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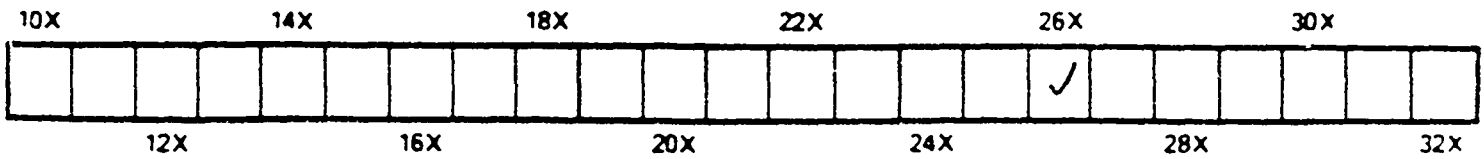

DIVISION COURTS.

OFFICERS AND SUITORS.

Clerks and Bailiffs.

Questions for the *Law Journal*, with reference to Attachment:—

1. From the words, "It shall be lawful for such Clerks, Judge or Justice of the Peace forthwith to issue a warrant," &c., &c., (section 64, D. C. Act, 1850) I infer that it is not absolutely compulsory on the Clerk, Judge or Justice, to issue such warrant, but that unless such Clerk, Judge or Justice postively knows that the affidavit filed is without sufficient ground, the warrant should be issued; if therefore such warrant is issued, handed to the bailiff or a constable, the property seized, brought to the Clerk, appraised and kept in custody till Court day; there appears no plaintiff; if defendant pleads illegal prosecution on the part of the plaintiff, and if the plaintiff hath absconded, where is the redress for the defendant's loss sustained by detention of his goods?

2. If after perishable goods seized and appraised, a third party claims such goods as his property, can Clerks legally sell such perishable property before judgment rendered? And if he can do so, by what authority may he require the plaintiff to indemnify him for so doing?

The condition of Bond (form No. 23) being only, "*in case judgment be not obtained by plaintiff*"; but in this instance, although judgment be obtained afterwards and at the same time third party proving his claim, such a bond would be insufficient. Such Bond also is required to be given to the defendant; it may, however, happen that such defendant had none of *his* goods seized; he therefore may not appear nor care anything about the attachment.

Should the Clerk decline selling the perishable property for want of sufficient security, and such property remain in his custody, it might very easily happen that the cost of keeping the same would amount to double its value.

The above questions came up in a certain case, which I will briefly state as follows:—

A. made affidavit against B., upon which warrant of Attachment was issued; the constable seized a horse and sundry other articles; the goods being brought to the Clerk's custody, were duly appraised—the horse at $20; next day C. appeared and claimed the horse. Interpleader Summons now issued according to Act; C. wanted to take horse—offered bail; Clerk had no authority to take bail, nor had he a form of bond; he found that form 24 is not applicable. Constable not having taken bond from plaintiff before seizing perishable property, (which he said he was not obliged to take, since the Act only says, "*it shall not be compulsory* upon the bailiff or constable to seize, until the party seizing out such warrant shall have given a bond," &c.; hence it is optional with the constable to demand such bond or not.) Clerk declined to give up the horse—also, found it advisable not to sell the same as perishable property, but abide the decision of the Judge at next Court.

In the event now of claimant proving the horse to be his property, the next question arises:

3. Who indemnifies the claimant for his damages sustained by the loss of the use of the horse?

The Clerk?—he will justify himself by the Act for what he has done, and by that which is not in the Act for that which he has declined to do.

The Constable?—he will justify himself by the Act, which makes the taking of a bond optional with him; and although the warrant commands him to take the effects of defendant, not saying anything about other effects, even not of such that are supposed to be defendant's, yet, nevertheless, if the constable did all in his power, if he seized the horse which was generally supposed to be defendant's property, and pointed out to him by plaintiff as such, it would be very hard if Constable should be obliged to pay any damage.

The Plaintiff?—he may say, "I was under the impression it was defendant's horse"; but he very probably will decline paying any damage, and if suit entered against him, plead for a non-suit on the ground that there is no authority for such claim.

4. And since neither Clerks, nor Bailiffs, or Constables are authorized to substitute laws or forms where the Act is deficient, would it not therefore be advisable for our Legislature to pass an Act whereby Clerks, Judges, and Justices of the Peace are authorized, before the said warrant is granted, to demand from plaintiff a bond, with surety conditioned, as in the 10th section, and also conditioned that the plaintiff will pay all costs, damages and claims that may be incurred in consequence of any seizure or sale of goods that the constable or bailiff may be directed by the plaintiff to seize, and which will afterwards be proved the property of a third party.

Your opinions in answer to the above questions will be thankfully received. O. K.

Answers to the above:—

No. 1. However it may be with respect to Justices of the Peace, who are not entitled to make any charge for issuing a warrant of Attachment, the Clerk is clearly bound to issue such warrant upon a proper affidavit being filed with him.—What should appear in such an affidavit, has been explained in a former number of this Journal.

The Clerk, as an officer of Court, is entitled to a fee, and the only discretion he can exercise is in respect to the sufficiency of the affidavit. O. K. wrongly infers from the words, "it shall be lawful," &c., that it is not compulsory on the Clerk to act upon a regular affidavit. When a duty is cast by Statute, upon officers of Courts whatever they *may* do, they *must* do on reasonable request. Whatever it is lawful for them to do, it would be illegal for them to refuse doing when an applicant has complied with the terms of the Act.

The officer's own knowledge, or supposed knowledge of facts, cannot excuse him from performance; the latter part of this query relates to a defect in the law, we will notice presently.

No. 2. He can, holding the proceeds.

If the claimant be anxious to obtain his property, there seems no objection to the Clerk's surrendering it to him on obtaining a Bond or other security to save him harmless in the matter: but if the plaintiff desire to have the property sold and will indemnify Clerk for so doing, the sale may be carried out. There is no provision for this in the Act, but a similar practice prevails with Sheriffs.

The best course is to sue out an Interpleader at once.

The Bailiff is liable, should he seize the property of a third party. In seizing perishable property, he may require a bond from the plaintiff, and he should

always do so, as it is his best, if not his only, security. Even on interpleader he would probably be ordered to pay costs for omitting to do so.

In the case put, it would have been better had the Clerk taken security from C. as was proposed, though he certainly was not bound to do so,—or have sold the horse and paid the amount into Court, on receiving from plaintiff the usual Bond.

No. 3. The Constable would be liable to the claimant for damages, for he did that which the attachment did not authorise him to do, viz., he seized the goods of a third party: if the plaintiff actually interfered and ordered the constable to seize the particular horse, he also would be liable to claimant.

No. 4. It is an objection that a party is allowed to sue out an attachment at all without bond to indemnify parties injured, should it turn out that plaintiff has acted without sufficient grounds, (*see query No.* 1); but in case of a doubt, as to whom property belongs, the constable must incur the responsibility of acting on his own judgment; yet there is no objection whatsoever to the constables receiving a bond from the plaintiff to pay costs and damages in case the goods, directed to be taken, prove afterwards to be the property of a third party; and this in addition to the bond which the plaintiff is required to give in the name of the defendant.

In doubtful cases a bailiff who can obtain a bond of indemnity from the party who puts him in motion should always do so: there is nothing against it in the Act.

Welland, March 19, 1857.

I wish to know what course I am to pursue in a case where I placed a note in the hands of a Clerk of a Division Court for collection—obtained judgment thereon—the Execution issued, the Bailiff returned it "no goods"—the Bailiff *died*. I ordered the amount to be collected—the execution issued again. The present Bailiff finds a receipt in the hands of defendant, signed by the deceased Bailiff, in full for the judgment and costs—said receipt mentioning number of suit, and all particulars. How am I to proceed to collect the amount of judgment—and from whom? I also wish to know if I am liable for any costs to the new Bailiff, for services performed in attempting to collect—and if I am, is not the Clerk, or the parties that are responsible for the judgment, responsible for the latter cost also? The defendant refuses to let the receipt pass out of his hands. C.

Answer to the above:—

The Bailiff's personal representatives are liable, as also his sureties. The action should be brought on the Bailiff's covenant for the false return of "no goods," when in fact the Bailiff had levied the money: the defendant who holds the receipt may be subpœnaed as a witness to produce it, and to prove that he paid on the first execution.

The Clerk does not appear to be in any way liable to you.

The Bailiff who made the last levy is of course entitled to be paid his costs, and the amount thereof will properly form part of your claim in the action on the covenant.

Your first step will be to procure a certified copy of the covenant from the office of the Clerk of the Peace of your county.

SUITORS.

Goods Bargained and Sold.

Purchaser not accepting.—If a party refuses to accept goods which he has purchased, the seller may bring an action against him for any loss or damages he has sustained by reason of the party not performing his contract: as the plaintiff has the goods, he will not recover their value, but he may recover for storeage or the like, but in general the difference between the contract price and the market price on the day the contract was broken is the measure of damages.

In an action for not accepting goods sold, the plaintiff must prove the contract and breach, the performance of all that was required by him to be done, the refusal to receive and the amount of damages.

Seller not delivering.—If a party who sells goods to another refuses to deliver them on request, an action lies by the purchaser, and in such action the purchaser must prove the contract, the breach, the performance of all conditions precedent on his part, and the amount of damages. The damages would be the difference between the contract price and the price of the goods at or about the day when they ought to have been delivered.

When parties agree to trade goods, and the balance being in favour of the plaintiff, the defendant omits even for three years to send goods to meet it, the lapse of time does not entitle the plaintiffs to bring an action as for goods sold: his remedy is by an action against the defendant for not delivering goods. To prove that the plaintiff was ready and willing to accept the goods and pay for the same, it will not be necessary to prove a tender of the money, and a demand of the goods is sufficient evidence that the plaintiff was ready and willing; the demand may be by the plaintiff's servant.

Breach of Warranty.

We now come to a subject of very general importance, on which little information is possessed by Division Court suitors, and upon which much misapprehension prevails. We purpose therefore entering at some length on this branch of the law and the evidence in relation to warranties in general.

Warranty in general.—Where goods or other things have been sold with a warranty as to their quality, which has not been kept, the purchaser may

maintain an action upon the warranty to recover damages for the breach, or in some cases he may rescind, give up, the contract and sue for and recover the money paid for the goods; for whenever money has been paid on a consideration which has wholly failed, it may be recovered back by the party who paid it.

In an action for Breach of Warranty, the party bringing the action, must prove three things:

1st. The contract relating to the sale, that is to say, the consideration or promise and warranty; 2nd. The breach of the warranty; 3rd. The damages sustained by such breach.

(TO BE CONTINUED.)

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

(*For the Law Journal.*—By V.)

CONTINUED FROM PAGE 43.

Goods, specially exempted from seizure, are thus mentioned in the 89th section of the D. C. Act:—"Excepting the wearing apparel, and bedding, of "such person and his family, and the tools and "implements of his trade, to the value of Five "pounds, which shall, to that extent, be protected "from such seizure."

It will be seen that the protection only extends to cover goods to the value of five pounds altogether, and it would probably be considered that the term "value" refers to the judgment creditor, and therefore that articles should be valued with reference to the price, they would probably bring at bailiff's sale.

By the 6th section of the D. C. Ex. Act, the landlord of any tenement is authorised by any writing under his hand or under the hand of his agent to be delivered to the Bailiff making the levy, (the writing stating the terms of holding, and the rent payable for the same) to claim any rent then due to him not exceeding a certain period, according to terms of payment, and in case of the claim being so made, the Bailiff making the levy must distrain as well for the amount of the rent so claimed and the costs of such additional distress, as for the amount of money and costs for which the warrant of execution issued, &c.; thus placing the officer in the position of Bailiff for the landlord, and at the same time an officer of the Court for the purpose of levying the amount of the Execution. Now as the landlord could himself distrain wearing apparel and the other excepted articles, so can the Bailiff of a Division Court, when thus acting for him. This then forms an exception to the rule, exempting wearing apparel from seizure, and although the wearing apparel and implements of trade of a debtor are under the 89th sec. of the D. C. Act exempted from seizure, yet when the landlord gives the bailiff a notice under the 6th sec. of the D.C.E. Act, claiming arrears of rent, the bailiff may distrain such wearing apparel, &c., in order to satisfy the rent so claimed.[1] We shall have occasion hereafter to notice more particularly the proceedings when a claim for arrears of rent is made by the landlord.

