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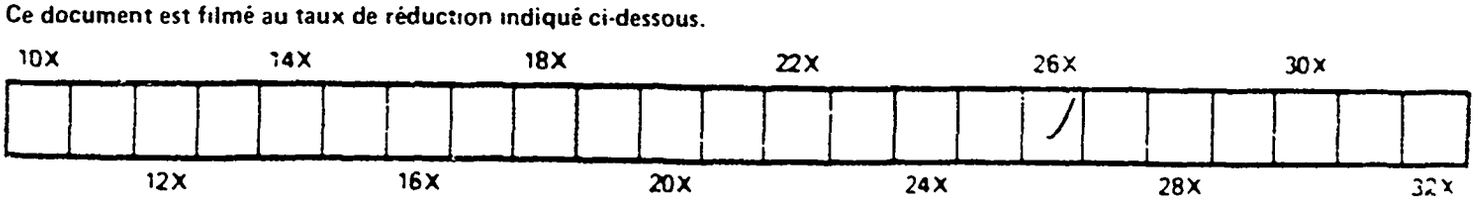

DIVISION COURTS.

OFFICERS AND SUITORS.

CLERKS.—*Taxation of costs—Witness fees.*—(*Continued from page* 62.) As soon after the Court as possible, the Clerk should receive from the successful party an affidavit of his disbursements to witnesses. The affidavit can be made before the Clerk of any D. C., and forwarded by mail or otherwise to the clerk in whose court the judgment was rendered, and may be by the party or his agent. At latest the clerk should be put in possession of it the day before execution is due, according to the order of the Court, as he has commonly general directions at the time of entering the suit to proceed and collect the amount claimed, which dispenses with a special direction to sue out execution, when the time given by the Judge has expired. Either of the subjoined forms will answer, the latter where there are a number of witnesses will be found more convenient in practice:—

Affidavit of disbursements.

In the &c.

Between A.B., plt;
and C.D., deft.

A.B. of &c., *Yeoman, (or* E.F. of &c., agent for the above-named plt.) maketh oath and saith, That ——, ——, and ——, did attend under subpœna as witnesses in this cause, on the part of the plaintiff, at the last sittings of this Court, and were each, in the judgment and belief of deponent, necessary and material witnesses on his (*or* the plt's behalf,*—that the said witnesses did each necessarily travel —— miles in coming to (*or* returning from)¶ the place where the said Court was held, and that the said witnesses have been paid on behalf of this deponent (*or* the plt,) —— shillings each for their attendance in Court and travelling expenses.

A.B. (*or* E.F.)

Sworn, &c.,

Clerk, &c.

A more general form.

In the &c.

Between A.B., plt;
and C.D., deft.

A.B. (*or* C.D.) of &c., the plt; (*or* deft) [*or* E.F. of &c., agent for A.B. (*or* C.D.) the plt (or deft)] maketh oath and saith, That the several persons whose names are mentioned in the first column of the schedule at the foot of this paper written, were each, in the judgment and belief of deponent, necessary and material witnesses on his [*or* the said plt's (*or* deft's)] behalf, and were supœnaed and did attend at the last sittings of this Court as witnesses, as aforesaid, *one* day each,—that the said witnesses respectively travelled in going to (*or* returning from) the said sittings, as deponent hath reason to believe, and doth verily believe, the number of miles respectively mentioned in figures in the second column of the said schedule opposite to the names of each of the said witnesses respectively, and that the several and respective sums of money mentioned in figures in the third column of the said schedule opposite to the names of the said witnesses respectively, have been paid on behalf of deponent [*or* the plt ((*or* deft)] as in the said schedule set forth for attendance in Court and travelling expenses, as witnesses in this cause.

A.B. (*or* E.F.)

Sworn, &c.,

Clerk &c.

Schedule referred to in the foregoing affidavit.

1 Names of witnesses	2 Miles travelled one way.	3 Sums paid
John Hearwell.	20	£0 12 6
Thomas Seewell.	10	7 6
James Value.	5	5 0
		£1 7 0

It is probable that where a witness comes a long distance by speedy conveyance, the Judge would at the trial order a less sum to be allowed than the tariff calls for; for example, if a party travelled 80 miles by "rail," and was able to come to and return from the Court the same day, and the fare was only 20s., the Judge would not, probably, allow more than 25s. or 30s.; but it seems to us that the Clerk has no such discretion, therefore, in cases seeming to require a special order, application should be made to the Judge.

We have hitherto spoken of witnesses resident within the County, attending under subpœna from the D. C.,—but under the proviso in the 48th sec. of the D. C. Act, a subpœna may be obtained from the Superior Courts to bring a witness from any part of U. C. When a witness attends under such subpœna, his allowance is according to the scale settled in the Superior Courts, which is as follow:—

Fees to witnesses.

To witnesses residing within three miles of the Court House, per diem.....	2 6
To witnesses residing over three miles from Court House, per diem,.....	5 0
And for every twenty miles travel.....	5 0

To Professional men.

Attorneys, Barristers, Physicians and Surgeons, 20s. per day, when called upon to give evidence in consequence of any professional service rendered by them, or to give professional opinions.

Surveyors.

When called upon to give evidence of any professional service rendered by them, or to give evidence depending upon their skill or judgment, 10s. per diem.

In taxing disbursements to such a witness, the clerk should have the subpœna from the Superior Court under which the witnesses attended laid before him, together with an affidavit of the dis-

* Where there is no travel, the paragraph as to travel will of course be left out.

¶ Travelling expenses per mile are only allowed for one way—going or returning—when different the higher travel may be taken.

bursements according to the above scale; but as this proceeding will generally be taken under professional direction, and service and disbursements be proved in the one affidavit, we need not furnish any form.

As to allowing the Superior Court fee for the writ of subpœna, we think the better opinion is that it *should* be allowed in taxation: at all events it will be better to do so, unless the Judge has ruled otherwise, as the party affected can apply to the Judge for a revision if he objects.

As to taxation generally.—The 14 sec. of the D. C. Act requires the clerk to tax the costs in every cause, subject to the revision of the Judge. The clerk must therefore have before him, in every case in which he taxes, a document in the nature of a bill of costs. A general table for this purpose was prepared by Judge Gowan, and has been for years in use in the County of Simcoe: it is printed on the back of the Summons, and filled in as occasion requires. It facilitates the clerk in his duties, and keeps the proceedings in a compact form, as well as serving to assist in making up the quarterly returns to Government,—and, forming the necessary foundation on which a revision may take place. We subjoin it:—

	Fee Fund.	Clerk.	Bailiff.
Entering			
Copies			
Services			
Mileage			
Affidavit, &c			
Confession			
Subpœna			
Adjournment			
Hearing			
Order or Judgment			
Total Fee Fund—Clerk and Bailiff			
Allowance to Witnesses			
Costs Taxed at			

Clerk.

The practice in taxing costs appears to be contemplated by the Act as an exparte proceeding; but should the unsuccessful party desire to be present and apply in good time, it would seem but reasonable to afford him an opportunity to be, so that he may be heard on any objection he has to urge. It would be commonly as to the disbursements to witnesses; and after hearing his objections, the clerk decides allowing or disallowing the charge in question as the same may appear to him to be just or otherwise.

Bailiffs.—We have occupied so much space in another part of this number with matters pertaining to Bailiffs, that we are unable here to give them the usual allowance of matter. However one hint we will give, though brief not the less important.

Do not let your accounts for fees run into arrear with clerks;—*settle up with the clerk and receive his fees after every court.* If, for any good reason, they are in any case allowed to stand over, ask the clerk to make a note of it in the service book, shewing that he has yet to account to him for them. It is presumed that the fees for service of process are paid in the first instance, and the clerk's duty is to pay them to the bailiff when the service is performed and the return made. Therefore if fees are allowed to stand over for any unreasonable time, and there is *nothing* under the clerk's hand to shew that they have yet to be accounted for; it might not unreasonably be presumed, should the bailiff afterwards pursue the clerk for payment, that there was nothing due.

Suitors.—The first and main consideration for a party desiring to bring an action in a D. C. is, Does the claim or demand, the plaintiff's cause of action, come within the jurisdiction given to these courts? We will endeavour to bring to as narrow a view as possible the cases which D. C.'s are empowered to take cognizance of—limited as to subject matter and amount—as described in the several clauses of the D. C.'s Acts.

It would be beyond the scope of this department in the L. J. to enter into any critical examination, of the scope, bearing or limits, of the jurisdiction clauses; we content ourselves by noting the subject of jurisdiction briefly, and in the order in which it is likely to be best understood, and of most practical value.

