far as by their rules and regulations, or by contract, they choose to assume that position.

When a person writes a message, under a printed notice requesting the company to send such message according to the conditions of such notice: *held*, that the printed blank was a general proposition to all persons of the terms and conditions upon which messages would be sent, and that by writing said message and delivering it to the company, the party must be held as accepting the proposition, and that such act becomes a contract upon those terms and conditions.

Where a telegraph company established regulations to the effect that it would not be responsible for errors or delay in the transmission of unrepeated messages; and further, that it would assume no liability for any error or neglect committed by any other company, by whose lines a message might be sent in the course of its destination: *held*, that such regulations were reasonable and binding on those dealing with the company.—*Western Union Telegraph Co.* v. *Carew*, (S. C., Mich.) 7 Am. Law Reg. 18.

Vendor and Purchaser.

Where a vendor of real estate, on default in the terms of payment by vendee, goes into a court of equity and has the contract declared void and of no effect, and is remitted to his original title and possession, this is not a proceeding in rescission, but in affirmance of the contract, and does not entitle the vendee to recover back the part of the purchase money already paid.

A purchaser of real estate, who has paid part of his purchase-money or done an act in part performance of his agreement and then refuses to complete his contract, the vendor being willing to do his part, will not be permitted to recover back what has thus been advanced or done.

A purchaser after payment of part of the purchase-money, intended to abandon the contract, and the vendor promised, if he would pay up arrears, to indulge him for a certain time. The purchaser paid up the arrears, but the vendor enforced his payment within the

time (as alleged) that he promised to forbear. *Held*, that there was no consideration for the promise, the purchaser having done nothing he was not already bound to do by his original contract.—*Hansbrough et al.* v. *Peck*, (Sup. C., U. S.) 7 Am. Law. Reg. 74.

SPRING CIRCUITS, 1868.

Eastern Circuit.

The Hon. Mr. Justice J. Wilson.

Pembroke	Wednesday	Mar.	11.
Perth	Monday	Mar.	16.
Brockville	Thursday	Mar.	19.
Ottawa	Tuesday	Mar.	24.
Kingston	Thursday	Mar.	26.
Cornwall	Tuesday	April	14.
L'Original	Tuesday	April	21.

Midland Circuit.

The Hon. Mr. Justice A. Wilson.

Napanee	Tuesday	Mar.	17.
Belleville	Monday	Mar.	23.
Cobourg	Tuesday	Mar.	31.
Whitby	Thursday	April	9.
Peterborough	Thursday	April	16.
Lindsay	Tuesday	April	21.
Picton	Wednesday	April	29.

Niagara Circuit.

The Hon. Mr. Justice Morrison.

Milton	Monday	Mar.	16.
Barrie	Tuesday	April	7.
Hamilton	Tuesday	April	14.
Welland	Tuesday	April	28
St. Catharines	Monday	May	4.
Owen Sound	Thursday	May	7.

Oxford Circuit.

The Hon. Mr. Justice Hagarty.

Guelph	Monday	Mar.	16.
Woodstock	Monday	Mar.	23.
Berlin	Monday	Mar.	30.
Stratford	Monday	April	6.
Brantford	Monday	April	20.
Cayuga	Tuesday	April	28.
Simcoe	Tuesday	May	5.

Western Circuit.

The Hon. the Justice of the Common Pleas.

Walkerton	Wednesday	Mar.	18.
Goderich	Tuesday	Mar.	24.
Sarnia	Tuesday	Mar.	31.
London	Monday	April	6.
St. Thomas	Wednesday	April	15.
Chatham	Tuesday	April	21.
Sandwich	Tuesday	April	28.

Home Circuit.

The Hon. the Chief Justice of Ontario

County of York	Monday	Mar.	16.
County of Peel	Monday	Mar.	30.
City of Toronto	Monday	April	6.

APPOINTMENTS TO OFFICE.

NOTARIES.

JAMES HARSHAW FRASER, of the City of London, to be a Notary Public in and for the Province of Ontario. (Gazetted 11th January, 1868.)

RICHARD H. R. MUNRO, of the City of Hamilton, to be a Notary Public in and for the Province of Ontario. (Gazetted 11th January, 1868.)

JOHN EDWARD ROSE, of the City of Toronto, to be a Notary Public in and for the Province of Ontario. (Gazetted 11th January, 1868.)

ELIJAH WESTMAN SECORD, of the Village of Madoc, to be a Notary Public in and for the Province of Ontario. (Gazetted 11th January, 1868.)

LOUIS BERNARD DOYLE, of the Town of Goderich, to be a Notary Public in and for the Province of Ontario. (Gazetted 11th January, 1868.)

JOHN BURNHAM, of the Town of Peterborough, to be a Notary Public in and for the Province of Ontario. (Gazetted 11th January, 1868.)

CORONERS.

WILLIAM JOHNSTON, of the Town of Brampton, Esquire, M.D., to be Associate Coroner in and for the County of Peel. (Gazetted 18th January, 1868.)

JOHN GRANT, of the Town of Brampton, Esquire, M.D., to be Associate Coroner in and for the County of Peel. (Gazetted 18th January, 1868.)

THOMAS GRAHAM PHILIPS, of the Village of Grahamsville, Esquire, M.D., to be Associate Coroner in and for the County of Peel. (Gazetted 18th January, 1868.)

CHARLES E. BONNELL, of the Village of Bobcaygeon, to be Associate Coroner in and for the County of Ontario. (Gazetted 18th January, 1868.)

THE NEW YORK CIVIL CODE.

During the long vacation we printed some parts of this code which appeared to us to be admirable. We have since had occasion to look into it more closely, with the especial object of seeing how its authors treated one of the subjects set by the commissioners in England for specimen digests, viz., Easements. We were amazed: the brevity of the digest is simply ludicrous. A subject to which Gale devoted an erudite treatise (which is now entering a fourth edition), and to which, moreover, Dr. Washburn, an American writer, has given his very careful and learned attention in a far larger work than Gale's, which has just been published, is disposed of in the New York Code in a few paragraphs. For practical purposes it is useless—it is a mere bite out of a colossal fruit. As a guide to those inclined to compete for the honor of of framing specimen digests of English law it affords no assistance; indeed it is rather discouraging, as showing how great must be the labor, how acute the intellectual vigor which shall reduce a branch of law to a set of propositions capable of invariable and rapid application.—*The Law Times.*