Disposal and Sale of Goods taken in Execution.—After goods have been seized under a warrant of execution, an inventory of them should be made. The Bailiff may either leave the property seized on the defendant's premises, placing a person in charge, or may remove it to a place of safe custody till he can sell them. But the Bailiff is not obliged to keep the goods, where he found them, for he is responsible for their safe keeping, and if rescued, he is liable to the plaintiff. It is not unusual, however, for Bailiffs to leave the goods seized in the possession of the defendant, on receiving sufficient security that they will be forthcoming on the day of sale. This practise is not prohibited by the Statute, and it seems the most inexpensive mode for the defendant; for by this means he is not deprived of the use of his property, nor is he at the expense of a person in charge. It is to be remembered that in thus acting, the Bailiff assumes a personal responsibility, for he cannot compel a plaintiff to step into his shoes and sue on the security, in case the goods are not forthcoming on the day of sale, and consequently he would be liable to the plaintiff to pay at least the value of the goods seized. In practise this mode of proceeding seems to work well.

[1] *Woodcock v. Pritchard*, 1 C. C. C., 493.

U. C. REPORTS.

GENERAL AND MUNICIPAL LAW.

WOODS v. THE MUNICIPALITY OF WENTWORTH AND THE CORPORATION OF HAMILTON.

(Easter Term. 19 Vic.)

Highways—Corporation—Liability of, to repair.

In case against the Municipality of the County of Wentworth and the Corporation of the City of Hamilton for not repairing a bridge alleged to be lying between the County of Wentworth and the City of Hamilton; it appearing in evidence that the bridge crossed the Desjardins canal the waters of which, by statute, are navigable waters, and are not within either the city or the county; that on each side of the canal there was a marsh, that the dry land on the one side was part of the township of West Flamboro', and on the other part of the of the City of Hamilton and that the canal divided the two.

Held, that such bridge was not to be considered as a bridge lying *between* the city and county within the meaning of the 32nd section of 12 Vic. cap. 81.

Semble, per *Draper*, C.J., that when the tort alleged is the non-performance of a joint duty; if the joint duty be not proved, the plaintiff must fail in toto.

(6 C. P. R. 101.)

CASE—The declaration stated that a certain bridge called the Upper Burlington Bridge lay between the county of Wentworth and the city of Hamilton, and was a public highway. That after the passing of the Upper Canada Municipal Corporations Act of 1849, it became and was the duty of the defendants to keep the said bridge in repair, and averred as a breach

of that duty that they allowed the bridge to get out of repair, and the planks, timbers and railing to be destroyed, and a large hole to be in the bridge, greatly obstructing and rendering it dangerous. By means whereof the plaintiff, his horse and carriage, while lawfully passing along the bridge, were thrown into the water.

Pleas, by the City of Hamilton: 1st. Not guilty; 2nd. That the bridge was not between the county and the city; 3rd. That the bridge is wholly in the county of Wentworth, and not extending into or beyond, touching or reaching the limit of the city; *absque hoc* that the bridge was between the county and city.

Pleas, by the County of Wentworth: 1st. Not guilty; 2nd. That the bridge was not between the county and the city; 3rd. That the bridge is altogether within the limits of the city of Hamilton; *absque hoc* that the bridge was between the county and city.

The case was tried in November last at Hamilton, before *Richards, J.* It appeared that the bridge mentioned in the declaration crossed what was formerly the channel of the Desjardins canal, which was deep water; that on each side of this channel there was marsh, and that the hard or dry land on one side the marsh is part of the township of Flamboro' West, and on the other side is part of the city of Hamilton. There is on the city side an embankment or filling in of earth going towards, but not extending to, this channel. The bridge was out of repair; there was a hole of some four feet long, and eighteen inches wide in it. The plaintiff was driving his horse in a buggy from the West Flamboro' side, over the bridge; the horse started at the hole, backed, and went over with the buggy, and the plaintiff in it, into deep water, and the whole were with some difficulty extricated. Some evidence was given on the part of the defence to show that the horse was baulky; that the plaintiff showed a want of proper care in driving, instead of leading, the horse across the bridge. But the main defence was, first, that there was no joint liability, such as is charged in the declaration, proved; and on the part of the city it was contended that no part of this bridge was within the city limits. To this it was answered that it is part of the harbour in front of the city. The jury found that the place where the accident happened was no part of the city of Hamilton, but was without the limits of that city, and they gave the plaintiff a verdict and £50 damages.

In Michaelmas Term, *Dr. Connor, Q. C.*, on behalf of the Municipal Council of the County of Wentworth, obtained a rule *Nisi* to set aside the verdict, and enter a nonsuit on leave reserved, or for a new trial on the ground of misdirection.

A similar rule was obtained by *Burton* for the city, in which it was further objected that the verdict was against law and evidence.

During Hilary Term last, *Freeman* showed cause, and contended that by the statute 12 Vic., cap. 81, sec. 39, a highway lying *between* a city and county is liable to be kept in repair by both, and this being a highway across the water which divides the city from the county, under the act both are liable for its repair; nor does it lie on plaintiff to show how much belongs to the county or how much to the city, and both are jointly liable—citing The Mayor of Lyme Regis v. Henley, 3 B. & Ad. 77; Rex v. The Inhabitants of Kent, 13 East. 220; Rex v. The Inhabitants of Lindsey, 14 East 317; Rex v. Kerrison, 3 M. & S. 527; Dwarris on the Statutes, 712; Statute 12 Vic., cap 81, secs. 39, 41, 60, 80, 106.

Dr. Connor, Q. C., contra.

DRAPER, C. J.—By the statute 12 Vic., cap. 81, sec. 38, all roads and bridges running, lying or being between different counties, or between a county and a city, lying within the boundaries of such county, or on the bounds of a town or incorporated village within such county, shall be within the jurisdiction and subject to the control of the municipal corporations of both such counties, or of such county and city, or town and village, as far as respects the making, maintaining or improving the same, or the stopping up, altering or diverting the same, or the protection of any timber, stone, sand or gravel growing or being thereon, or the regulating the driving or riding thereon, or other use of the same, and this notwithstanding that the line of such road or bridge shall or may occasionally deviate from the line of its course between such county and city, or along the bounds of such town or village, and in some parts thereof lie wholly within one or the other of such counties, city, town or village; and no by-law, to be passed by any of such municipal corporations with respect to any such road or bridge for any of the purposes aforesaid, shall have any force or effect whatsoever, until the passing of a by-law in similar or corresponding terms, as nearly as may be by the other of such corporations.

Sec. 41 gives to the municipal council of each county power to make by-laws. Eleventhly, for the opening, &c, of any new or existing highway, &c., bridge or other communication running, lying or being *within one or more townships; or between two or more townships* of such county, or *between such county and any adjoining county or city*, or on the bounds of any town or incorporated village lying within the boundaries of such county, as the interests of the inhabitants of such county at large shall in the opinion of the municipal council require to be so opened, &c., at the public expense of such county; and for the entering into, performing and executing any arrangement or agreement with the municipal corporation of any such adjoining county or counties, city or cities, or of any such town or incorporated village, for the execution of any such work and at their joint expense: and, Twelfthly—For the protection and preservation of any timber, stone, sand or gravel, growing or being upon any allowance or appropriation for any of *such county roads*. (See also Sixteenthly.)

The hundredth section (read, as re-enacting, in regard to cities, the sixtieth section.) Firstly, gives to the city council power to make by-laws for the opening, &c., any new or existing highway, road, street, side-walk, crossing, alley, lane, bridge or other communication, or any public wharf, dock, slip, drain, sewer, shore, bay, harbour, river or water, and the shores and banks thereof within the jurisdiction of the corporation of such city, and for the entering, performing and executing any arrangement or agreement with the municipal corporation of the county or counties in which such city may lie, for the execution of any such work, at the joint expense and for the joint benefit of the municipal corporation of such city and the people they represent.

The first question which appears to present itself is whether this is a bridge lying between the county of Wentworth and the city of Hamilton, coming within the meaning of the thirty-ninth section 12 Vic, cap. 81, as a bridge lying between the boundaries of the county and the city. The evidence in itself is not at all distinct or satisfactory. In order to ascertain this, in addition to the evidence given at the trial, I have looked at the description of the boundaries of the city of Hamilton, given in Sched. C. to 12 Vic., cap. 81, according to which it seems the city of Hamilton lies within the boundaries of the township of Barton, and is in fact created out of part of that township; and the city is bounded by the waters of the Burlington Bay; not however treating these waters as the boundary of the township of Barton. The city boundaries also include the *harbour* in front of the city. It was contended that these waters or the harbour extended behind the Burlington heights, and the Desjardins Canal acts show these waters, running, if not to, at least towards Dundas, were and are navigable waters, not within either the county or city, and therefore are a highway between the county and city; and so this bridge over such waters is a bridge over a part of a highway between the county and city, within the meaning of the 12 Vic., cap. 81, sec. 39. The jury negatived virtually, if not directly, that the bridge was in the harbour in front of the city.

The 7 Geo. IV, cap. 18, the act incorporating the Desjardins Canal Company states in the preamble, that "it is of manifest importance to form a water communication or canal *from* the said bay (Burlington) to the village of Cook's Paradise, through the intervening marsh and other lands." I do not find anything else in this or other acts of Upper Canada respecting the Desjardins Canal, touching the question, however remotely. The only act of Canada affecting this canal is 16 Vic., cap. 54, which throws no light on the question. None of these acts show the bridge to be within the *harbour*, though the water over which it crosses should be deemed part of Burlington bay.

There is in fact no evidence to show where the boundary line between the townships of Barton and Flamboro' West meet, if in fact they meet at all in the marsh through which the waters in question run. Looking merely at a map, it would seem as if they did not, but that the marsh generally lies either in the township of Ancaster or of West Flamboro'. According to Mr. Blythe's evidence, the place on the west side where the bridge and its continuation comes to the firm ground is in West Flamboro'; but in which township, or whether in any township, the marsh or the water-channel over which the bridge passes does not appear as a distinct matter in evidence.

If this marsh and this channel are within the limits of either of the townships named, or in fact of any township, then the bridge must be, I think, considered as not within the meaning of the 39th section, as a bridge lying *between* the county and city. I understand that section to refer to roads forming a separation in their longitudinal extent as well as in the breadth, either between two counties or a city, and the other part of the county in which the city is. A road along which a traveller would pass between the two, or across which he would go out of one into the other, and not a road which passes through one county directly it reaches the boundary between it and some other territorial division, passes along and through such other. I take this road to be of the latter character, and therefore not within the strict meaning of the statute. But it may be (and I so understood it to be suggested) that the marsh is without the limits of any township, is in fact Crown property ungranted, and it was contended to form part of the waters of Burlington Bay; and then the joint liability of the city and county was rested on one of two grounds: 1st, that the navigable channel was within the clause 39; in which case I do not perceive that the statute extends to making a bridge over it; or, 2nd, that this road comes within the spirit or the letter of the act, as a road crossing a portion of ungranted marsh, which intervened between the city and another portion of the county. If this were so, then it would, I suppose, be within the limits of the county of Wentworth, which by 14 & 15 Vic., cap. 5, schedule A, No. 42, consists of the townships (among others) of Flamboro' West, Ancaster and Barton; for by the 11th sec. the limits of all townships on lake Ontario, &c., and also on any rivers, lakes and bays not specifically mentioned in the act (which Burlington bay is not) extend to the middle of the lakes and bays, and to the middle of the channels of the said rivers: so that this marsh, if omitted from any survey as part of the waters of Burlington bay, must, within this enactment, form part of the township or townships immediately abutting on it.

But the effect of this extension of the side lines of a township would only be to bring the bridge in question, either in part or altogether, within the limits of one of the townships adjacent; and that would apparently not affect the city of Hamilton, as not coming within the application of that enactment, being composed of a part of the township of Barton, but leaving Barton still a township, and as such subject to the provisions of the statute referred to; so that in that view this bridge would not be between the city of Hamilton and the county of Wentworth. And if the limits of Hamilton were to be extended by force of the statute till they reached the middle of the channel of the navigable waters, the limits of the township of West Flamboro' must be in like manner extended until they met those of the city. So that it appears to me this bridge can in no way be treated as one lying or being between the city and the county, so as to create the joint liability to repair declared upon. The verdict that the bridge, &c., was not within a part of the city, seems quite right; and for the reasons already given, I think, as to the city, the rule for a nonsuit should be made absolute.

As to the county, I am by no means disposed to accede to the argument, that being an action of tort, the plaintiff may retain his verdict against one defendant, though failing against the other. My inclination at present is, that where the wrong is the non-performance of a joint duty, if the joint duty be not proved the plaintiff must fail altogether. But were it otherwise, I do not see any evidence to make the county liable for keeping this road in repair. No proof was given of any by-law making this a county bridge or road, nor any other proof establishing the liability of the county to keep it in repair. No statute that has been cited, or that I have seen, imposes such an obligation. It is not a toll bridge, for all that appears, so as to come within the provisions of 16 Vic., cap. 190, sec. 34.

I think, therefore, the rule obtained by the county to enter a nonsuit should also be made absolute.

Buchart v. The Municipality of the United Townships of Brant and Carrick.

(Easter Term, 19 Vic.)

Proof of by-law.

The court will discharge a rule to quash a by-law moved on a copy of the by-law, verified in a manner different from that pointed out by the statute, unless the reasons for such variance are clearly and satisfactorily explained.