With this aim, it seems better to note in the first place the *causes of action over which D. C.'s have no jurisdiction whatever, no matter how trifling the amount in difference may be.*—They are as follows: Actions for any gambling debt, for spirituous or malt liquors drunk in a tavern or ale-house,—*even* if a note of hand be given for a grog bill, it cannot be sued on,—actions of ejectment, or actions, in which title to landed property or permanent rights, are involved—or where right to take toll, or any custom or franchise shall come in question, or in which the validity of any devise, or disposition under a will or settlement, may be disputed,—also actions for—libel or slander—criminal conversation—seduction—or breach of promise of marriage,—any such action, as specified, it will be useless to bring, for even should the defendant consent to the case being heard, the Judge has no power to try it, and a non-suit will be entered against the plaintiff; and no item that would fall within the range of these prohibited objects should be included in any account entered for suit.

The first class of cases that D. C.'s have power to dispose of are limited only as to amount, namely, to

ten pounds currency,—so that *if a cause of action is not one of those mentioned in the above exceptions, a plaintiff need not enquire further, but take it for granted, whether his claim be for an injury done to his person or to his property, or growing out of a money transaction or dealing of any kind,—that he has a right to sue,*—for the last D. C. Act gives the Courts jurisdiction with the exceptions before mentioned, over all personal actions where the debt or damages claimed, is not more than ten pounds.

The D. C.'s have also a further jurisdiction, limited both as to the nature of the action, and the amount of the claim. This jurisdiction extends to all claims and demands whatever (*not mentioned in the exceptions*) of debt, account, or breach of contract, or money demand, whether payable in money or otherwise, where the amount or balance claimed does not exceed the sum of twenty-five pounds; or in any contract for the payment of a sum certain, in labour, or any kind of goods or commodities, or in any manner otherwise than in money, i. e., upon any contract for the delivery of goods, &c., or doing of work, &c., for value received, or for, or upon a past or executed consideration, after the day is past on which the goods, &c., ought to have been delivered, or the labour, &c., performed, an action may be brought for the amount in money claimed. And although a plaintiff may not divide any cause of action into two or three suits, for the purpose of bringing the same within the jurisdiction of the court, yet if he have a cause of action above twenty-five pounds, on which a suit might be brought under the Act, if the same was not above that amount, and he claim only the balance or sum of £25, he may bring an action for that amount, but in such case, he must enter, in his account, or particulars of demand, an abandonment of so much of his claim as is over the sum of £25; but it is provided that no unsettled account to a greater amount than £50, shall be sued on, in any D. C. The above comprehend the ordinary jurisdiction of the courts, and are to be found in the 23 & 26 secs. of the D. C. Act, and sec. 1 of the D. C. E. Act.

ON THE DUTIES OF CORONERS.

(CONTINUED FROM PAGE 66.)

I.—THE POWER AND DUTY OF CORONERS IN RELATION TO INQUESTS.

Judicial duties generally.—The Coroner being a Judicial (as well as Ministerial) officer, cannot appoint a deputy[a] to hold the inquest for him: this, however, does not prevent his having the assistance of a clerk to take down the evidence in writing according to his dictation. By the stat. of 1 & 2 P. & M., c. 13, he may enquire of accessories *before* the fact, but not of accessories after the fact.[b] Acting judicially, as taking an inquest, where there are several coroners, the act of one is sufficient: and after proceedings had by any one of them, an inquest by another would be void.[c]

As to Deodands.—Deodands (from the Latin *Deo dandum*) are forfeitures which the superstition of ancient times introduced and called by the name of Deodands—from the application of them to pious uses[d]—and defined to be "when any movable thing inanimate, or beast animate, *doth move to or cause* the untimely death of any reasonable creature, by mischance, without the will or fault of himself, or of any person."[e] Where a thing not in motion "is the occasion of a man's death, that part only which is the immediate cause is forfeited; as if a man be climbing up the wheel of a cart, and is killed by falling from it, the wheel alone is a deodand; but wherever the thing is in motion, not only that part which immediately gives the wound (as the wheel which runs over his body), but all things which move with it and help to make the wound more dangerous (as the cart and loading which increase the pressure of the wheel) are forfeited. It matters not whether the owner were concerned in the killing or not; and therefore in cases of homicide the instrument of death and the value are presented and found,—as that the stroke was given by a certain penknife (or razor) value sixpence."[f] Nothing, however, can be forfeited as a deodand, nor seized as such, till it be found by the coroner's inquest to have caused the death.[g] But these forfeitures, being founded rather in the superstition of an age of ignorance than in the principles of sound reason and policy, have not of late years been favorably received either by juries or courts—the former taking upon themselves to mitigate them "by finding only some trifling thing, or part of an entire thing to have been the occasion of the death," and the latter (although the finding by the jury hardly warrantable) refusing to interfere."

II. PROCEEDINGS IN RELATION TO INQUESTS.

SUMMONING JURY.

How Summoned.—The Coroner's first step on being notified than his services are required, is to issue his Warrant, directed to the constables of the township in which the body lies dead, to summon a jury to appear before him at the time and place by him specified. The number of jurors summoned is usually 24, (though twelve only *must* be sworn) and the form used as follows:—

(a) Rex v. Farrand, 3 B. & A. 269.

(b) 2 Hawk, c. 9, s. 26, 27.
(c) 2 Hale, P. C. 59.
(d) 1 Hale, 420.
(e) 3 Inst.
(f) 1 Black. 301.
(g) 1 Hawk. c. 26.

Warrant.

County of ——, } To the Constables of the Township of
To wit: } ——, in the County of ——.

By virtue of my office, these are in Her Majesty's name to require and command you, immediately upon sight hereof, to summon and warn twenty-four good and lawful men of your Township to be and appear before me, A.B., gentleman, one of the Coroners of the County aforesaid, at the house of N.N., in the Township aforesaid, on the —— day of —— instant, at the hour of —— of the clock in the forenoon, then and there to enquire of, do, and execute all such things as on Her Majesty's behalf shall be lawfully given them in charge touching the death of H.H., and for so doing this shall be your sufficient authority. And be you then there to certify what you shall have done in the premises, and further to do and execute what in behalf of our said Lady the Queen shall be then and there enjoined you.

Given under my hand and seal this —— day of ——, A.D. 18 .

A.B. [L.S.]
Coroner.

With the Warrant, it were advisable to hand to the constable selected for the particular duty the requisite number of blank summonses for service upon the jurors: we subjoin the form given in "The Canadian Constables' Assistant."(h)

Summons.

County of ——, } By virtue of a Warrant under the hand
To wit: } and seal of A.B., Esquire, one of Her Majesty's Coroners for this County, you are hereby summoned personally to be and appear before him as a Juryman on the —— day of —— instant, at —— o'clock in the forenoon of the same day, at the house of N.N., in the Township of ——, in the said County, then and there to enquire on Her Majesty's behalf, touching the death of H.H.; and further to do and execute such other matters and things as shall be then and there given you in charge, and not to depart without leave.—Thereof fail not at your peril.

Dated the —— day of ——, A.D. 18 .

To ——, of the Township of ——, Yeoman. } ——— ———, Constable of the Township of ——.

If Jurors do not attend.—After being duly summoned, if a Juror does not attend the inquest, he may—after being openly called three times—be fined such a sum, not exceeding 20s., as the Coroner may see fit to impose. And the 3rd sec. of 13 & 14 Vic. c. 56, provides that the Coroner "shall make out and sign a certificate, containing the name, residence, trade or calling, of such person so making default, together with the amount of the fine imposed, and the cause of such fine, and shall transmit such certificate to the Clerk of the Peace in which such defaulter shall reside, on or before the first day of the Quarter Sessions of the Peace then next ensuing:" and that the party fined may not be put to unnecessary trouble or expense, and to give him an opportunity of paying the same, the Act further provides that the Coroner "shall cause a copy of such certificate to be served on the person so fined, by leaving it at his residence, within a reasonable time after such inquest." It is discretionary with the Coroner to impose the fine for non-attendance, but—unless to make an example and thereby possibly prevent delay and inconvenience at future inquests—he would hardly exercise the power where a sufficient number had assembled.

Opening the Court.—On the day, and at the time and place named in the Warrant, the Coroner, Constable and Jurors, must all attend. The Constable first makes return of the Warrant, when, after being satisfied that a sufficient number of Jurors are assembled, the Coroner causes the Court to be duly opened. This is done by the Constable making proclamation in the following form:—

Oyez—Oyez—Oyez,

You good men of the County of ——, who have been summoned to appear here this day, to inquire for and on behalf of our Sovereign Lady the Queen, when, how, where, and by what means H.H. came to his death, answer to your names as you shall be called, upon the pain and peril that shall fall thereon.

The Coroner then calls over the Roll returned by the Constable, and marks off such Jurors as make answer. There is no limit to the number of Jurors, so that all who are summoned and attend are usually sworn in, and it is the better course, as, where an adjournment is necessary, all the Jurors might not—from sickness or other unavoidable cause—be able to meet again; but the inquest *must be found by twelve* at least.(k) Before administering the oath to the Jurors, the Coroner requests them to choose their Foreman: this being done, the Coroner administers the following oath:—

FOREMAN'S OATH.

"You shall diligently enquire and true presentment make of all such matters and things as shall be here given you in charge on behalf of our Sovereign Lady the Queen, touching the death of H.H. now lying dead, of whose body you shall have the view: you shall present no man for hatred, malice, or ill will, nor spare any through fear, favour or affection; but a true verdict give according to the evidence: So help you GOD."

Before this oath is administered, however, the Coroner should specially direct the attention of the other Jurors, saying:—"Gentlemen, hearken to your Foreman's oath: for the oath he is to take on his part, you, and each of you, are severally to observe and keep on your part." After the Foreman is sworn, the Coroner proceeds to swear in the rest of the Jurors—usually four at a time.:

(h) Page 45.

(k) 2 Hale. p. 59.

JURORS' OATH.

"Such oath as W.W., the Foreman of this Inquest, hath for his part taken, you and each of you are severally well and truly to observe and keep on your parts: So help you GOD."

For the "Law Journal."

SOME REMARKS ON MEDICAL TESTIMONY, &c., AT CORONERS' INQUESTS.

IN compliance with a suggestion in the *Law Journal*, I send you the following notes, in the hope that they will be enlarged on by some one more capable of treating the subject, which I consider important from having frequently witnessed great loss of time occurring at inquests, as well as failure in procuring evidence, arising from want of system in the Coroner, or want of knowledge of the points to which his questions should be directed. The evidence may be divided into intrinsic and extrinsic,—the former furnished by some alteration which existed in the state of one or more of the important organs of the body, which rendered impossible the maintenance of life, of which testimony and explanation are to be sought from the medical witnesses,—the latter relating to habits of the deceased, or to violence applied accidentally or designedly, (which would produce these alterations).

The order in which these two forms of evidence are to be elicited will depend on the particular case, but as a general rule it is better to defer the examination of a medical witness until evidence has been collected which may be rendered more clear by his testimony, or which may suggest questions on some points which in all probability would escape notice were he first examined and suffered to depart, as is frequently the case. I may here mention that it is extremely important that Coroners should have considerable information on Medical Jurisprudence. I have frequently heard medical witnesses confine their evidence to concise or vague answers to the questions asked, and seen an unsatisfactory inquisition the result, when a slight knowledge in the Coroner of the testimony which might have been expected, and its real value, would have elicited full, clear, and explicit statements. It will be well to remember that medical men generally recollect, on inquests, that any statements they may then make may have to be sustained before a Superior Court, and may therefore shape their evidence to avoid committing themselves or betraying ignorance. Were our Coroners well informed on the subject, medical men must necessarily keep in advance of them, and we should have no more of such testimony as now too frequently injures the professional character of the witness, and obstructs justice.

The first witness to be called, on an inquest, should be the one present at the death of the deceased, or the person first finding the body. In the former case, the witness will probably repeat *pre-mortem* statements, or describe symptoms which may strengthen the opinion of the medical witness founded on a *post-mortem* examination of the body, and testify as to the length of the last illness, the attention to or neglect of the means of prolonging life on the part of relations or friends, and the state of things around the patient, which may throw some light on the cause of death. In the latter case enquires may be directed to the appearance of the body, as whether wounded, emaciated, frozen, &c.; its position, the state of the ground, or objects around, as affording evidence of a struggle, or an accident. Coroners should, I think, as opportunity offers, state publicly the impropriety of removing bodies found dead, or of changing the position in which they were first seen, until they are examined by competent persons; and as well urge caution in removing objects, or obliterating by want of care traces which may be around bodies so found. For example, a body is found with a contused wound, which is sufficient to have produced death, but which might have been received from accident, or from design. The instrument which inflicted the wound may be close by and might be thoughtlessly removed, and the crowd which usually collects on such occasions may thus destroy or confuse the traces of a murderer.

In the selection of a medical man to make a *post-mortem* examination of a body and give evidence on an inquest, Coroners should be influenced solely by the desire to further the object of their office, and private feeling should give place to public duty. The practitioner chosen should be the best qualified the neighbourhood affords; he should in all cases be formally served with a summons, as unfortunately from the small amount of remuneration allowed by the Legislature for his services, it may be his interest to keep away from an inquest to attend to his private practice. In cases when *malpractice* of the medical attendant, or others, may be suspected as the cause of death, it will be advisable to select a competent medical man as witness who resides at some distance from the locality, and has no interest in the parties whether for or against them. Coroners should remember that the medical man may generally be expected to be the most intelligent witness at an inquest, and should get as much evidence as possible from him.

The medical man's duty, on being called to see a body, is to observe carefully all appearances around the corpse, to search for, or cause to be searched for, or at all events to prevent the removal of such objects, which may be expected to be found

somewhere near, as his professional knowledge and common sense may lead him to think might have caused death. He will look for and examine blood-spots on the person of the deceased, or near him, if wounds have been inflicted, as well as examine the wounds themselves. They will determine together, generally, between accident, suicide, or murder. When a struggle has taken place, drops of blood may be found in positions which would prove that they flowed from the slayer and not from the slain, and a knowledge of the existence of a fresh wound or a suspected party may be the means of detecting the culprit. Should there be any cause to suspect the presence of a second person at the death, traces of course must be looked for, both as foot-marks and broken branches, twigs, &c., which may mark his passage and the direction taken. When I speak of the medical man's duty, I mean his duty as a member of society and a professional man, and not that any legal obligation (which extends to the Coroner alone) binds him on most of these points; but should he have seen the body first, and should the Coroner be delayed in coming until the scent has become confused, and evidence is difficult to be obtained, the latter may expect that the medical man will have directed his attention to these points, and may seek information from him accordingly. The Coroner should obtain medical evidence as far as possible freed from technical terms. In cases which are likely to go before a Superior Court, medical evidence should be taken *in extenso*. Questions relating to the appearances presented on the *post-mortem* examination should be asked in order, as, for instance: Describe the appearance and state of the surface of the body.—Did you find any fractures? What was the state of the brain, lungs, heart, liver, spleen, stomach, bowels, kidneys, generative organs, &c.?—Unless the case clearly does not require it, the Coroner should insist on a post-mortem examination of the separate viscera, as a little additional trouble taken at the inquest may save a vast amount of annoyance afterwards. In cases of suspected poisoning, the Coroner should witness the sealing up of the vessels containing the stomach, its contents, substances supposed to be poison, or other objects which the medical witness may think necessary to remove for future or more perfect examination, or which he (the Coroner) may desire to forward to a chemist for analysis. Inquiries may be made concerning the influence which the habits or business of the deceased may have exercised on his death, and inquisitions may be of use in exposing the injury inflicted by intemperance, or the loss of life arising from the mode in which certain trades are conducted. Coroners should remember that their office affects society farther than in its relation to justice, most sanitary reforms owing their origin to evidence afforded by inquests.

T. C. D.

U. C. REPORTS.

GENERAL LAW.

REGINA EX REL. JOHN TELFER v. JOHN ALLAN.
" " " JOHN BAIRD v. JAMES ALLAN, THE ELDER.
" " " WM. MCKAY v. JAMES ALLAN, THE YOUNGER.

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

Application for quo warranto, not in time if not properly made—Omission of motion paper and signature to statement—Qualification for township councillor.

The enactment that a writ of summons to set aside an election must be applied for within six weeks, means that it must be applied for as the practice directs; and therefore, where there was no written motion paper, and the statement was not signed as required by the rules of court, the application was held too late.

The signature to the statement was held not to be dispensed with by the affidavit of the relator endorsed, that he believed the grounds of objection stated within to be well founded.

Where more than two persons were rated on the collector's roll above £100 as freeholders, (and therefore qualified for township councillors) but it appeared that they were not freeholders, but holders of location tickets from the crown, and further that there were not in fact two persons qualified to be elected. *Held*. That the collector's roll was not conclusive as to the qualification; but as it was shewn that there were not two persons in the township qualified, the relator was precluded from objecting to the qualification of those elected.

[CHAMBERS, 12th March, 1853.]

A writ of summons was issued in each of these cases against the defendants respectively, in the nature of a *quo warranto* for usurping the office of township councillor for the township of Holland in the county of Grey.