(6 C. P. R., 130.)

S. Richards, in Michaelmas term last, obtained a rule *Nisi* (returnable on the 1st of Hilary term) calling on the Municipality of the United Townships of Brant and Carrick to show cause why a by-law, entitled, "No. 4, to raise, by way of loan, the sum of £500, payable with interest in seven years, for the purpose of cutting several roads and bridging streams in the United Townships of Brant and Carrick," should not be quashed, on the following grounds: First—That the amount of ratable property in the Municipality for the financial year next preceding the passing of the by-law is not set forth therein. Second—That no day is named on which the by-law shall come into operation. Third—That the interest on the debentures is directed to be made payable half-yearly or otherwise, which is uncertain. Fourth—That the by-law purported to be for the construction of certain works, which were nearly all done and paid for before the by-law was passed. Fifth—That there are several distinct and unequal rates in the pound, mentioned in the schedule, to be levied. Sixth—That the by-law does not impose a special rate per annum, to be levied in addition to all other rates levied in each year. Seventh—That the by-law was not submitted to the qualified municipal electors of the Municipality for their approval.

There were affidavits, verifying the copy of the by-law produced to be a true copy. The copy produced had, moreover, no seal. The facts extrinsic of the by-law itself, which constituted the foundation of the fourth and seventh objections, were also stated on affidavit.

In Easter term *C. Robinson* showed cause. He objected to the want of a seal, and to the sufficiency of the excuse for its not being attached to the copy as the statute requires; also, that the certificate of the clerk was insufficient; that the papers should be entitled, that it might appear who was the relator: that though Buchart is put forth as the relator, it is another party who swears to the copy of the rule—See Fisher v. The Municipal Council of Vaughan, 10 U. C. Q. B. R., 492. He referred to 12 Vic., chap. 81, sec. 198; In re Conger v. Peterboro' Municipal Council, 8 U. C. Q. B. R. 349; Cole on Quo Warranto, 181; the rule in the Court of Queen's Bench

in England of Michaelmas term 3 Vic., and the case of Regina v. Hedges, 11 A. & E. 163, showing that under that rule the affidavit must show at whose instance the application is made.

Richards, in reply, insisted that the affidavits in this case, stating distinctly that the copy put in was a true copy of the by-law, furnished more direct evidence of its authenticity than the attaching of the seal would do; that it appeared the clerk had stated that he dared not put the seal; that in Easter term 17 Vic. the court of Queen's Bench, in Morrison v. Municipality of Arthur, granted a rule to quash a by-law, though the clerk had refused to certify it. Supposing the case properly before the court, the other side had not attempted to support the by-law.

DRAPER, C.J.—The 105th sec. of 12 Vic., cap. 81, makes it the duty of the township clerk, on the application of any resident of any township, or any other person having an interest in the provisions of a by-law, and on payment of his fee, to furnish a copy of such by-law, certified under his hand and the seal of the municipal corporation; and either of the superior courts of common law may be moved, "upon production of such copy, and upon affidavit that the same is the copy received" from the clerk. The affidavit of Edmund Savage states that the copy produced is the copy received by him from the clerk of the municipality, and that it is a true copy of the said by-law passed by the Municipality. There are two certificates purporting to be signed by the clerk of the Municipality, one dated the 1st of November, 1855, wafered over the other, which is dated the 11th of October, 1855, and so as partially to conceal it, though it is not apparently cancelled. That of the 1st of November is in these words: "I hereby certify that the within copy of by-law No. 4, passed by the Municipality of the United Townships of Brant and Carrick on the 25th day of June now last past, given under my hand this first day of Nov., 1855. (Signed) A. McVicar, clerk, &c." The other, which is entirely covered by the paper on which the foregoing is written, is as follows: "I hereby certify that the within is a true and correct copy of a by-law passed by the Municipal Council of the United Townships of Brant and Carrick on the 25th day of June last: Brant, 11th October, 1855. (Signed) A. McVicar, secretary." Neither of the foregoing certificates has any seal; and the absence of the seal of the Municipality is accounted for by an affidavit of Malcolm Colin Cameron, that he hath been informed and verily believes and hath good reason to believe, that the clerk of this municipality was requested and refused to place or affix the seal of the said municipality to the certificate annexed to and at the end of the copy of by-laws hereto annexed; alleging as a reason, that 'he dare not do so'; and that for that reason, and none other, the said seal is not placed thereon or thereto. As this affidavit is sworn on the 14th of November last, it may allude to either of the two certificates, one of which is annexed to the copy of the by-law produced by being wafered on to it; and the other (that of the 11th of October) is written at the end of the copy of by-law annexed to the affidavit.

Without saying that there are no circumstances which will induce the court to dispense with any of the formalities, by the observance whereof the by-law is to be considered as verified without other proof, I may observe that I think it incumbent on parties who depart from the directions of the statutes to explain clearly and satisfactorily to the court the grounds on which they substitute other modes of proof of the by-law moved against. There are two things to be established: 1st. That a by-law was passed; 2nd. That the copy offered to the court is a true copy. The 198th section of the statute referred to by Mr. Robinson requires all by-laws to be authenticated by the seal of the corporation, and by the signature of the head thereof, or of the person presiding, &c., and also by that of the clerk of such corporation; and then enacts, that any copy of any such by-law written without erasure or interlineation, sealed with the seal of the corporation, and certified to be a true copy by the clerk, and by any member of the corporation for the time being, shall be deemed authentic, and shall be received in evidence in all courts without proof of the seal or signatures, unless it be pleaded that any of them are forged.

Now, if the certificate of the clerk is informal, and therefore insufficient for the purposes of this application under the 155th section, it becomes necessary to prove the by-law authenticated by what the 198th section requires. In the present case, the by-law, according to the copy produced, was signed by the reeve, and countersigned, "A McVicar, treasurer." He may be the same person who was clerk in October and November following; but unless clerk on the 25th of June, when, according to the certificates signed by A. McVicar, the by-law was passed, it was not duly authenticated, and it does not appear how this was; and there is no direct evidence that the original by-law was sealed; there is only a representation of a seal, indicating that the seal was attached to the original: sufficient if the certificate had been in conformity with the statute; but without that, not by itself sufficient to prove that the original by-law was sealed.

Assuming that if the clerk's refusal to affix the seal were distinctly proved, other proof of the passing of the by-law and of its contents would have been receivable to warrant the issue of this rule, I think the demand and refusal should have been directly proved. That the court ought not, without sufficient cause shown on affidavit, to dispense with the production of a copy certified as the 155th section requires, and that no sufficient proof has been given why the seal is not affixed, to enable us to say, that other proof of the by-law should be received; and I do not think the other proof that is offered goes far enough.

In my opinion, therefore, the rule should be discharged.

Per Cur.—Rule discharged.

THE CHIEF SUPERINTENDENT OF SCHOOLS FOR UPPER CANADA, APPELLANT, IN THE MATTER OF THE TRUSTEES OF SCHOOL SECTION NO. 4 IN THE TOWNSHIP OF HALLOWELL, PLAINTIFFS, AND ROBERT STORE, DEFENDANT.

(Michaelmas Term, 20 Vic.)

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

The proviso in 16 Vic. cap. 185, sec. 15, applies only to the case of an undivided property extending into more than one school section of the same municipality, not where the land lies in different municipalities.

(14 Q. B. R., 541.)

APPEAL from the Division Court for the county of Prince Edward.

The plaintiffs sued for school rates.

The only question raised at the trial was whether the defendant was liable to pay school rates out of the school section in which he resided, he claiming to come within the proviso of the 15th section of the School Act of 16 Vic., cap. 185.

The following facts appeared in evidence, or were admitted on the trial:—

First—That the defendant appeared on the assessment roll assessed for lot number 1, in the first concession of Hallowell, at £850.

Second—That that lot is partly in the town of Picton, and the defendant has his dwelling house and resides in the town of Picton, and that there is no dwelling house on the said lot No. 1 without the limits of the corporation of Picton; and hat the defendant is the occupant of not only the part lying without the limits of the town, but a considerable part of what lies within the town limits; and that no fence or other erection divides the lot, so as to mark where the division takes place.

Third—That the school section No. 4 is described as comprising the 1st concession of the township of Hallowell north of the carrying place, from the limits of the town of Picton to the township line, and also the second concession from the north side of lot No. 2 to the township line 4.

Fourth—That the school house in the school section No. 4 is without the limits of the corporation of Picton, on lot No. 8, and the defendant did not send any children to the school there, or use it in any way.

Upon a consideration of these facts, the learned judge below decided that the defendant came within the proviso contained in the 16th section of the act, which is as follows: "Provided always, that any undivided occupied lot, or part of a lot, shall only be liable to be assessed for school purposes in the school section where the occupant resides."

Duggan for the appeal.

ROBINSON, C.J., delivered the judgment of the court.

If we look no further than the words of the clause in question, they do seem to import that where a man owns either a lot or a part of a lot which covers a part of two school sections, he should only be liable to be assessed for school purposes in respect of such lot or part of a lot in the school section wherein he lives.

Whether the whole of the land is to be taken into account in assessing him for school purposes, or only that part of it which lies within the school section in which the proprietor resides, is not expressly stated in the act, probably because it was thought unnecessary to express it.

We are not surprised that it appeared to the learned Judge of the County Court that the proprietor could, at all events, not be assessed for a school rate by any authority out of his school division, where he is living upon an undivided estate, whether such estate be a whole lot or part of a lot; because that does seem to be the plain import of the words.

The defendant, it is stated, lives in the incorporated village of Picton, upon a lot of land which extends beyond the limits of the village into school section No. 4 in the township of Hallowell; so that his land not only extends into two school sections, but it forms part of two distinct municipalities. And the question raised by the appeal is, whether the 16th section of 16 Vic., cap. 185, was intended to apply to any case where, as in that before us, different portions of the same lot on which the person assessed resides are in different municipalities, or only to cases in which parts of the same lot are in different school sections of the same municipality.

Our opinion is, that the portion of Storm's land which lies in Hallowell must, by the authorities of that municipality, be treated as the land of an absentee, and charged with taxes accordingly, though the 15th section of 16 Vic., cap. 185, is not so carefully expressed as to bring out the distinction into view. We are satisfied that must be the meaning of the legislature, and that this provision applies only in regard to the case of an undivided property owned by one person, and extending into more than one school division of the same municipality.

In such cases there would be no conflict of duties, because there is but one assessment roll and one machinery for imposing and collecting the rates; but where the property extends into more than one municipality, the land is still to be rated in each according to the provisions of the assessment act—16 Vic., cap. 182, secs. 22 and 39, and other sections—and there would be a school rate put into the roll in respect of the land situate in that municipality in which the proprietor has been rated as a non-resident, as well as that in which he lives, as was no doubt the case in this instance; and it is plain that nothing was done here but what must inevitably take place in carrying out the general assessment law, with which the clause in question in the School Act was not intended to interfere.

We are not aware that any other question was intended to be raised by the appeal, and therefore are of opinion that an order should go that the judgment given in the Division Court be reversed, and the judge of the court should give judgment for the plaintiff for the rate due.

Judgment below reversed.

CHAMBER REPORTS.

(Reported for the Law Journal and Harrison's Common Law Procedure Act, by T. MOORE BENSON, Esquire.)

CALVERLY v. SMITH.

Seizure of money paid into Court, under Division Court Execution—13 & 14 Vic. chapter 53, section 89.

Money paid into court is not liable to seizure under execution, while in the hands of the officer of the court.

(Jan. 28, 1857.)

The particulars of the case appear in the judgment.

ROBINSON, C.J.—On the 20th January, *Richards, J.*, granted a summons on the deputy clerk of the Crown and Pleas in the county of Simcoe to show cause why he should not pay over to the plaintiff or his attorney the money paid into Court by the defendant in this cause.

This suit is depending in the Common Pleas, declaration having been filed. Pleas were filed on 6th December, one of which was of payment of £10 into Court.

The plaintiff's attorney went with a proper authority from his client to receive the money from the Deputy Clerk of the Crown, who informed him that he had it not; for that the £10 had been seized by the bailiff of a Division Court, under an execution against the goods and chattels of this plaintiff at the suit of Young and Abram.

It happened that the defendant's attorney in this suit was attorney also for the plaintiff in the suit in the Division Court; and, taking with him a bailiff of the Division Court, he went to the office of the Deputy Clerk of the Crown and paid into Court for the defendant in this suit the £10 in question, laying it on the table before the Clerk, and obtained the Clerk's receipt for it in the margin of the plea. The bailiff who had come with the attorney, and who no doubt was acting under instructions from him, thereupon immediately took up the money from the table, saying that he seized it under an execution in his hands against this plaintiff at the suit of Young and Abram.

The Deputy Clerk of the Crown, (or rather his clerk, for he was not present in person,) having the execution shown to him, and supposing the bailiff had a right to take the money, did not oppose it.

The money was paid over by the bailiff to the attorney.

The question is whether the seizing it under the Division Court execution was legal, under the Statute 13 & 14 Vic., cap. 53, sec. 89.

I think it was not legal. It could never have been intended by the Statute to allow of money being seized in the hands of an officer of the Court under such circumstances. It might create confusion and embarrassment; for it was not the plaintiff's money till he accepted it; and it ought to remain in the custody of the Court, and under its control, until the plaintiff took it out. There might, for all we can tell, have been circumstances which would have made it proper for the Court to allow the defendant to take it back(a); or, for all the bailiff could tell, the case may have been one in which a defendant was not allowed to pay money into Court; or the plaintiff, even if he had taken it out, might be allowed under certain

(a) *Culyer v. Selby*, Arch. Practice, 1283.

circumstances to return it; and at all events he must be allowed to exercise his discretion whether he will take out the money or not, looking at the condition upon which it has been paid in. The bailiff had no right to settle the point for him.

It was an error in the attorney to act in a double capacity, as he did.

But on more general grounds, it has been decided in several cases in England under the Statute, (1 & 2 Vic., chap. 110) which permits money belonging to a defendant to be seized in execution—which Statute is precisely like ours in it language, —that the Sheriff, or officer, can only seize money which is in the hands of the defendant, and not money which is in the hands of a third party, and held by such third party to his use, still less money in the custody of the Court upon a payment which the party has not yet even accepted.

Watts v. Jefferyes, 15 Jurist, 435, referring to *Wood v. Wood*, 4 Q.B., 397, and *Robinson v. Peace*, 7 Dowl. P. C., 93; *Masters v. Stanley*, 8 Dowl. P. C. 169; *France v. Campbell*, 9 Dowl. P. C. 914.

If the money is still in the hands of the attorney, he ought to replace it; but at any rate the officer should not have suffered it to be taken away, and this Summons must be made absolute. Summons absolute.

CAMPBELL v. PEDEN ET AL.

Garnishee—Partners—C. L. P. Act, 1856, section 194.

An unsettled balance due by one partner to another cannot be attached; but if the balance has been fully ascertained by a settlement of accounts, it may be attached.

(Jan. 26, 1857.)

Freeland, for plaintiff, had obtained a summons calling on one Peden to show cause why he should not pay over to the judgment creditor (Campbell) a certain debt due by him to the judgment debtors, (Peden and others.)

Jackson, for garnishee, showed cause. The defendants and the garnishee had formerly been partners, and the alleged debt was a matter of account between them as such.

ROBINSON, C.J.—This case does not come within the meaning of the C. L. P. Act, it being an account between partners, and therefore only cognizable by a Court of Equity. Had there been a settlement between the partners, resulting in a balance in favour of the garnishee, then that balance being the ascertained amount of garnishee's indebtedness, might have been attached, and the garnishee ordered to pay it over. Summons discharged.

(Reported for the Law Journal and Harrison's Common Law Procedure Act, by CHARLES WAY, Esquire.)

HUNTER v. KEIGHTLEY ET AL.

Ejectment—Collision between tenants and a stranger.

(Feb. 16, 1857.)

Action of Ejectment by plaintiff Edward Hunter, against defendants, J. Keightley and Edward Jackson.

It appeared from affidavits that one James John Hunter (agent for plaintiff) was formerly owner of certain land and premises, for the recovery of which this action was brought, and that whilst he was such owner he demised the said lands by Indenture of Lease, dated 18th of April, 1854, unto said defendants for seven years. Defendants occupied under said lease until the assignment after mentioned.

In December, 1855, one A. N. Vrooman, commenced an action of Ejectment against defendants, in which said James J. Hunter, by leave of the Judge, appeared as landlord, and issue was joined between said Vrooman and said J. J. Hunter in December 1855, since which time Vrooman had not proceeded with the action.

On 7th May 1856 said J. J. Hunter conveyed said premises and assigned the said lease and the reversion unto the plaintiff in this action. In June 1856, Vrooman commenced another action against defendants in the name of one Rachel Russell, in which defendants colluded to keep the service of summons secret from said plaintiff, and judgment was fraudulently signed against defendants, and they agreed to become Vrooman's tenants.

In consequence of such fraud said judgment was set aside by Judge's order in July 1856, and the plaintiff in this action was allowed to appear, since which no further proceedings had been taken in said action.

In consequence of said fraud and collusion defendants had been brought up upon a forfeiture of the tenancy, and on 30th December last the following order was made by McLEAN, J.:

"Upon reading the affidavit filed, I do order that A. N. "Vrooman be allowed to appear and defend this action as "landlord."

Which order was made *ex parte* upon affidavit of Vrooman that he was in possession, which was wholly untrue. Summons was taken out by plaintiff, calling upon defendant to show cause why the said order of the 30th December should not be set aside with costs, or why said order should not be amended by restraining Vrooman from disputing plaintiff's title or setting up an adverse title on trial of said cause, and why plaintiff should not have leave to sign judgment in this cause.

Eccles, for plaintiff, moved summons absolute.

RICHARDS, J., granted an order setting aside the said order of 30th December, no cause being shown against it.

WRIGHT v. HULL.

Order for writ of Supersedeas.

(Feb. 17, 1857.)

Summons to show cause taken out on 14th instant by defendant's attorney.

This cause was tried at the Assizes on the 9th September last, and verdict taken for plaintiff.

The affidavits showed that the action was commenced against defendant as endorser of certain promissory notes declared on in this cause; that defendant had been arrested and was in close custody, and that plaintiff had not entered judgment upon the said verdict, and had not caused defendant to be charged in execution, although more than a term had elapsed since the trial.

Summons moved absolute by defendant's attorney, and unopposed.

RICHARDS, J., granted an order for writ of *Supersedeas* to issue.(a)

(a) N. R., 99.

Bamberg v. Solomon.

(Feb. 18, 1857.)

Summons to show cause was taken out by defendant's attorney, why defendant, who was a prisoner in close custody, should not be discharged upon entering a common appearance in the said action, upon ground that the plaintiff did not declare against said defendant before the end of the Term, next after the time, when said defendant was arrested, and upon ground that two Terms had elapsed since the said arrest, and that the plaintiff had not declared against said defendant.

McMichael, for defendant, moved summons absolute.

Richards, J., granted an order for a *Supersedeas*; defendant to be discharged on entering a common appearance.(a)

Vance et al v. Wray.

Order to change venue in action of Replevin.

Action of Replevin is not local, unless it is brought to recover a distress—14 & 15 Vic., cap. 64, sec. 5. Wrong spelling of party's name is not sufficient ground for refusing an order, when it is "*idems sonans.*"

(Feb. 20, 1857.)

This was an action of Replevin, brought by plaintiffs, to recover a yoke of oxen from the defendant.

The venue was laid in the county of York, one of the united counties of York and Peel, and defendant's attorney took out summons to show cause why the venue should not be changed to the county of Simcoe, and moved summons absolute this day.

Carroll, for plaintiffs, opposed summons on ground of defendant's name being spelt "Rae," instead of "Wray," in the writ of summons, declaration, and all other papers on behalf of plaintiffs, and also in defendant's appearance.

Richards, J., thought this objection immaterial, (as it was "*idem sonans*") and granted an order to change the venue on the ground that the cause of action arose in the county of Simcoe, and not in the county of York, and that the witnesses on both sides resided in Simcoe.

(Reported for the Law Journal and Harrison's Common Law Procedure Act, by C. E. English, Esquire, B.A.)

Baxter et al v. Dennie.

Practice—Writ of Attachment, service of—Absconding debtor.

Writs of Attachment must be served on the nearest friends of the absconding debtor, and a copy put up in the office of the Deputy Clerk of the Crown of the county where he resided.

(Feb. 21, 1857.)

This was an application, under the 45th sec. C. L. P. Act, 1856, for the allowance of the service of a writ of Attachment on Dennie, (an absconding debtor) or for direction as to what proceedings would be considered suitable service, on affidavits to the effect following:—

1. That the defendant resided and carried on the business of a dry goods merchant and general grocer at Bath, in the county of Addington.

2. That the father and brother of the defendant reside about four miles beyond the said village of Bath.

3. That the defendant has left Upper Canada: that his present whereabouts is unknown, and that he is supposed to have gone to the Western States.

4. That before his departure he made a general assignment of his personal property to one Griffith for the discharge of certain trusts therein mentioned.

5. That the said assignee now resides in the village of Napanee, and is aware of this process; also, an affidavit of the Sheriff of the united counties of Frontenac, Lennox and Addington, that the defendant has absconded, and that every reasonable effort has been made to effect personal service of the writ of Attachment on him, but without effect.

Richards, J., I will grant an order that the writ be served on the father and assignee of the defendant, and that a copy be put up in the office of the Deputy Clerk of the Crown for the united counties of Frontenac, Lennox and Addington; and if the defendant do not put in special bail within fifteen days after such service the plaintiff shall be at liberty to proceed in the action; all other papers requiring service, to be served in the same way.

Stephen et al v. Dennie.

Practice—Absconding debtor—Service of writ of Attachment.

An affidavit to support an application for the allowance of service of writ of Attachment should state what efforts have been made to effect personal service.

(Feb. 21, 1857.)

Jackson applied to have the service of the writ of Attachment allowed, on the efforts previously made to effect personal service, or for direction as to what proceedings would be considered sufficient service under the circumstances, on an affidavit of the Sheriff of the united counties of Frontenac, Lennox and Addington, to the following effect:—

1. That he had received a duplicate of the writ of Attachment for service on 4th February instant.

2. That the defendant absconded from Upper Canada on 28th November last, and that after diligent search and enquiry having been made by him, no information can be obtained as to the place whither he has fled.

3. That every reasonable effort had been made to effect personal service of said writ on the defendant, but without effect.

Richards, J.—I cannot make any order whatever in the matter, the affidavit being wholly insufficient.

Affidavits in these applications should show as far as possible:—

1. Where the defendant resided, and what was his business or profession when in the Province.

2. What property (if any) he has in the Province, and in whose hands it is.

3. Whether he has any (and if any, what,) friends or relations residing in the Province or elsewhere.

4. That the defendant has not put in special bail to the action.

5. *What* specific efforts have been made to effect personal service on the defendant, and to discover his whereabouts.

Trust and Loan Co. U. C. v. Elison et al.

Practice—Irregularity—Amendment.

In ejectment defendant may amend his appearance, if filed without the notice required by 224th section C. L. P. Act, 1856.

(March 1, 1857.)

Action of Ejectment. The claimant applied to set aside the appearance entered, on the ground that no notice of the nature of the defendant's title or claim to the premises, had been filed pursuant to the 224th section C. L. P. Act.

(a) N. R., 100.

Gildersleeve, for the defendant, admitted the irregularity, and applied for leave to amend.

McLEAN, J.—I think this is a proper case for amendment.

Order granted accordingly, on payment of costs and *terms*.

HOUGHTON v. GREAT WESTERN RAILWAY COMPANY.

Practice—Residence of plaintiff—C. L. P. Act, 1856. sec. 25.

Plaintiff must state the place of his abode, if required, when there is good ground for believing that he does not reside within the jurisdiction of the Court within which the action is brought.

(March 1, 1857.)

M. C. Cameron applied for a stay of proceedings in this cause, until the plaintiff or his attorney should give to the defendant a memorandum stating the place of his abode, on affidavit by the partner of the defendant's attorney to the following effect:—

1. That he was informed by the plaintiff's attorneys, that this action is brought in consequence of the plaintiff having been removed from the defendant's train on an occasion when he had a *through ticket* from the Suspension Bridge to Windsor.

2. That appearance had been duly entered.

3. That he had applied to the plaintiff's attorney for the particulars of his (the plaintiff's) residence, and that he was informed that he (plaintiff's attorney) does not know his residence positively, but thinks it is at Windsor.

4. That he has good ground to believe, and does believe, that the plaintiff does not live at Windsor, but in the United States of America.

The name of *Miles O'Reilly, Esq.*, was endorsed on writ of Summons, as attorney for the plaintiff. No cause was shown.

McLEAN, J.—I think these grounds are sufficient: take an order.

LANDON v. STUBBS.

Practice—Appointment to tax costs.

One half-hour's grace is always allowed for both parties to appear, under an appointment to tax costs.

(March 2, 1857.)

Carrall applied to set aside with costs the taxation of a nominal bill in this cause, on the ground that the said bill was taxed by the opposite party before the expiration of one half hour after the time appointed by the Master to tax the costs in this cause.

Blevins, contra. I conceive there is a difference between an *appointment* to tax costs and a *notice* of taxation: in the former case it is necessary that the parties appear before the Master punctually at the hour named; in the latter case the space of half an hour is generally allowed after the return of the notice of taxation—moreover, it was *Mr. Carrall's* appointment, and consequently it was his duty to be there punctually at the hour named, though half an hour's grace be allowed to the opposite party to appear, and to wait for him if necessary.