The statement in the last case set out that the defendant usurped the office *by virtue* of an election held on the 3rd of January, 1853; that the relator had an interest, as voter; and stated these objections—

1st. That no qualification was *required* (meaning that none was held to be necessary) twenty persons being at the time of the election assessed for real property, in their own right, upon the collector's roll, at not less than £100 each.

2ndly. That no qualification, or oath of qualification, was required by the returning officer from any of the candidates.

3rdly. That the copy of the collector's roll was not verified by the affidavit or affirmation of the returning officer.

4thly. That the assesment roll for Holland was made out and verified by the assessor, and delivered to the township clerk; and that after the collector's roll had been made out by the clerk, and after the township clerk had delivered the collector's roll to the collector, the letter F—signifying "freehold"—placed opposite the names of nineteen freeholders in the said township, was struck out, and H, for "householder," put in its place by some person unknown, without the consent or knowledge of the township clerk.

5thly. That the copy of the collector's roll had been in like manner altered, without the authority or knowledge of the township clerk, after it had been delivered by the clerk to the collector, by inserting in such copy the name of David Cronk.

6thly. That the collector's roll contained, besides freehold property, the personal property of the rate-payers in Holland.

7thly. That the township clerk of Holland (Cardwell) being *ex officio* returning officer for the township, and having stated that he was determined to require an oath of qualification from the candidates, was summarily dismissed by a majority of the council, and another (Wainwright) appointed in his place; and that the members of the council who so appointed

Wainwright were James Allan the elder, then town reeve, James Allan the younger, John Allan, and John Fleming; and that the members thereof appointed town reeve and councillors for the current year were Andrew Walker, James Allan, senior, James Allan, junior, John Allan, and James Young.

On the return of the summons the defendant's counsel, Mr. *Dempsey*, objected—

1. That the the statement of objections was not signed either by the relator, or by any one as his attorney, or by any one —*i. e.*, the original statement.

2. That it was not in the form prescribed by the rules—charging that the defendant usurps the office "by virtue of an election," &c., instead of "under pretence of an election."

3. That it did not state whether the relator claimed the seat, or what relief he desired.

4. That the notice attached to the writ was not addressed to any one, and was insufficient.

5. That no copy of an affidavit verifying the statement was on the copy served.

6. That no motion paper was filed on applying for the summons.

7. That the summons did not issue within the time limited by law.

As to the preliminary exceptions:—There was no written motion paper attached to the statement, as the 2nd rule of M. T. 1850 requires (Draper's Rules, 135); and the statement was not dated, and had no signature of any person to it; but there was endorsed on the back of it an affidavit by William McKay, describing himself as "the relator in the within relation named," in which he swore that "he believes the grounds of the said within statement to be well founded in fact." This was dated in the jurat as of the 31st of January, 1853.

The required recognizance was shewn, executed, as appeared, on the 31st of January, with affidavit of justification of same date, but no affidavit of execution or due taking.

The summons issued on the 19th of February, 1853.

The facts were the same in the three cases in regard to the forms of papers, dates, &c., as well as the grounds of objection.

On the summons returned there was written a notice, not addressed to any one, stating that the writ of summons had been issued at the instance of the relator and on his relation, and that a statement, whereof a copy is annexed, was filed in the court, with affidavits supporting the objections, &c.—such a notice as the rules require.

In the case of James Allan the younger an affidavit of his was produced, to the effect that he had no knowledge at the time of the election that Cronk's name had been improperly inserted in the collector's roll—that he was in no manner privy to it; that Cardwell, the clerk, was dismissed from his office *some time* previous to the election, and that he had not acted in his office since his discharge.

Also an affidavit of James Allan, senior, that he was town reeve for Welland in 1852; that many of the persons designated as freeholders on the collector's roll had not patents, deeds, or leases, but only location tickets and rights of purchase from the government; that he believed there were only seven or eight persons who had deeds, and were liable to be assessed for real property to the amount of £100; that he himself had not obtained a patent for his land, but was nevertheless put down on the roll as a freeholder by Cardwell, the late township clerk.

It was sworn also by the assessor for 1852 that he had doubts whether he should return those as freeholders who told him that they had only tickets of purchase from the government, and had not their patents; and that he asked the clerk, Cardwell, and was told by him that they were freeholders, and to put them down as such.

On the copy of collector's roll John Allan was assessed for real property £151, and was marked H; the two James Allans were both assessed for real property under £100, and both marked H.

Robinson, C. J.—First. As to the want of a written motion-paper annexed to the statement, as the rule requires, and of the signature to the statement. The rule clearly and explicitly requires both. Then comes the statute, which provides that the summons "*shall be applied for within six weeks*" (13 & 14 Vic. ch. 64, schedule A. 23.)

That, I think, should be taken to mean applied for as the practice settled under authority of the statute directs—*i. e.* by *written motion*, supported by a statement of objections, *signed by the relator and his attorney*. An irregularity in the written motion, or in the statement, would be a different thing.

No doubt, if on the last day of the six weeks a party were to stand up in judge's chambers, and say that he applied for a summons, but had no statement to produce, because his client was at a distance, and had not sent him one; in one sense he would have *applied* for the summons—that is, he would have asked for it—but I think he should not be recognized as having applied within the meaning of the law.

So I think here, the relator, having not yet filed a written motion or put in a written statement, is too late—that is, he has not effectually applied within the time. I think I should not hold the signature to the statement dispensed with by the affidavit on the back of it.

As to the merits.—By statute 14 & 15 Vic. ch. 109, schedule A 4, the returning officer is to procure a *correct copy of the collector's roll* for the preceding year, *so far as it contains* the names of all male *freeholders* and *householders* rated in it in respect of rateable real property in the ward, with the amount of assessed value. This is to be verified by the affidavit or affirmation of the collector, or person having the legal custody of the original roll for the time being, and also by that of the returning officer, to be appended to or indorsed upon the copy. And no person shall be qualified to be elected a township councillor who shall not be a freeholder or householder of such township or ward, seized or possessed of real property, held in his own right or that of his wife, as *proprietor* or *tenant* thereof, which shall be rated in the collector's roll, in the case of a freeholder, to the amount of £100, or upwards, and in the case of a *householder* to £200, or upwards.

The rest of the clause shews the meaning to be, that a person must either have his qualification as freeholder, householder, owner, or tenant.

As regards persons *to be elected*, the provision in this clause is wholly negative—*i. e.* no one can be elected *who is not* on the roll as freeholder or householder. It does not make the fact of being on the roll as a freeholder, &c., to a certain amount a conclusive qualification, without regard to the truth of the case as to his actual position. (See also, 12 Vic. ch. 81, secs. 122, 129.)

So I think, that though more than two persons were rated on the copy of the collector's roll above £100, as freeholders, —*i. e.* if we disregard the alteration made by the collector, in the assessor's roll, or rather in the copy of it delivered to him, by substituting H. for F.; and if we should still read the copy of the roll, as if those above £100 marked now H. stood still on the roll marked freeholders—yet the question still remains, were they in fact freeholders. They are not rated at a sum sufficient to qualify them as householders. Then can a person elected councillor for any township in Upper Canada sit, if his only title really be that he lives on land rated at over £100, which he has contracted to buy from the

Crown, and respecting which it is not shewn how he stands in regard to his contract, whether he has fulfilled all or any of its conditions? I think not; he is not owner of the land or tenant.

By 13 & 14 Vic. ch. 67, sec. 1, the land of these persons, held as it is, would be liable to be rated, but that proves nothing to the point of this question, because the *occupants* of all lands have to pay taxes; but certainly being an *occupant* of land, . . *freeholder* or *tenant*, would not qualify a candidate. The persons rated in this roll are not *tenants*—they have no landlord, and pay no rent; they are not freeholders, not *owners*, in which sense, as the clause itself explains, the term freeholder is used.

So, I think that the relator's case would fail upon the merits, if he had applied properly and in time. There were not, I think, two persons or more in the township qualified to be elected, and so no qualification was required for those who were elected; and consequently I think the judgment must be for the defendants, with the costs of the proceeding. (14 & 15 Vic., ch. 109, sec. 17.)

Regina ex. rel. Allemaing v. Zoeger.

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

Election of township councillors—Place of holding election—12 Vic., chap. 81, sections 5, 9.

A municipal council by by-law, under 12 Vic., chap. 81, sec. 5, appointed a place for holding the election of township councillors. The township council having *by resolution* appointed another place, an election held there was set aside, as the change could be made only by by-law.

[Chambers.]

In this case the relator's objection to the election of the defendant was that the election was not held at a place legally appointed.

The defendant was elected township councillor for ward number 1, in the township of Wellesley, in the county of Waterloo, on the 3rd of January, 1853. The election was held at Smithville in the said township.

By the statute 12 Vic., chap. 81, sec. 5, it is enacted "that every such municipal council, whenever by such by-law they shall divide any such township into rural wards, as aforesaid shall in the *same* by-law appoint a convenient place in each of such wards for holding the election of township councillors for such ward."

And by the 9th section it is enacted, "that it shall and may be lawful for the municipality of each township, from time to time, by any by-law or by-laws to be passed for that purpose, to appoint a fit and convenient place in each of the several wards into which such township shall be divided, for holding the election of township councillors, every which appointment shall supersede that made by such district, county or municipal council, as well as any appointment previously made by such municipality."

It appeared that in the by-law whereby the township of Wellesley was divided into wards, a place called Kirntcher's school-house in the third concession was appointed as the place for holding the elections, and that accordingly they were there holden in January, 1851 and 1852: but that without any by-law to supersede the place so appointed, a resolution was prepared in the township council "that Joseph Lees Lee be appointed returning officer for the next election, and be directed to hold the said election for such Ward at Smithsburg within the said ward;" and that, in accordance with instructions, the township clerk filled up a warrant, sealed with the corporate seal of the township, addressed to Joseph Lees, appointing him returning officer for the township of Wellesley, ward number 1, for the year 1853—meeting to be held first Monday in the year, at Smithsburg, as before.

The election appointed to have been held was held accordingly at Smithsburg, a place three miles from the school-house, and the defendant was returned without opposition.

Sullivan, J.—The relator was not shewn to have interfered with the election, or to have acted in any way to disable or disqualify him from making the present objection. I have no difficulty in adjudging that the place originally appointed for holding elections could not be superseded by any resolution or other mode short of the solemnity of a by-law. I therefore hold the objection well founded, and adjudge that the election of the defendant be set aside, and a new election ordered, with costs to be paid by the defendant, he having defended his seat, contrary, as I conceive, to the express words of the statute.

Regina ex rel. Ritson v. Perry et al.

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

Returning officer—His duty to have copy of collector's roll at election—Want or inaccuracy of such copy, how far an objection—Authority of J. P. for United Counties, how far by separation.

The 16 Vic. ch. 181, sec. 10, enacts, that it shall be the duty of the returning officer of each township or ward to procure a true copy of the collector's roll for the year preceding the election, which copy shall be verified by the affidavit of such collector, and also by that of the returning officer, to be taken before any justice of the peace for the county, &c.

It appeared that in this case the roll used by the returning officer was a true copy of and taken from the assessor's roll, and not from that of the collector, but it was sworn that the collector's roll itself was a true copy of the assessor's roll.—*Held*, sufficient.

Held also, that an election could not be set aside because the returning officer had no copy, or an incorrect copy of the roll, unless it be shewn that the absence or inaccuracy of such roll has prejudiced the election; or that some candidate or voter refused on that ground to proceed, and relied upon the objection. It may, perhaps, also be necessary to shew that the candidates returned were not all eligible; or that they had not in fact a majority of legal votes.

Neither is it any objection that the copy of roll was not verified, as the statute requires, at least unless the objection be taken before or during the election, or some variance be shewn between the copy used and the original.

The affidavit of the returning officer verifying the roll was sworn, on the 2nd of January, before A., who held a commission as justice of the peace for the united counties of York, Ontario and Peel. Ontario had been separated from York and Peel by proclamation issued at Quebec on the 31st of December, but it was not shewn that any one in Ontario knew of this proclamation until after the election.

Held, that A. had authority to take the affidavit.

Quære, whether A., notwithstanding the separation, would not still continue J. P. for the three counties, and authorised to act for any one while he was in it, or at least for that in which he was resident.

Chambers, 15th April, 1854.

The defendants were returned as duly elected, at the last election of councillors for the township of Whitby. The relator was a freeholder, who was entitled to vote at the said election.

The objections stated were, 1st, That the returning officer did not procure a correct copy of the collector's roll for the township for the year next before the election (1853), so far as such roll contained the names of all the male freeholders and householders rated upon such roll, in respect of the rateable real property lying in the township, with the amount of the assessed value of the real property for which they were respectively rated in such roll, or otherwise.

2ndly. That the roll, or copy of roll, used by the returning officer, was not verified by the oath of affirmation of the collector of the said township, or other person having the legal custody of the original roll; nor of the returning officer, taken before any justice of the peace of the county of Ontario, the county within which the said township was and is situated, or any other officer legally empowered to administer an oath or affirmation.

The summons was obtained upon an affidavit of one George D. McDonald, who swore that, at the close of the poll, on the 3rd of January last, these defendants were declared duly elected; that the defendant was present at the election on both days of polling, 2nd and 3rd of January, and saw the roll, or copy of a roll, used by the returning officer: that he examined it during the election and since, to ascertain who were duly qualified to vote: that the only copy of a roll used

at the election was a copy of the *assessment roll* for Whitby for 1853, so far as the same contained the names of all the male freeholders and householders rated upon such assessment roll, in respect of rateable real property lying in said township, and not of the collector's roll: that on the said copy of the assessor's roll was endorsed an affidavit (of which a copy was annexed by deponent) made by John Gordon, the returning officer, who was the township clerk of Whitby, that, *to the best of his knowledge*, the same was a correct list of the male freeholders and householders, with the amount of the assessed value of the real property for which they are respectively rated on the original assessment roll of the township of Whitby for 1853.

This affidavit was sworn on the 2nd of January, 1854, before W. Allison, who signed as a justice of the peace for the county of Ontario, or an officer having authority to administer an oath or affirmation for that purpose.

This copy of the assessor's roll, the only copy of a roll used at the election, was verified only by that affidavit.

On the part of the defendants, an affidavit of Gordon only was filed, who swore that, as town clerk, he had the legal custody of the assessment roll for 1853, as corrected by the court of revision, from which the collector's roll was prepared: that this collector's roll was a true copy *of the said original roll*, as corrected: that the roll which was prepared for the returning officer was a true copy of *said original roll*, and corresponded in every particular required by law with collector's roll: that at the time of the election the roll which had been prepared from the said original roll for the collector was in the collector's hands, and had not been returned to him, the town clerk, and therefore the copy of the roll furnished to the returning officer could not be compared with the collector's roll; but that both were and are true and correct copies of the same original roll, as required by law for the purposes of the election: that having the custody, as clerk, of the said original roll, he did, just before holding the election, make the affidavit of verification written on the roll, furnished for the purpose of the election: that W. Allison had been a justice of the peace for the united counties of York, Ontario and Peel, previous to and during the year 1853; that at the time the affidavit was taken by him the county of Ontario had been made a separate county, and that W. Allison was still empowered to administer the oath, unless such separation of the county deprived him of the authority to act as a justice for the county of Ontario, under his commission for the united counties: that Ontario was proclaimed a separate county on or before the 2nd of January last (1854), on which day the affidavit was taken, and that he, Gordon, was not then aware that the county of Ontario had been made a separate county: and that no objection to the returning officer's roll, the affidavit of the returning officer, or other objection to the mode of conducting the election, was made by any person at any time during the election or at the close.

The statutes and clauses bearing upon the question are 16 Vic. ch. 181, secs. 10, 27; 16 Vic. ch. 182, secs. 25, 39, 46; 12 Vic. ch. 78, secs. 18, 37.

ROBINSON, C. J.—The relator is not entitled, I think, to succeed upon either of his objections.

The first is, that the returning officer did not procure a correct copy of the collector's roll for the year preceding the election. It is true that the returning officer had not at the election a copy of the collector's roll, which had been actually transcribed from the collector's roll; and it was a plain omission of the returning officer's duty that he did not procure a copy to be taken. That the collector's roll is not yet returned by the collector is no excuse; that might very well be the case consistently with the fact, but there is no reason to suppose that there would have been any difficulty in obtaining access to the roll in the collector's hands, either for the purpose of transcribing it, or in order to compare it with the copy which had been taken from the assessor's roll. It would not have signified from what paper the copy was taken, if after it was written out it had been compared, as it ought to have been, with the collector's roll.

Still it is here sworn, and not contradicted or attempted to be disproved, that the copy of the roll which the returning officer had was in fact a true and correct copy of the *collector's roll*. The deponent does not confine himself to swearing that it was a copy of the assessor's roll, or a copy of a copy, but that the collector's roll is itself a true and correct copy of the assessor's roll as corrected upon revision, and that the returning officer's copy was a true and correct copy of the same assessor's roll as corrected. Of course, if both are true copies of the same roll, they must be true copies of each other.