McLEAN, J.—I can see no difference whatever between an *appointment* to tax and a *notice of taxation*; one half hour's grace is, by the Practice, always allowed, in both cases, for the appearance of either party.

Order granted to set aside taxation of nominal bill with costs.

GROVER v. PETTIGREW.

Practice—Irregularity—Demand of particulars—Remittitur damna.

Service of demand of particulars still operates as a stay of proceedings, under C. L. P. Act, 1856.

(March 3, 1857.)

The defendant took out a summons on the 19th Feb., 1857, to set aside a final judgment signed for want of a plea, with costs, for irregularity, on the grounds:—

1st. That the judgment was signed after the service of a demand of particulars of the plaintiff's claim under the common counts of his declaration, and before the said particulars were delivered.

2nd. That the judgment was signed on only the two special counts of the declaration, no *remittitur damna* or *nolle prosequi* having been entered as to the common counts—or to set aside the judgment without costs on the *merits*.

Defendant put in among other papers an affidavit of his attorney, stating:—

1st. That an appearance was duly entered 8th Jan., 1857.

2nd. That the declaration contained, in addition to two special counts on two promissory notes, particulars of which were endorsed on the writ of summons, four common counts for *goods bargained and sold*, for *use and occupation*, for *interest*, and on *an account stated*, no particulars of which were endorsed on the writ, or served with the declaration.

3. That he caused a demand of particulars of the plaintiff's claim under these common counts to be served on the plaintiff's attorney on the 24th January, 1857.

4. That he had never, nor had any one for him, received any particulars under said common counts; nor had he ever received any intimation that the plaintiff did not claim anything under those counts, nor did he hear anything further from the plaintiff's attorney in this suit until he was informed by the deputy sheriff that he had an execution against the defendant.

5. That the defendant has a good defence to this action on the merits.

Carrall, for plaintiff, put in an affidavit stating that the action was brought by the plaintiff as payee against the defendant, as maker of two promissory notes; that the declaration was served on the 17th, and judgment signed on the 26th of January, 1857, for want of a plea; and that the writ of summons was specially endorsed with particulars of the said promissory notes, as required by 41st sec. C. L. P. Act, 1856; and contended:

1. That there was no provision or authority in C. L. P. Act, 1856, for the service of a *demand of particulars*, and hence it could not operate as a stay of proceedings, but is a mere nullity; the defendant should have applied to a Judge in Chambers for an order for better particulars.

2. That the plaintiff has no claim whatever under the common counts, and therefore he would apply for leave to amend his judgment, by entering a *remittitur damna* as to these counts.

3. That if his lordship should not consider him entitled to leave to amend on account of the defendant's affidavit of merits, then he submitted that as this irregularity would be amendable were it not for the defendant's affidavit of merits,

consequently the defendant is admitted to plead on the merits, and therefore it should be on the usual terms, *i e.*, on payment of costs, *a fortiori* this judgment should not be set aside with costs.

The defendant replied, that though there is no express provision for service of demand of particulars in the C. L. P. Act, 1856, yet the old rule 9 E. T. 5 Vic., is not repealed by that act, nor is there anything in that act inconsistent with it, and hence it must still be of full force, and a demand of particulars still operates as a stay of proceedings from the time of its service.

2. That the defendant could not apply to a Judge for *better* particulars, because the particulars under the two special counts were full and complete as far as they went, and no particulars whatever were served under the common counts.

McLean, J.—This judgment is clearly irregular in two respects: 1st. The old rule 9 E. T. 5 Vic. not being repealed, a demand of particulars must still operate as a stay of proceedings.(*a*)

2. The common counts being for an unliquidated demand, the plaintiff could not sign judgment without entering a "*nolle prosequi*" or *remittitur damna*, as to these counts. He cannot now have leave to amend an irregular judgment, the defendant having made an affidavit of merits. The judgment must therefore be set aside with costs.

Gilmour v. McMillen.

Practice—Copy of writ of Capias—Signature of Clerk of Process.

The memorandum of warning and signature of Clerk of Process may be endorsed on the back of a copy of a writ of Capias.

(March 18, 1857.)

The original writ of Capias in this cause was in the usual form, with the ordinary warning to the defendant at the bottom on the face of the writ, and the name of the Clerk of Process at the foot of this memorandum, but the copy served corresponded with the *original* only down to this memorandum, which was then endorsed on the back of the copy, and the name of the Clerk of Process was signed below this endorsement, and not on the face of the copy; so that the body and endorsement together formed a complete copy of the original writ.

M. C. Cameron applied to set aside the writ of Capias copy, service and arrest thereunder for irregularity with costs on the ground that the said writ was not signed by the Clerk of Process as required by sec. 4, C. L. P. Act, 1856, or to set aside the copy, service and arrest, or to set aside the arrest only on the foregoing ground, and on the ground that there was no memorandum or copy thereof written under the copy of the writ served, as in the body of said copy is alleged and referred to, or because the copy served is not a true copy of the original, in this, that the name of the Clerk of Process is not put in the said copy of the writ.

Leys showed cause.

Robinson, C. J.—I see nothing essentially wrong in the original writ; it is signed by the Clerk of Process, and I see nothing in the Statute or in the form of the writ requiring that signature to be put in any particular place. As to the variance between the *copy* and *original*, the only difference is, that the memorandum of warning and the signature of the Clerk of Process is endorsed on the back instead of being put in the body of the copy; this I do not consider material, and therefore must discharge the summons.

Watt v. George.

Practice—Equitable plea—Signing judgment.

Judgment may be signed if an equitable plea be pleaded with other pleas, without the leave of a Judge, or in any other action than replevin.

[March 9, 1857.]

The Declaration in this cause, containing common counts only, was served 21st February, 1857, and 28th February, 1857, the defendant pleaded thereto:

1st. Never indebted; 2nd. Payment; 3rd. Set-off; 4th. An equitable defence of the nature of a sett-off.

On the 3rd March following the plaintiff signed Interlocutory Judgment.

This application was made to set aside this judgment, either retaining or striking out the equitable plea, as his lordship should order; 1st, for irregularity on the ground that judgment was signed after pleas were pleaded; 2nd, on the merits.

McMichael showed cause:—

1st. There is no authority whatever for pleading an equitable plea in this action, the C. L. P. Act, 1856, only making provision for such pleas in the action of Replevin.

2nd. Even if the defendant had a right to plead an equitable defence, he could not do so with the other pleas he has pleaded, without first obtaining leave of a Judge—this he did not do.

The defendant replied:—

1st. The equitable plea is pleaded under sec. 287 C. L. P. Act, 1856, as interpreted by *Mr. Justice Burns* in *Reilly v. Clark*, reported in the *U. C. Law Journal*, vol. II, No. 12, when it was expressly decided that equitable pleas might be pleaded in other actions beside Replevin.

2nd. This plea is of the nature of a set-off, and is pleaded as such, and consequently is included in and may be pleaded under sec. 133 C. L. P. Act, 1856; and consequently, instead of signing judgment under sec. 135, the plaintiff should have applied to have this plea struck out under sec. 290, which was enacted after, and therefore governs section 135.

Robinson, C.J.—In my opinion sec. 290 refers to a different class of cases altogether from section 135, viz., to those cases where the objection is not that the plea is pleaded irregularly or improperly, but that the plea itself is improper, and calculated to embarrass the plaintiff, or to defeat the ends of justice. I cannot conceive an equitable defence being pleaded, or standing as a plea of set-off, and hence this plea being pleaded with other pleas without a Judge's leave, is irregular; moreover, section 287 specifies the action of Replevin only; and therefore I think an equitable plea could not be allowed in this or any similar case. I must discharge the summons as to the irregularity.

(*a*) *Sed qu.* It is expressly ordered by the new rules of T. T., 1856, that all then existing rules of practice in either of the Superior Courts of common law shall be annulled. (See Preamble to New Rules; see also N. R. 20.)

ANCIL v. BRICHER.

Practice—General demurrer, showing consideration in declaration.

Declarations, under C. L. P. Act, need not show mutual promises.

(March 10, 1857.)

This action was brought on an agreement for building purposes, and the declaration alleged that the defendant agreed to erect certain Mills for the plaintiff according to specifications therein mentioned, and that the plaintiff was to supply all lumber required, and to pay the defendant a certain sum of money.

The defendant demurred generally to this declaration as bad in substance, on the grounds:

1. That the declaration shows no consideration.

2. That if the agreement be under seal, the declaration should have so stated it.

Richards applied to set aside this demurrer—1st, as frivolous; 2nd, because it is not dated.

Crooks, contra, contended that no consideration being alleged and no mutual promises being shown, the agreement on the face of the declaration is a *nudum pactum*, unless under seal; if it be under seal, it should have been so stated: and hence the declaration in either case is bad. This, said he, was clearly the case under the old law, and I submit that the law in reference to either of these points has not been altered by the C. L. P. Act, 1856; see *Gould v. Welch*, 1 Jurist, N. S., part I, page 821.

Richards, in reply.—The defendant admits that if mutual promises had been alleged, the declaration would be good, now the necessity for such allegations is expressly done away with by sec. 98 C. L. P. Act, 1856, and this declaration is perfectly analogous to and drawn directly from the precedent given in section 18 of schedule B. under this Act; again, sec. 103 expressly enacts that demurrer must be dated.

ROBINSON, C.J.—I think the declaration sufficient according to the new rules, and therefore must set aside the demurrer as frivolous, with costs.

WEST v. HOLMES.

Interrogatories—Actions of Ejectment.

Interrogatories referring to the defence of the defendant will not in general be allowed in actions of Ejectment.

(March 10, 1857.)

ROBINSON, C.J.—This is an action of Ejectment. The plaintiff moved to be allowed to put interrogatories to the defendant as to whether any lease bearing date 15th July, 1853, had been made to him by one Thomas Holmes of the land in question, or *any* lease of the said land, and by whom made, for what time; and whether the time had expired when this action was brought; whether any person was present at the execution, any subscribing witnesses, who they were, and on what day the lease was delivered; whether he has any defence to this action, if so, what?

The plaintiff's attorney swears that he claims the land under a mortgage made to him by Thomas Holmes, but that the defendant with his notice filed with his appearance under the 224th sec. C. L. P. Act, stated that besides denying the plaintiff's title he claims title in himself under an indenture of lease made by Holmes to him, dated 15th July 1853; that his client (plaintiff,) informed him that he is not aware of any such lease, and does not believe there is any; that he has a good cause of action, and that the plaintiff will derive benefit from the discovery.

The plaintiff makes an affidavit to the same effect.

I think it would be contrary to the spirit of the 222 and 224 sections C. L. P. Act, to compel the defendant to answer these interrogatories, and contrary also to the general principles of Courts of Law and Equity, which protect persons from the necessity of exhibiting their title deeds.

The object of these interrogatories is not to obtain evidence to strengthen the plaintiffs title, but to obtain a discovery of the evidence of the defendant's title.

I do not say that I have not a discretion to order it; and if a foundation were laid for suspecting fraud, for instance, if Holmes being applied to had denied having made any lease to the defendant, I should perhaps do it; but to grant the application in the present case upon no other grounds than are shown, would tend to establish it as a principle, that as a matter of course either party in an action of Ejectment may under the discovery clauses of the C. L. P. Act compel his opponent to discover his title.

The notice filed by the defendant gives sufficient intimation of the nature of the title which he asserts; and it was not intended that he should be put to swear to the truth of his defence. I refuse to make the order: costs of opposing this application to be costs in the cause.

LE[illegible]. AL v. NEILSON ET AL.

Irregular writ of Execution—Amendment of.

Where part of a debt has been levied under a *Fi. Fa.*, and the writ returned, either a *fi. fa.* residue or an *alias* may issue. The former is the more correct; but if the latter be issued, it must, on the face of it, agree with the judgment. The endorsement must be according to the true amount to be levied.

(March 12, 1857.)

ROBINSON, C.J.—A summons was granted by ***Burns, J.***, on 13th February, 1857, which, being enlarged several times, was argued before me 11th March instant, to show cause why the writ of alias *Fi. Fa.* in this cause, directed to the Sheriff of the county of Hastings, should not be set aside; or why all proceedings in this cause should not be stayed, on the ground that the debt in this cause has been paid; or why the *Fi. Fa.* should not be set aside for irregularity in this, that it does not bear the endorsement, showing by what attorney it was issued, or his place of residence; and the endorsement does not state the amount of debt separate from the costs, as required by the Rule of Court; and that it should have been a *Fi. Fa.* for the residue of the original debt, and not merely endorsed for a balance.

On the part of the plaintiffs a cross summons has been obtained to show cause why they should not have leave to amend this alias *Fi. Fa.*, then in the hands of the Sheriff of Hastings, by endorsing the name of the attorney who issued the writ with his place of residence, and also by separating the debt from the costs in the endorsement to levy.