It does therefore appear that the returning officer had that copy of a roll which the law requires.

But at any rate, I do not consider that an election is liable to be held void upon an objection of this kind, where all preceeded without difficulty or question at the time. It is a direction of the legislature, that for facilitating the election, and giving information to all concerned as to those who are the qualified voters, there should be present at the election a true copy of the collector's roll: but if the candidates and voters are content to proceed without looking at it, or without enquiring whether there is such a roll present or not, then I am clear that the election cannot be held void because it has been afterwards discovered and brought to light that there was no copy of a roll in the possession of the returning officer, or that the copy which he had was incorrect.

It must be at least shewn that the absence of such a roll, or the incorrectness of it, has prejudiced the election, or that some candidate or voter on that ground refused to proceed, and relied upon the objection, not taking his chance of the result of the poll without objection, and silently reserving to himself a right to accept afterwards.

And I desire to guard myself against being understood to express an opinion that an election should at any rate be held void on an objection of this nature, when it is not even attempted to be shewn that the candidates returned were not themselves all in fact eligible, or that they had not in fact a majority of legal votes.

I do not think, either, that the election can be held void on the second objection, that the copy was not authenticated by such affidavit or affidavits as the law requires. I consider that provision to be merely directory, and at any rate that it is not competent to any party to object to the election on that ground after all is over, and when no such exception was taken before or during the election, and when no variance is shewn between the copy used and the collector's roll.

If I thought otherwise, it would be immaterial to consider the effect of the alleged want of authority in Mr. Allison to administer the oath, for it would be fatal that there was no affidavit of the collector, since, according to what is now shewn, the roll was at the time of the election in his legal custody.

But if there existed no ground for that objection, and if I was of the opinion that, whether the want of a copy of the roll duly authenticated was objected to during the election or not, the validity of the election must inevitably depend upon the question whether there was in fact a proper copy of the collector's roll, authenticated precisely as the statute directs, then I could not have held that the election here must fail on the sole ground of Mr. Allison's assumed want of authority to administer the oath.

I do not consider that he derived any continued authority to act under the statute 12 Vic. ch. 78, sec. 37, for that is a provision to meet the case of justices appointed for districts before

the jurisdiction was limited by counties; whereas Mr. Allison, as I understand the case, held a commission as justice for the three united counties, issued, as I assume, after the passing of the 12 Vic. ch. 78.

But, taking this to be so, he was justice for the three counties; and I am not satisfied at present that, if there be no other enactment applying to the case, he would not continue till removed or superseded to be a justice of the peace for the three, and authorised to act for either while he was within its limits; or at least to be a justice for that county within whose limits he is resident (but see 12 Vic. ch. 78, sec. 18). And even admitting that upon the issuing of the proclamation making Ontario a separate county his power to act as a magistrate would cease as to all the counties, yet that effect would not follow till he had, or at least till he could be expected to have notice of the proclamation; and it seems to be clear here that no one could have notice on the 2nd of January, in Whitby, of the proclamation in question, which issued, it is said, in Quebec, on the 31st of December. We are not to take into consideration in such cases the feats that may be performed by the electric telegraph, because we have no reason to assume that that method of communication would be resorted to. It is not pretended here that any one in Whitby did in fact know of the proclamation till after the election.

That under these circumstances the act done by Mr. Allison as a justice would be valid, and that perjury might be assigned upon an affidavit so taken by him, is, I think, clear on the following authorities—Sir Randolph Crew *v.* Vernon (Cro. Car. 97), Burch *v.* Maypowder (1 Vern. 400), Thompson's case (3 p. Wms. 195), 2 Eq. Ca. Abr. 419, Moore 333, 1 Hale P. C. 499, 2 Hale, P. C. 24, Com. Dig. "Justices of Peace," A 8, 1 Chalmers' Opinions on Colonial Matters, 413.

It was intimated upon the argument that it would be acceptable both to the relator and the defendants that a new election should be ordered, but that does not relieve me from the necessity of determining whether on either of the exceptions taken the election was illegal, and, as I think it was not, I can only give my judgment in favor of the defendants, and I do not see why the relator should not pay costs.

MUNICIPAL CASES.

(Digested from U. C. Reports.)

From 12 Victoria, chap. 81, inclusive.

(Continued from page 70.)

ELECTIONS.

XXI. *Election of township reeve—Validity thereof—Mandamus.* 12 Vic. c. 81, 13 & 14 Vic. c. 64, s. 15, & sch. A., Nos. 7, 22.

At an election of township councillors, the person who acted as returning officer for one of the five wards was not the person appointed, but one of the same name. Afterwards, when the five councillors elect assembled to choose a Reeve, the councillor from this ward was objected to as not being duly elected. The other four councillors then, *without taking the oath of office*, proceeded to elect the reeve.

Held, That the fifth councillor should have been allowed to vote with the others, for it was not for them to determine the validity of his election.

Held also, That the oath of office should have been taken by the councillors before proceeding to elect the reeve, such election being within the meaning of the municipal council act, "on entry upon their duties." A mandamus applied for by the reeve thus elected was therefore refused.

In re. Hawk and Ballard. 3 U. C. C. P. Rep. 241.

XXII. *Qualification of voters—Illegality of by-law to declare.*

A township council has no authority to declare the qualification of voters: a by-law enacted by them for such a purpose must be quashed with costs.

In re. Bell and the municipality of the township of Manvers. 3 U. C. C. P. Rep. 241.

XXIII. *Election—Qualification of voters—Residence—Estoppel*—16 Vic. c. 181, s. 10.

A. had his dwelling-house at Bowmanville, where his wife and family resided, but he had a saw-mill and store, and was postmaster in the township of Cartwright, which occasioned him frequently to visit that place, and while there he used to board with one of his men in a house owned by himself. *After voting at Bowmanville he went down to Cartwright and voted there, also, at the election of township councillor, which was being held at the same time.* It appeared that the relator, one of the candidates for Cartwright, objected to A.'s vote there, but said it should be accepted if he would swear that he was a resident, and that A. took such oath and his vote was thereupon recorded.

Held, (reversing the decision of the Judge of the County court) That A.'s vote should have been rejected, for he was a resident of Bowmanville and entitled to vote there only, and his conduct in voting there first shewed that he regarded that as his home. That a peremptory mandamus should go for holding a new election, and that the judgment should be reversed with costs, including those of the court below, as well as of the appeal.

Held, also, That the relator's conduct could not estop him from afterwards objecting to the vote.

Regina ex. rel. Taylor *v.* Cæsar. 11 U. C. B. R. Rep. 461.

XXIV. *Disqualification—Contract with Corporation*—12 Vic. ch. 81, sec. 132,—16 Vic. ch. 181, sec. 25. (a)

The defendant was elected Alderman for a ward in the city of Hamilton. It appeared that before the election he had tendered for some painting and glazing required for the city hospital: that his tender was accepted, and that he had completed a portion of the work, for which he had not been paid. A written contract had been drawn up by the city solicitor, but not signed by defendant; and he swore that before the election he informed the Mayor that he did not intend to go on with the work.

Held, (reversing the judgment in Chambers) that the defendant was disqualified, as a contractor with the corporation: that it was immaterial whether the contract would be binding on the corporation or not, and that his disclaimer could have no effect.

Regina ex. rel. Moore *v.* Miller. 11 U. C. B. R. Rep. 465.

(a) The question of disqualification for corporate office by reason of the candidate being engaged in any contract, or even a partner in any incorporated company has been of late frequently before the Courts; and the law apparently is productive of some hardship, and of uncontemplated results in the exclusion from office of many persons who, from their position and abilities, have every other qualification for the office. The cases of *Regina v. Cummings, Ellison v. Finlayson, Ellison v. Smith*, in the Court of Common Pleas, in which judgments were given in Hilary Term. 18 Vic., and Reg. ex. rel. *Ranton v. Cormier, (U. C. Law Journal*, 68) seem to be of this nature. In the Bill to amend the Municipal Corporation Acts, introduced by the Hon. J. Hillyard Cameron, and now before the Legislature (which contemplates an entire repeal and partial re-enactment with alterations of the Corporation Acts) there is in this particular some amendment. For the office of Alderman or Councillor, it is proposed that no person shall be disqualified, by reason of his being a proprietor or shareholder in any Incorporated Company, which shall have any contract or agreement with any County, Township, &c. And the word "contract" is defined as not to extend to any lease, sale, or purchase of any Lands, &c., or to any contract for such lease, sale, or purchase, or for the loan of money, or to any agreement for the loan of money only, but any Alderman or Councillor having any interest in such matter, shall not vote at any meeting of the Municipal Corporation upon any question arising upon such matter.

XXV. *Qualification for Alderman, under* 16 Vic., ch. 181, section 18. (a)

The defendant having been elected an Alderman of a ward in Toronto, relied for his qualification upon three leasehold properties. The first was a house for which he had been rated in the collector's roll for the preceding year at £35 annual value, but in which he had ceased to have any interest since the June before the election.

Held, Robinson, C. J., not available, for the qualification must be held at the time of election.

The second was a house which he had taken after giving up the first, and for which he was assessed as occupant at £45 annual value.

Held, A good qualification to that amount: and that it was no objection that the defendant had not held this property for a year when elected, for the statute refers to the extent of the interest, and not to the time for which it must have been held.

Quære, Whether there must be a year of the term yet to run at the time of election?

The third property consisted of rooms in the second story of a house, with a separate entrance from the street, rented by the defendant and one T. as partners, and occupied by them as a printing establishment, and for which they were rated as occupants at £65 annual value. It was sworn that by an agreement between the defendant and T., made in November before the election, the whole assessment was allowed to be charged to the defendant's account, and that he had assumed and was ready to pay it.

Held, That if the defendant could be treated as separately rated at all, it could only be for half the annual value—and as this, added to the first property, would not make up the £80 required by the statute, he was disqualified.

It was therefore necessary to determine whether the last mentioned property was of such a nature as to afford a qualification within the terms of the act.

The next candidate could not be declared duly elected, as the notice given to the electors of defendant's want of qualification was not sufficiently explicit.

Regina ex. rel. Dexter *v.* Gowan. 1 Prac. Rep. 104.

XXVI. *Election—Candidates nominated, but no votes offered —Misconduct of returning officer.*

At an election for township councillors, after the nomination of several candidates, the returning officer adjourned the proceeding to another room in order to receive votes. No votes were tendered for any one, (all parties holding back for some unexplained reason) and he therefore closed the election *at about three o'clock*, and declared the defendants elected by "acclamation."

Held, Draper J., that the election was void, and that the Statute 13 & 14 Vic., ch. 64, sched. 23, leaving no discretion in the Court, the costs must follow the decision, and the relator have costs adjudged to him against the defendants and the returning officer of his proceeding against each.

Regina ex. rel. Smith *v.* Brouse et. al. 1 Prac. Rep. 180.

THE LAW JOURNAL.

MAY, 1855.

We are informed that a meeting of the D. C. Bailiffs of the United Counties of Lincoln and Welland was held last month on the subject of their present remuneration, and that a petition to the Legislature was agreed to, signed and transmitted to Quebec for presentation, and we believe a similar course has been adopted in other counties. The petition is very properly confined to the statements that since the tariff of Fees payable to them was fixed, many duties have been imposed for which no remuneration has been provided,—that in other cases Bailiffs are required to perform services for fees that do not compensate for the time spent,—and that owing to the increased expense of living, their present allowance falls short of a proper remuneration for work done.

The amended Tariff proposed is as follows:—

Tariff of Fees for Division Court Bailiffs.	Not exceeding £2.	Exceeding £2, and not exceeding £5.	Exceeding £5, and not exceeding £10.	Exceeding £10, and not exceeding £15.	Exceeding £15.
	s. d.	s. d.	s. d.	s. d.	s. d.
Service of Summons or other Proceeding, excepting Subpœna, on each person,	0 6	0 9	1 0	1 3	1 6
Service of Subpœna on each witness,	0 6	0 6	0 6	0 6	0 6
For taking Confession of Judgment,	0 6	0 9	1 0	1 3	1 6
Making each Affidavit of service of Summons	1 0	1 0	1 0	1 0	1 0
Enforcing every Warrant, Execution or Attachment, against the Goods or Body	2 0	2 6	3 6	4 0	5 0
For every mile necessarily travelled from the Clerk's Office, to serve Summons or Subpœna, or other paper; or for the purpose of levying on Execution or Attachment, 6d.—and all Road and Bridge Tolls paid by the Bailiffs, in making such service.					
For every Jury Trial		0 6	0 9	1 0	1 6
For carrying Delinquent to Prison, including all expenses and assistance, per mile, 1s.					
For every Schedule of Property seized under Attachment,—Return including Affidavit of Appraisal,	2 6	2 6	3 6	3 9	5 0
Every Bond, including Affidavit of Justification	2 6	2 6	3 6	3 9	5 0
Every Notice of Sale, (not exceeding three) 1s. each.					
That there be allowed to the Bailiff, upon the sale of Property under any Execution or Attachment, the sum of 5 per cent. upon the amount realized on the Execution or Attachment.					
For each day's attendance at Court, 10s.					
For every Witness sworn, 3d.					
For every Return to a Commitment or Execution, 1s. 3d.					
For each Return to the Judge, under Rules of Court, 20s.					

As in the case of Clerks, we feel called upon to

review impartially this proposed increase.—The fourth item is uncertain; the affidavit is commonly drawn by the Clerk, and if the fee of 1s. is for attending to swear, merely, it is too much. We would alter it thus—"Attending to swear to each affidavit of service of summons or other paper requiring service, 3d." The eleventh item is vague, but to the charge we do not object. We think it should be thus: "Every notice of sale (not exceeding three) under attachment or execution, 1s. each." As to the twelfth item, 5 per cent., we are obliged to say, it is in our opinion too much, considering the nature of the Court, but we would not think 3½ per cent. too large: such per centage not to apply to any overplus. The allowance for attendance in Court seems reasonable: indeed, the whole trouble of preparing the Court room, lighting fires, &c., falls on the Bailiff.

The fourteenth item is objectionable—the oath to witness is administered by the Clerk;—and instead of it, we would insert—"Calling on each cause, 3d." In respect to the last item, an allowance for returns should be made, as in the case of clerks, to which we referred in the last number; but in either position, we think a fee of 15s. would compensate the officer. This last item and the attendance in court to be paid by the Clerk to the Bailiff out of the fee fund, and it should be so provided for in the tariff.

The claims advanced by Bailiffs are strong: we give an extract from a letter sent for publication by Mr. Charles Cockburn, one of the bailiffs for Lincoln and Welland; it will speak for itself:—

"There are very good reasons why Division Court Bailiffs' fees should be raised to something nearer a remunerating point than they are at present; and in the first place I would call attention to the fact that, since the present tariff was adopted, the various articles of consumption have raised to a price really enormous when compared with the prices at that time. For instance, in this part of the country in 1850-51, &c., we paid but from 10s. to 12s. 6d. per cwt. for flour—now we have to pay from 27s. 6d. to 30s. for 100 lbs.; meats of various kinds from 2d. to 4d., now from 5d. to 10d. per lb.; butter from 6d. to 7½d., now from 1s. to 1s. 3d. per lb.; potatoes from 1s. to 2s. per bus., now from 2s. 6d. to 5s.; hay 40s. per ton, now 100s.; oats from 1s. to 1s. 3d., now from 2s. 6d. to 3s.; and almost every article required for food, either for man or beast, has raised in proportion. To meet this change, mechanics' and day-labourers' wages have raised, and the salaries of various public officers have also advanced; and surely bailiffs of Division Courts, whose duties are both laborious and responsible, should have the same consideration in their behalf, to enable them to meet the increased demands upon them for the support of themselves and families, and the expense of keeping their horses, &c. In the next place, the fees allowed never were sufficient to properly remunerate them. For instance, if a summons of the highest denomination has to be served, say 20 miles from the Clerk's office, the whole fee allowed is 7s. 8d, which is all that is made for the services of the bailiff and horse; deduct for feeding his horse and his own dinner the old price, 1s. 10½d, and what is left for him? 5s. 9½d.! But if he should fail in effecting a service, he gets nothing at all, not even the money he has actually paid out of his own pocket for expenses, and this as many times as he may have to make the journey for the same purpose; and in the case of an execution, if no goods is found, the Bailiff must spend his time, use his horse, pay his expenses, and get nothing in return,—as often as the plaintiff sees fit to require him to do so: in the Superior Courts a fee is allowed on all Fi. Fa. returns, but not so to Bailiffs of the Division Courts. At the sitting of Court the Bailiff is required to be present, to act as a peace-officer, attend to the swearing of witnesses, act as crier, and do such other things as may be required of him, without any compensation whatever, while in all other Courts a reasonable allowance is made for these services, respectively."

Mr. Cockburn notes also certain service required of Bailiffs in returning and swearing to service of summons,—and the "lengthy and laborious returns" required of Bailiffs for which nothing is allowed, having been added to their duties since the present tariff was framed; and states that the proposed tariff would, in the aggregate, be far below what is allowed to constables (from whom no security is required) for similar duties.