The facts of this case were stated in a judgment given by me in Michaelmas Term last in this same cause on a motion

to quash a return made by the Sheriff of Hastings to a previous *Fi. Fa.* which had been delivered to him.

I have read the affidavits filed upon the present application, and will state the principal facts shortly: The plaintiffs, having a judgment in this case against the defendants for a large amount, of which a portion had been levied, took out a writ of *Venditione Exponas* in March, 1856, directed to the Sheriff of Frontenac, Mr. Corbett, endorsed to levy £1,680 11s. 9d.; under this writ Mr. Corbett exposed to sale all the interest of the defendants in a certain steamer called the "City of Hamilton," otherwise called, it seems, "The City of the Bay," and under the circumstances stated in the affidavits and in the judgment I have referred to, Mr. Gildersleeve was treated by the Sheriff as the purchaser at the sale of the defendant's interest in the boat, for £1,050. What that interest was, was not explained at the sale, and does not seem to have been known to the Sheriff, or to Gildersleeve, or to any one present; nor is it explained now, any further than that these defendants swear they were members of a steamboat company, holding each individually a certain number of shares in the company; that the company had bought for the price of £6000 the boat in question, but under what name, or from whom they bought it, is not explained; and it is alleged that they had paid £3000 on account.

The Company were in possession of the boat which was then laid up for the winter at Kingston.

Gildersleeve swears that he supposed the defendants had some interest in the boat, of which they were then in possession; and that he was confirmed in the belief by seeing their captain, Noseworthy, bidding at the sale, and, as he supposed, on the behalf of the defendants.

No doubt Gildersleeve was anxious to get the possession and control of the boat, because she had been running on the Bay of Quinte in opposition to a boat or boats that he owned.

Why the defendants should have put Noseworthy forward to bid for them does not appear, for if she could rightly be sold, or any interest in her, as being liable to the execution against the defendants, she would still have been liable while in their hands to be sold, to make up any unsatisfied portion of the judgment.

Noseworthy at the sale bid for them £1055. Gildersleeve had only bid £1050, and was the next bidder under Noseworthy, whose bid was afterwards treated as abandoned by the Sheriff, because he did not pay the money as he was required to do.

There are statements in the affidavits complaining of the Sheriff's conduct as unreasonable, and intended improperly to favour Gildersleeve, by the rigour with which he demanded instant payment of the money bid by Noseworthy, and there are statements on this point on the other side.

There are statements also which are rather inconsistent in regard to what was done by Gildersleeve afterwards, by way of taking possession of the boat, and asserting his interest in her as purchaser at the sale. Gildersleeve denies to a great extent what is stated in that respect on the side of the defendants. The season for using the boat had not yet arrived; and it does not appear that the defendants gave up possession of the boat, or were ever willing to do so, though it is stated that Gildersleeve did not suffer them to remain unmolested in the exclusive possession of her.

Gildersleeve paid the £1050 bid by him to Sheriff Corbett, who remitted it to Mr. Cameron, agent for the plaintiffs; and the defendants paid the Sheriff the balance £690 and upwards, and obtained from him a receipt in full of all that was directed to be levied under the Execution.

It is sworn on the plaintiff's side that it was afterwards discovered clearly that the defendants had no interest whatever in the steamer in question; that she had been registered under the name of "The City of Hamilton," and under that name had been sold to Bethune & Company, who had mortgaged her to one Cotton, and that mortgage had been assigned to certain persons in Toronto; so that the whole interest in the boat was held by Bethune & Co. and the assignees of this mortgage which they had given on her. The plaintiffs state also that Mr. Cameron, the agent of the plaintiffs, knowing perfectly what the facts were, as respected the title, allowed Gildersleeve to repudiate what had passed at the Sheriff's sale, and to take back his £1050; which was in effect returned to him by its being credited to him on account of a purchase which he afterwards made of the same boat from the true owners.

Under these circumstances Sheriff Corbett, being indemnified, as it seems, has made a return of "*nulla bona*," which leaves the plaintiffs, as they contend, at liberty to take out a fresh execution against the defendants, as the other has turned out, in fact, wholly unproductive to the plaintiffs of any part of the amount falsely supposed at one time to have been realised to the plaintiffs by means of the sale spoken of.

They have therefore sued out this Execution, which the defendants are now moving to set aside; and *first*, as to the alleged irregularities, there can be no question, I think, as to the propriety of allowing the amendments moved for. The Execution has not been acted upon; and even if it had been, still such amendments could nevertheless be made, as more important amendments have been made in Executions against the person even, after they had been executed, and at a time when the practice was less liberal in that respect than it is now.

With respect to the objection that this writ should only have been for the amount which the plaintiffs allege to be yet unsatisfied, that is for the residue after deducting the £690 paid; that, no doubt, is all that can be made, and if the plaintiffs had endorsed their writ for more they could have been restrained to the amount proper to be levied.

Where an Execution has been in part satisfied, and the plaintiff sues out an alias, and in the body of it states only the sum that remains unpaid, as if that were all that had been recovered by the judgment, without explaining the apparent inconsistency that has been held irregular; but here the body of the writ and the judgment correspond; and there is in that respect no repugnancy; and the endorsement does not include the £690, but directs the balance only to be levied.

It does not appear to me that the not having made the writ a *Fi. Fa.* for residue, stating the £690 to have been paid, is a

fatal irregularity; though undoubtedly the other is the more regular course: both, however, arrive at the same result; the defendants are in no degree prejudiced; and under the extensive authority now given to amend, I should allow an amendment in this respect if it were pressed, and if it appeared essential.

The material question is as to the plaintiff's right, after what has taken place, to take out a further execution against the defendant's goods for the £1050, which, no doubt, was at one time supposed to have been made, and acknowledged by the Sheriff to have been made, by the sale of the defendants' interest (whatever it might be) in this steamer. When I am asked to interpose summarily and set aside this Execution upon the ground that the £1050 has been already made, I think I am bound to take into consideration the fact, that since the Sheriff's sale spoken of, the question of title to the steamer as between Gildersleeve, claiming as vendee of Bethune's interest, and also as assignee of the mortgage given by him; and these defendants who still maintained possession of the boat, has been tried and adjudged upon—Gildersleeve having replevied the boat; that in that action Gildersleeve has been found to be the owner, by title derived quite independently of any interest under the defendants; and that the defendants in that trial confined themselves to attempting to raise objections to the *primâ facie* title of the plaintiff, without setting up any title in themselves, or even explaining what interest, if any, they claimed to have, and from whom or under whom they had acquired it.

It is impossible for me, under the circumstances I have mentioned, to treat the £1050 as being in fact levied, (that is, finally levied) under the writ to Sheriff Corbett; the defendants do not contend that the plaintiffs have in fact received and held the money bid at that sale; but they contend that Gildersleeve, having been content to give £1050, and having in fact given it to the Sheriff for such interest as the defendants' had, and the £1050 having also passed into the hands of the plaintiffs' agent, they (the plaintiffs) are bound by the receipt of this money, and that Gildersleeve is bound by his bid, and the Sheriff by his discharge given to the defendants; so that the money can never again be levied, although it may be that the defendants held no legal interest in the boat, and that Gildersleeve acquired no interest by his purchase at the Sheriff's sale.

The defendants' right, as they contend, could not be prejudiced by anything done between the plaintiffs, or their agent and Mr. Gildersleeve, in giving back the money to Gildersleeve, and taking it from him again as paid on another account; and, no doubt, that argument is correct.

There are still three main facts however: that the defendants turn out, so far as we know, to have had no title to the boat or any interest in her; that Gildersleeve, notwithstanding his bid at the sale, did not get exclusive possession of her from the defendants, but they held by their claim whatever it was, as if no sale had taken place; and he now owns the boat solely through a purchase otherwise made, having derived no advantage from his bid, and the defendants having been deprived of nothing in consequence of that supposed sale.

Under such circumstances I must leave the plaintiffs to proceed at their own risk to collect the residue of their debt.

If Sheriff Corbett is concluded by the sale, and his receipt, and is estopped from returning that he had made nothing besides the £650, which was paid to him in cash, the defendants must take their remedy against him for a false return, or otherwise as they may be advised; and in an action the legal consequences of what has taken place, can be maturely considered and decided upon, in such a manner as will admit of an appeal.

The sum which the plaintiffs are proceeding to collect, as being still due, is large; it may be inconvenient for the defendants to pay it, and I would willingly save them from any sacrifice of property, while it may appear to them possible that they can claim to be relieved from any further payment.

If the plaintiffs feel that without incurring any danger of losing their money they can safely let matters rest until Term, I would readily allow the defendants to renew their application to the full court; but if that is not voluntarily acceded to by the plaintiffs, I will not stop their proceedings, but leave the defendants to their remedy against the Sheriff—for it is clear what the substantial merits of the question are: so far as I can see, the defendants have not through the Sheriff's sale in April parted with or lost anything of value, and Gildersleeve acquired nothing, and the plaintiffs in this suit have profited nothing. It cannot reasonably be insisted therefore that the defendants have paid the plaintiffs the £1050 in question.

NORDHEIMER v. GROVER.

Bail to limits—Discharge by bankruptcy—Exoneretur.

In bail to the limits a Judge will in no case order an *Exoneretur* to be entered on the bail bond.

(March 14, 1857.)

This was an application to have an *Exoneretur* entered on the bail bond, and the bail discharged on the ground that the defendant had obtained his final order of discharge in the Insolvency Court: sec. 302, C. L. P. Act.

ROBINSON, C.J.—The bail to the limits being entered for the Sheriff's security, I do not accede to an application to have an *Exoneretur* entered on the bail bond, on the defendant and the securities of the bail showing that the defendant obtained a final order of discharge from the Insolvent Court. The entering an *Exoneretur* on the bail-piece on the surrender of the principal is a different thing. I cannot tell but that the certificate may be shown to have been obtained by fraud, and may be hereafter cancelled for that cause; nor but there may have been a breach of the bond before the certificate was granted. If the Court would do anything more than stay the proceedings on the bail bond, when an action in such a case as this might be brought, it would be the ordering the bail bond to be given up to be cancelled; for the bond to the sheriff is not in the possession of the Court, but of the sheriff.

Summons discharged without costs.

MOSS v. DAYLY.

Satisfaction Piece—Executed out of jurisdiction.

A certificate of the due admission of an attorney of Lower Canada must be produced, with Satisfaction Piece, in suits in Upper Canada executed before him.

(March, 1857.)

This was an application for an order that satisfaction be be entered on the Roll in this cause on filing the Satisfaction Piece now produced.

The Satisfaction Piece purported to have been executed in Montreal before an attorney of Lower Canada.

McLean, J.—I do not consider this Satisfaction Piece sufficient, nothing appearing here to show that *D. David, Esq.*, is an attorney, advocate, &c., duly admitted for Lower Canada, as he has signed himself. The signature of the witness should be verified by a certificate of one of the Judges of Lower Canada, or by an affidavit made before one of the commissioners in Lower Canada appointed under 12 Vic., cap. 77, sec. 1, for taking affidavits to be read in Upper Canada.

McEdward v. McEdward.

Practice—Arbitration.

Matters in dispute in an action cannot be referred to the Judge of any other County than that in which the Venue is laid, unless by consent.

(March, 1857.)

The venue in this cause was laid in the county of Waterloo, and the defendant applied, under C. L. P. Act, 1856, to refer the matters in dispute to the County Court Judge of the county of Wellington, on the ground that all the witnesses live in that county.

Read opposed the application.

Robinson, C.J.—As this application is resisted I do not see that I have any authority to grant it, the Statute only providing for reference in such matters to the Judge of the county in which the action is brought. I must, therefore, either leave the defendant to proceed in the original action or refer the matter to the Judge of the county of Waterloo: (Har. C. L. P. Act, sec. 84, note *c*.)

Defendant took an order referring the matter to the Judge of Waterloo.

Washington v. Webb.

Interpleader—Stay of proceedings—16 Vic., cap. 177, sec. 7.

A stay of proceedings will not be granted under 16 Vic., cap. 177, sec. 7, where the goods have been sold and an action is brought for the goods, the Interpleader being for the proceeds of the sale of the goods.

(March, 1857.)

This was an action against a Division Court Baliff for seizing and selling certain goods and chattels belonging to the plaintiff, under an Execution sued out by Molloy against one Youbanks.

After the sale of the goods and payment of the proceeds to the Clerk of the Court the Bailiff received a notice of action from the plaintiff, pursuant to 14 & 15 Vic., cap. 54, sec. 2; on the receipt of this notice he took out an Interpleader Summons, under which both Molloy and the plaintiff appeared and supported their respective claims. The Interpleader Issue had not been decided at the time of the commencement of this action, nor when the following application was made.

On the 7th February, 1857, the Bailiff, after being served with a writ of Summons in the action applied under 16 Vic., cap. 177, sec. 7, for a stay of proceedings, and such further order as to costs in the matter in dispute as his lordship should think proper to make.

M. C. Cameron showed cause.

McLean, J.—I do not see my way clear in making any order in this cause: the action being for the goods themselves is not brought "in respect of the claim" under the Interpleader Summons, which I conceive refers merely to the proceeds of the Bailiff's sale. If the plaintiff, when he appeared under the Interpleader Summons, waived his right to the property seized by the bailiff, then he would be estopped from proceeding in this action; but I do not think that by appearing he did waive his right, because the goods may have been of much greater value than the money produced by sale; if after the decision of the Interpleader Issue he should take the money out of Court then to that intent, he will certainly have waived his right to recover in this action, but in the meantime I consider the plaintiff is entitled to proceed in this action for the property seized, or its full value especially, as it may have been sold by the bailiff, for one quarter of its worth.

Order granted to discharge the summons, reserving leave to apply again if the plaintiff should take the money out of Court.

Regina ex rel. Beaty v. O'Donaghue et al.

Default of election of Alderman on day of Election—Validity of subsequent appointment.

This case was argued by *Dr. Connor, Q.C.*, for the relator, and *A. Wilson, Q.C.*, and *J. Hallinan, Esq.*, for the defendants. The particulars appear in the judgment.

Robinson, C.J.—This is a summons in the nature of a *Quo Warranto*, under section 146 of 12 Vic., cap. 81, to try the validity of the election or appointment of the two first named to be Aldermen, and of the last two named to be Councillors of St. David's Ward of the city of Toronto.

The grounds set forth in the statement are, that at the last annual election of Aldermen and Councillors for the city of Toronto, there were no persons returned as elected for St. David's Ward, the returning officer for that Ward having made a return that the proceedings were interrupted by a riot:

That the Aldermen and Councillors chosen for the other Wards met on Monday, 19th January, 1857, the day appointed by Statute for choosing a Mayor, the Clerk of the City Council presiding:

That upon this meeting they proceeded to appoint two Aldermen and two Councillors to represent the Ward of St. David's, but did not conclude the appointment till the following day.

It is complained that such their appointment was illegal and void, because they should first have proceeded to the election of a Mayor, as the law requires, and could not on the day appointed by law for choosing a Mayor, with the Clerk presiding, and before any Mayor had been chosen, legally proceed to appoint Aldermen and Councillors for the Ward of St. David's.

I do not consider that the legality of an appointment made as this was in default of an election, can be tried by a proceeding under the 145th section of 12 Vic., cap. 81. The proceedings in that and the subsequent sections which relate to the trial of the validity of elections have all (as it appears to me) so clear a reference to elections by the votes of the Ward, or other division, that I do not feel authorised to apply them to the case of an appointment by the other Aldermen and Councillors, though I have little doubt that if it had engaged the attention of the Legislature, they would have subjected such appointment to the same summary jurisdiction.

The provision expressly made in the 146th clause that all elections of Mayors, Wardens, Town Reeves, and Deputy Reeves shall be deemed elections within the meaning of this section, rather strengthens than weakens the argument against my assuming such a jurisdiction; because that addition to this clause certainly does not take in this case, nor has it been otherwise provided for.

It is left, therefore, I think, at present to the ordinary proceeding by *Quo Warranto*.

That being my opinion, I cannot properly perhaps adjudicate upon the case, but it may be satisfactory to the parties interested in the question, that I should intimate what my opinion on the question is, and more especially as my brother Judge, to whom the application for a summons was made, seems to have considered that he was bound to entertain the case, and the parties have in consequence incurred costs on both sides.

I consider that the appointment should be upheld as valid, the proceeding that took place being the most proper under the circumstances, and a reasonable compliance with the directions of the Statute.

If the Legislature had been asked while passing the Act to specify distinctly the course that should be followed in such a case, that is whether the Mayor should be first chosen by the members returned, however imperfect the representation might be, and then that they should next proceed to complete their body; or whether the vacant places should be first filled, so that in the election of Mayor the representatives of all the Wards might have a voice. We cannot doubt but that they would have expressed the latter course to be the one that should be pursued.

If the other course were to be taken, then for the very purpose of influencing the election of Mayor a riot might be got up in most of the Wards, which might lead to the result of the Mayor being unavoidably chosen out of the Aldermen of one Ward, and by the representatives of one Ward alone.

The only difficulties are formal difficulties: undoubtedly the 19th January was the day especially appointed for the very purpose of choosing the Mayor; and there is no authority expressly given to the Clerk to preside at a meeting for appointing to vacant seats in the Council. In fact, nothing is said about that in the Act.

It does appear also that the proceedings that were adopted were unanimous—I mean as to supplying the vacancies—and that is the only matter in question in the present case.

I am of opinion therefore that the defendants should retain their seats, on the double ground that I have no authority to undo their appointment, and also that I think their appointment must in law be sustained; and I adjudge that the relator shall pay the costs.

TO READERS AND CORRESPONDENTS.

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THE LAW JOURNAL.

APRIL, 1857.

ADMISSION TO PRACTICE THE PROFESSION OF THE LAW IN UPPER CANADA.

We do not coincide with the writer of the subjoined article on "English and Irish Attorneys." It has been sent to us for publication, and in fairness we must allow the advocate of "the gentlemen from abroad" to urge their claims; this he does plausibly enough.

Our views on the subject of the admission of Attorneys are well known, for we have more than once advanced them through the columns of the *Law Journal*. Every candidate for admission as an attorney should be subjected to a rigid preliminary as well as final examination; nor would we exempt the "gentlemen from abroad" from examination. A Canadian attorney could not obtain admission to practice in England and Ireland; why then should the English or Irish attorney expect here a privilege denied to us at home?

Will the writer of the article in question deny that there is something to be learned by the professional man who has not been brought up in this country, who has not attended our Courts, who knows nothing of our Statute Law, the jurisdiction and practise of our Tribunals, the decisions in our Courts? Let him look to our Statute Book, let him cast his eyes over *Harrison's Digest*, and he will scarcely venture to assert that the "old country" can venture to practice with the most distant hope of advantage to his client, unless he has studied the laws of this country as well as those of England.

It is a mistake to confound the calling of the Barrister with the office of Attorney. An ignorant attorney is sure to go wrong, and the public have no means of deciding on his fitness and capacity; it is not so with the advocate—the public have full opportunities for forming a judgment respecting his fitness as an advocate; but the argument at best only goes to show an apparent inconsistency in the present system. It does not follow that because barristers are admitted without examination, that attorneys should be.

Our desire would be to see both barrister and attorney subjected to an examination, and, wherever they may have acquired their legal knowledge, admit them, if on examination they are found to be possessed of competent education, and capable of practising with advantage to their fellow subjects in Upper Canada. As to any *right*, there is none. The question is one of fitness and expediency, and concerns the public more closely than the profession.

ENGLISH AND IRISH ATTORNEYS.

The unusually great number of applications before the legislature from English and Irish Attorneys and Solicitors, asking to be admitted to practise in Upper Canada, demands attention. It is passing strange that English and Irish barristers, if having diplomas, are admitted without difficulty into the folds of the profession of Upper Canada; but that attorneys and solicitors must either undergo the servitude of an articled clerk, or obtain an Act of Parliament. This is not the less remarkable in view of the fact that in Upper Canada the two branches of the profession, attorney and barrister, are generally to be found united in one and the same individual. We believe the subject to be well worthy of consideration. Is it proper to receive English and Irish barristers upon proof merely of their profession? If so, is it proper to withhold that privilege from English and Irish attorneys and solicitors? In our opinion the one rule should govern both cases. If in Upper Canada there were a scarcity of barristers and a plethora of attorneys, a reason might exist for the admission of the one class and the exclusion of the other when imported from abroad. If in the diploma of an English or Irish barrister, we had the sure token of an able, educated, honest, and learned man, but in the attorney's diploma nothing of the kind, there might be a reason for the distinction observed; but as neither hypothesis is true, the case is not at all improved by such considerations On the contrary, our attention, when pushed a little further in the direction of facts, teaches us a lesson rather to the benefit than the prejudice of attorneys. The English attorney has from the earliest time been subject to examination, his qualifications tested, and his competence proved, and therefore his diploma is some evidence of his efficiency; but with the barrister the case is just the other way. Until very recently the idea of subjecting barristers to an examination, was not very generally entertained in England. None of those who come to us have any testimony of learning or ability; and yet we receive them with outstretched arms, and turn our faces from their less pretending, though not upon that account, less deserving brethren. We must affirm that the one rule should govern both cases, and whether that rule should be one of prohibition or free admission, we shall proceed to inquire.

The rule of prohibition is one of protection, and the rule of admission one of free trade. Prohibition can only be justified either upon the enlarged ground of public interest, or to us the not less vital one of professional interest. Is the manufactory of Osgoode Hall in such a weak consumptive state that we must use the external appliances of protection? Are the public liable to be injured in person or property by the introduction of English or Irish manufactured lawyers? Are our professional men afraid to enter the arena with the best of the men who come among us from abroad? To neither of these questions in the abstract can a pure and positive answer in the affirmative be made. Then what reason exists for refusing professional learning and ability when tendered at our doors. We fear selfishness squints through reason and logic to arrive at the conclusion most pleasing to its taste. The Canadian student must not blurt, nor the Canadian barrister grumble, under the delusion that the English or Irish men who offer their professional services to the public in Upper Canada do so without having undergone study and drugery like themselves. These gentlemen from abroad must have done so at sometime and somewhere, and whether in England, Ireland or Scotland, we conceive it matters not: the sole question should be, is the appli-

cant what he pretends to be, and what we have a right to expect that he is? If so, the public interest is preserved, and unless the influx should be very great, our professional interest will not suffer. The learning of a professional man is his capital, and we do think that his capital, wherever carried, is wealth. To refuse such an one without reason and without necessity is unjust to him and of little good to ourselves. The advantages of connexion, knowledge of the country, knowledge of the manners of our people, knowledge of local laws, as well as local habits, are all on our side: this we have, which the English or Irish lawyer has not. Should we then shrink from an honourable contention, under such circumstances? We shall not say yes, and in saying so attribute poltroonery to the ablest bar in any of the British Colonies. None other than men of ability, learning, and integrity, gifted besides with patient assiduity, can ever succeed to our prejudice. Few such will leave their homes on a game of hazard in a country, where, without friends or admirers, they must work their way in patient industry. Men of a different stamp, if bold enough to come, may come, but only to fail in their hopes and curse their destiny. These considerations point us to checks that will at one and the same time prevent over supply, and conserve the position of native lawyers intact.

However, we hold that it is necessary for our Courts, when admitting a English or Irish lawyer, to do more than inquire that he is what he professes to be, an admitted barrister, attorney or solicitor. Measures should be taken to secure us against the moral pestilence of outcasts, few though they be, who leave their country for their country's good. Proof of good standing should be insisted upon, in addition to proof of qualification. Each applicant should be prepared with proof that he is free from reproach, and duly qualified to practise. Otherwise this might be the consequence—a lawyer struck off the rolls at home, or who made good his escape to prevent such an unpleasant proceeding, might without fear, favour, or affection, renew his career in this land of promise.—*Communicated.*

LAW BOOKS—MESSRS. A. H. ARMOUR & CO.

We would mention, for the benefit of our professional readers, that Messrs. Armour & Co. of Toronto, keep constantly on hand a selection of Law Books—American reprints of standard English works, and English books imported direct. They also import *to order* from England and the United States. And we may add, that in every transaction we have had with Messrs. Armour & Co. entire satisfaction has been given to us.

An unusually large supply of Reports has compelled us to defer Editorial matter in this number: an early acquaintance with the cases decided in Chambers is most important to the practitioner, and the fact of their appearance will furnish our best excuse.

ERRATUM.—Page 76, fourth line from bottom of page, after "old country," insert "lawyer."

MONTHLY REPERTORY.

COMMON LAW.

C.P. BAKER v. THE BANK OF AUSTRALASIA. *Jan.* 29.

Interpleader Act (1 & 2 *Vic., cap.* 58)—*Where court refused to accede to an application for an interpleader.*

J. D. Coleridge, on behalf the defendants, obtained a rule calling upon the plaintiff and one Abraham, to show cause why they should not interplead under 1 & 2 Wm. cap. 58.

The action was brought by the plaintiff as endorsee of a bill of exchange drawn by the Bank of Australasia, at Melbourne, in Australia, payable at thirty days after sight to the order of Sarah Ann Abraham, accepted by the Bank of Australasia in this country, who were the defendants, and endorsed by the said Sarah Ann Abraham, who was a married woman and the wife of the said Abraham. Abraham, finding that his wife was living with another man, went to the bank and told them not to pay the bill, and that he was entitled to it. The plaintiff claimed to be entitled to sue the defendants as the *bona fide* holder of the said bill.

Prentice showed cause.—This is not a case for interpleader at all, because it is a case of contract: *Dalton v. The Midland Railway Company*, 12 C. B., 458; 1 W. R., 308; *James v. Pritchard*, 7 M. & W., 216; *Grant v. Try*, 4 Dowl. 135; *Newton v. Moodie*, 7 Dowl., 582; *Turner v. The Mayor, of Kendal*, 13 M. & W. 171. The Bank have no defence to this action, because they are estopped from saying that Sarah Abraham could not endorse the bill: (The authorities are referred to in *Byles on Bills*, 155; *Smith v. Marsack*, 18 L. J. C. P. 65, S. C. 6, C. B. 486.) This is really a promissory note made by the defendants, payable to Sarah Ann Abraham. (COCKBURN, C.J.—You see she thereby enters into a contract.) The married woman does not thereby make herself liable. (CRESWELL, J.—Is she an endorsee, or is she not?) So far as the defendants are concerned, she is: so far as she is concerned, she is not.

Bushby appeared for Abraham. *J. D. Coleridge*, in support of the rule.—By acceptance the acceptor only admits what is then on the bill. The endorsement is not admitted, except in the case of the drawer: *Regan v. Serle*, 9 Dowl., 193; *Crawshay v. Thornton*, 6 L. J. ch. 179; *Paternier v. Campbell*, 12 M. & W. 277. (COCKBURN, C.J.—What do you say would be the force of the issue?) Baker should sue Abraham. (CRESWELL, J.—It may very well be that he may be entitled to the bill, and yet that the defendants may be bound to pay the holder.) . . . . . .

(Creswell, J.—I should say the true principle would be that we cannot grant an interpleader, unless the question to be tried is the same question as would be tried between the original parties.) *Cretland v. Leyland*, 6 Jur. 733; *Frost v. Hayward*, 12 L. J. Ex. 242; *Newton v. Moody* is clearly distinguishable, for then the defendant had an interest. (Cockburn, C. J.—How can we decide that question against the present holder, thereby depriving him of having his right decided by the highest authority?) *Prestwicke v. Marshall*, 4 C. & P. 594: (see 5 M. & P. 513, and 7 Bing. 565.)

Cockburn, C. J.—We think that this rule ought to be discharged. It is unnecessary to express any opinion as to whether the case is within the Interpleader Act. It is sufficient to say that this is not a case in which we think we should comply with the application. It is impossible to frame any issue in which the question which the applicant desires to raise, could properly be decided—the question whether the acceptors are not estopped from denying the right to endorse. It is clear that it could not be raised between these parties. We think this is a question which we ought not to decide in this manner. We do not think we could make the rule absolute without doing injustice.

Creswell, J.—I am entirely of the same opinion. There is a good deal of authority for saying that this is not a case within the Act. The recital in the Act is very precise. Here you are seeking to recover money which is his own, and in which he has a great interest. There is another question with reference to the nature of the nature of the contract, whether he (they) has (have) not entered into a contract to pay to the holder of the bill. I think we have no right to put it on a simple issue between two parties which has the right.

Crowder, J.—I also think that it is doubtful whether this application is within the Interpleader Act; but as there is discretionary power, I think in this case we ought to refuse it. I think if we granted this application, it would be impossible to frame an interpleader issue so as to try the real question between the parties.

Willes, J.—Not having heard the whole of the argument, I give no opinion.

[Rule discharged as against Abraham with costs. Costs as between plaintiff and defendant to be costs in the cause.]

EX. Matthew v. Blackmore. *Feb.* 11.

Covenant—Qualified covenant to pay—Money lent.

The defendant, an executor and trustee, borrowed £200 from the plaintiff, secured by a deed, in which, after reciting that one S., mortgagee of certain trust property, had assigned the same to the plaintiff, and that defendant had occasion for £200 to pay off debts of his testator, which the plaintiff had agreed to advance on the security of the mortgaged premises, the indenture witnessed that the defendant charged the mortgaged premises with the £200: and the defendant covenanted out of the monies which should come to his hands as such trustee of the lands compromised in the security, or the personal estate of his testator, to pay the plaintiff the principal sum and interest. The indenture contained no other covenant for payment: *Held*, that a promise to pay on demand could not be implied, as it was inconsistent with the covenant, and that the plaintiff could not therefore maintain an action for money lent.

Q.B. Murgatroyd v. Robinson. *Feb.* 3, 24.

Easement—Prescription insufficiently alleged—Right of throwing rubbish into stream—Suggestion under C. L. P. Act, 1852, *section* 143.

To a declaration for throwing into a stream near a mile off the defendant quantities of rubbish, so as to be carried down the stream into a mill-pond of the plaintiff, and by choking it up to obstruct his mill, the defendant pleaded as to the throwing, a right by prescription to throw into the stream near his mill the ashes and sweepings necessarily arising there, identifying with these the rubbish complained of. The plea however did not contain an averment, that, during the period of prescription, the rubbish had been carried down to the plaintiff's mill in the manner alleged in the declaration. Verdict having been given for the defendant on this plea, it was

Held, that the plaintiff was entitled to judgment *non obstante veredicto*: but on an affidavit, that the fact was proved at the trial, the rule was suspended to allow the defendant to apply for leave under sec. 143 of the Common Law Procedure Act, 1852, to add a suggestion to the fact of the omitted averment.

Quære, supposing this averment to have been inserted, whether the plea would have been good.(a)

EX. Hunson v. Hall and another. *Feb.* 11.

Pleading—Equitable plea—Set-off of damages.

For an action to recover the balance of an account for the porterage of goods, the defendant, on equitable grounds, claimed to set off against the plaintiff's demand the cost price of goods lost by the negligence of the plaintiff during the currency of the account. *Held*. that it afforded no defence.

B.C. Evans v. Matthews. *Jan.* 31, *Feb.* 24.

County Court—Notice of Appeal, statement of grounds in—Jurisdiction—Rule 141—13 *&* 14 *Vic., cap.* 61, *sec.* 14—*Constructive service—Second notice*

In County Court appeals, the statement of the grounds in the notice of appeal mentioned in rule 141 is not a condition precedent to the jurisdiction of the Superior Court to hear the appeal, but a requirement for the information of the Court below:

The plaintiff, in an action against two defendants, served a notice of appeal on all the parties: but it did not state the grounds. He then, within the 10 days mentioned in the County Courts Act, served a second notice, stating the grounds, on the registrar and on one of the defendants, and on the tenth day posted to the other defendant the same notice, which, according to the course of the post, ought to have been delivered the same evening, but was not received till the 11th day. The plaintiffs also within the 10 days, also attempted to serve the notice on the defendants attorney, but the office was shut up (as it was to be presumed from the affidavits) for the purpose of preventing such service. The parties afterwards went before the County Court Judge, who properly signed the case for appeal, but the respondent then protested that the notice of appeal was insufficient.

Held, upon the facts above, that the Superior Court had jurisdiction to hear the appeal, and that there was no sufficient irregularity in the notice of appeal to take away such jurisdiction.

Semble, also, that if the second notice of appeal which the plaintiff endeavored to serve on the respondent's attorney, had under the circumstances been left outside his office, such service would have been valid.

NOTICES OF NEW LAW BOOKS.

The Statutes of Practical Utility on the Administration of Justice in Upper Canada, *from the first Act passed in Upper Canada to the Common Law Procedure Act*, 1856, *chronologically arranged, and showing such as have been actually repealed or otherwise abrogated, with an Index: the whole intended as a circuit companion. Edited by* Robert A. Harrison, *Esq., B.C.L., Barrister-at-Law.—Toronto, Maclear & Co., Publishers.*

This is a very useful publication, and one that will be very welcome to practitioners and others. It contains all the Sta-

(a) *Semble*, that it would.

tutes and parts of Statutes in force which relate to the practise of the Courts. The arrangement is chronological, and an analytical Index serves to facilitate reference to matter embraced. Mr Harrison has succeeded in producing a convenient and reliable circuit companion, and has most satisfactorily and creditably executed the task assumed; he has cleared away the rubbish, and given us the law as it stands—all statutable law in relation to practice in the Courts. References to corresponding statutes, which are for the most part given in marginal notes, will be found exceedingly useful, particularly those to the C. L. P. Acts.

Those most conversant with the labour of hunting through the disjointed mass which makes up the body of the Statute Law of U. C. will best appreciate the labour expended by the Editor in the preparation of this excellent little work.

The book itself is got up in convenient form, and in right good style—the type clear, the paper fair, the arrangement unexceptionable, little inferior to law books from the best English publishers.

The Edition is limited, and we advise our readers to secure a copy without loss of time.

ENGLISH COMMON LAW REPORTS, VOL. 86. WITH TABLE OF CASES AND PRINCIPAL MATTERS. *Edited by* HON. GEORGE SHARSWOOD. *T. & J. W. Johnson & Co., Philadelphia.*

This, like other volumes of this series, is a reprint of the "authorized Reports" of the English Common Law Courts, and contains upwards of 900 pages, exclusive of the Index, which is put in small type.

The volume embraces the cases in the Court of Common Pleas and Exchequer Chamber in Easter and Trinity Terms, and Trinity Vacation, 1856, answering to Common Bench Reports, vol. xviii. The style and execution of the books in this series are good, and the price ($2.50) per volume is far below the English price; while the notes by Judge Sharswood, with reference to American cases, add greatly to the value of the production.

A TREATISE ON THE LAW OF CONTRACTS, AND RIGHTS AND LIABILITIES EX CONTRACTU. *By* C. G ADDISON, ESQ., *of the Inner Temple. Barrister-at-Law. Second American, from the fourth English Edition, with notes and references, by* EDWARD INGERSOL.—1857. *Philadelphia, Robert H. Smith, Law Bookseller.*

This popular and truly valuable work has reached the fourth edition, which was issued in England last year. The book before us is a reprint of the English work, and appears to be faithfully and accurately executed.

To the practising lawyer in Upper Canada *Addison on Contracts*, we have no hesitation in saying, will be found the most useful treatise extant on the important branch of the law it covers: and in this last edition the author has remodelled and improved the whole work, as well as added greatly to the original matter, exhibiting all the recent alterations, and giving all the recent cases illustrative of the rules and principles of the law of contracts.

This standard work has been taken in hand by an American editor, *Mr. Ingersol*, who has contributed a number of useful notes with references to American decisions. These references are very full and complete, and add a new feature, enhancing the value of the work to the Canadian lawyer.

We have already expressed an opinion that American Reprints, with such references by a competent American editor, are more valuable to us than English editions, and the difference in price is considerable. We paid the agent of Stevens and Norton, the original publishers, £2 12s. 6d. for the English edition: the price of the Philadelphia reprint, with American cases, is only £1 12s. in Toronto. The style and mechanical execution of the Philadelphia edition is really good. We cordially recommend it to the profession.

We have one thing, however, to complain of—a fault rather in form than substance—the omission of any advertisement or preface by the American editor: a word from *Mr. Ingersol* would not have been amiss, and we think it was due to the profession.

ENGLISH REPORTS IN LAW AND EQUITY, VOL. 25. *Edited by* CHAUNCEY SMITH, *Counsellor-at-Law. Little, Brown & Co., Boston.*

The present volume of this well known series contains upwards of 600 pages, besides a full Index. It embraces 98 cases—viz., cases in the House of Lords and cases in the Court of Chancery during the years 1855-56. Many cases not to be found in the Queen's Bench, Common Bench and Ex. Reports, are given in this series, which furnishes in addition cases before the House of Lords, the Privy Council, the Lord Chancellor, the Court of Appeal in Chancery, the Admiralty and Ecclesiastical Courts.

The mechanical execution is good, and the price per volume ($2) remarkably cheap.

A DIGEST OF THE DECISIONS OF THE COURTS OF ENGLAND, *contained in the English Law and Equity Reports, from the first volume to the thirty-first, inclusive. By* CHAUNCEY SMITH, *Counsellor-at-Law. Philadelphia,* 1857, *Little, Brown & Co.*

This necessary companion to the English Law and Equity Reports is a most creditable performance. The cases are very fully set out; (those in relation to practice, for example, occupying some 43 pages—those in relation to the English County Courts, about 12 pages): the analytical arrangement is excellent. The book will greatly facilitate the work of research.

The Digest is in small type, and, with the table of cases, contains over 900 pages of closely printed matter. This table is a most important addition to the work, and the references in each case is not only to the volume of the Law and Equity Reports where it is to be found, but also to the various English publications: this last more valuable to us than to the profession in the United States. There is also a reference to the page of the Digest.

Every one who possesses the Law and Equity Reports will of course procure a copy of this Digest; but apart from its worth in conection with the series to which it belongs, it possesses sufficient intrinsic value to commend it to the favorable notice of the profession here and elsewhere. We recommend our readers to get it: the price is £1 7s. 6d.