For ourselves, we can only add that any one who has read the D. C. Act must see how necessary it is that persons selected to fill the office of Bailiff should be men of intelligence. They are expected to be fully acquainted with the onerous duties they have to perform; and when we consider the variety of those duties, and the various tricks and shifts of dishonest parties to elude the law, the responsibility under which the officer lies for any departure, however unintentional, from the strict line of his duty, it must be apparent that to have these duties undertaken and well performed, provision should be made for fairly remunerating Bailiffs. We have no hesitation in saying that they are not properly paid under the present tariff. Large security is required from them; they are tied down by the most stringent enactments; they are subject to penalties for the slightest omission of duty; and, from the nature of the office, there must ever be a certain amount of labour to be done, which is entirely unproductive. The fair way is to look at the tariff as a whole, and we think that with the alterations we suggest, the fees under it will not exceed a just remuneration.

We have just received a printed copy (or rather a part copy, for several pages are deficient) of a Bill to re-organize the jurisdiction of the several Courts of Common Law and Equity in Upper Canada, and to extend their jurisdiction. We cannot of course speak of the measure it embraces as a whole, the copy being incomplete: our remarks at present, therefore, will be brief and necessarily confined to what is before us,—*ex pede Herculum.*

The very preamble is incorrect in its statement: first in this, that it alleges that the jurisdiction of the D. C.'s has been extended to the full limit of the former jurisdiction of County Courts, whereas

such is not the case, as a comparison of the Acts will clearly prove; secondly in that it alleges that suits brought in the County Court may be prosecuted in the Superior Courts at the same or a less expense to suitors than if brought in the County Court. It is passing strange that any professional gentleman could venture to introduce a measure on such an erroneous statement. If indeed all the law business of Upper Canada was confined to the County of York, there might be a *colour* for the assertion: but it is spread over the country from Sandwich to Lancaster,—Niagara to Simcoe,—and for business in the Superior Courts, a double set of law agents is necessary, the Country Attorney and his Toronto Agent: on this ground alone it is manifest that the expense of conducting actions in the Superior Courts must be greater. Where are motions for new Trial, motions in arrest of Judgment, and other Term motions in the Superior Courts made? Necessarily at Toronto, wherever the venue may be. And in respect to the period of time within which a creditor may procure judgment and enforce his demand, (in other counties than the County of York), the County Courts offer the advantage of four sittings in the year, whereas, if forced into the Superior Courts, the plaintiff has but the benefit of two assize courts during the year in either of which to bring his claim, when contested, before a jury. True it is that under the present state of the law in certain cases, suits may be brought down to the County Court sittings, under a writ of Trial, but this Bill proposing to abolish the present County Courts, by its operation would render such a proceeding impossible. Do not time and convenience enter into the element of expense, and can it be said that suits may not with less loss of time and more convenience to suitors be wholly disposed of in the locality where the parties reside than partly there and partly in Toronto. Again, the Judges of the Superior Courts are not now able at all times to get through their assize business, but are obliged to make remanets of many cases,—every lawyer knows the great expense attending this, and yet additional work, it would appear, is proposed to them. The present County Courts, to which the people are accustomed, and which have given general satisfaction, are now proposed to be done away with as courts of original jurisdiction, and for what? not to meet the wish of the people, but the reverse; nor of the profession, generally, for we have heard no wish expressed. We cannot conceive whom the change would benefit, except the resident lawyers of Toronto.

The greatest English lawyers battled for years in favor of a decentralization in the administration of the law, and with many conflicting interests partially succeeded. All legislation in the present day tends the same way. From the time the Division Court system was introduced by Mr. Draper (no mean lawyer), and a better could not be devised, it has been gradually enlarged and improved, until at length it has been brought into something like a perfect shape; and now, when it is in good working order and giving general satisfaction, the framer of this Bill comes in to derange everything,—to destroy the efficiency of the D. C.'s as speedy and cheap tribunals, and to gorge them with a certain class of business for the benefit of the few.

The 1st clause of the Bill erects the D. C.'s into County Courts: the 2nd gives them jurisdiction as between partners. At present the Judges are kept constantly occupied to prevent business in the D. C.'s falling into arrear: they could not, with this additional jurisdiction, prevent it. Now they can generally get through the business of a D. C. in one day; with the complicated class of cases that would fall under the provision of the 2nd and 3rd clauses, it would take several days to hold a Court, and the poor suitor pursuing for his 15s. or 20s. should wait his turn. It would cost them in time more than the amount of their demands: it would in effect be a denial of justice in all cases for small demands. The change would be ruinous to D. C's, and would be sacrificing the rights of the many litigants to bring in Replevin, Ejectment and Partnership suits; or to gratify the morbid fancy that may look upon simple change as substantial improvement.

Apart from objections to the principle of the Bill, the structure of it is singularly imperfect. Upon every clause, the most serious questions on construction would arise: indeed we are led to think that the framer cannot have made himself acquainted with the system he proposes to improve,—as we think to subvert,—a system that has taken years and thousands of pounds to build up, and to which the greatest talent in the country has been directed.

The Bill contemplates outlay not now necessary: and also provides for an increased payment to deputy Clerks of the Crown: but we see no provision respecting the rights and claims of Clerks of the Peace and Sheriffs. But it is really useless to pursue the Bill in the shape in which it appears, only four out of nine pages being printed; should it be proceeded with, and we can procure the rest of the Bill, we will hereafter review it at length.

It is most singular that a measure involving such important and wide-spread interests, *no less than that of every Division Court suitor in Upper Canada, should be introduced at so late a period in the Session, and then sent before the country only half printed.*

An able writer has said that when the fiction of law,—that Justice could only reside and be visited at Westminster,—became established, the local courts were overthrown, and parties were no longer

able to get their controversies decided conveniently in their own locality.—So far as we can judge this Bill paves the way for, if it is not intended to introduce, the wedge in favor of centralization,—a principle long since abandoned in Upper Canada in respect to small claims. It is in fact an attempt to upset the legislation of past years, which had resulted in a system well established, in good working order, and a boon to the public, for the purpose of returning to the exploded plan.

We are indebted to many gentlemen for Reports of cases arising in the County and Division Courts. We take, however, the liberty of suggesting that it would be beneficial that they should condense as much as possible, and nothing inserted not actually relevant or material to the point decided.—We prefer, also, such cases as may be decided on points of practice, rather than on General Law, in the several courts.

We learn that the Governor-General in Council has directed copies of the Analytical Index to the D. C. Acts, Rules and Forms prepared by Judge Gowan, to be furnished for the use of every D. C. officer in Upper Canada. A similar step was taken under a former government, and with decided advantage, in respect to the Statutes relating to Justices of the Peace, which were printed in pamphlet form with a suitable Index, and sent to Magistrates and Coroners, &c. Officers engaged in the administration of Law should have all the aids to acquire information which the Government can give.

Our readers will find in this number abbreviations of which we before spoke:—D.C. for "Division Court," D.C. Act for "The Upper Canada Division Courts Act of 1850," D.C.E. Act for "The Upper Canada Division Courts Extension Act for 1853," Co. for "County," Q.B. for "Queen's Bench," C.P. for "Common Pleas," Plt. for "Plaintiff," Dft for "Defendant," J.P. for "Justice of the Peace."

But as they are used by us to economise space, officers must bear in mind that they are not allowable in forms required for use; and that every word must be written in full.

We have inserted the communication of T. C. D. with much pleasure: the subject is of much importance, and ably written and condensed.

Until the next Term in England, there will be a dearth of Common Law notes for our monthly Repertory; they will be resumed with the commencement of Term.

The serial article on the Duties of Magistrates, by a "J. P.," is unavoidably crowded out of this number.

TO CORRESPONDENTS.

J.—We agree with you in thinking that it is not absolutely necessary that the Clerk should be personally present to receive a delivery of cumbrous goods, seized under attachment. He can, when the goods lie at an inconvenient distance, authorise an agent to act for him. "The compass of a vessel, tiller of a boat, &c., may very conveniently be used as symbols of delivery, a part for the whole. Our remarks on page 22 of this Journal were general, and on the supposition of a case where the Clerk could attend conveniently.

A VILLAGE CLERK.—It is a rule which is usually acted on by periodicals not to notice any anonymous communications, which rule, for obvious reasons, we have adopted. We are therefore obliged, acting on this principle, to decline notice of your letter in this instance.

S. C. P.—We are obliged by your letter and its suggestions, and the spirit in which your remarks have been written; but you should bear in mind the difficulties under which a work like the present is originated, and that it is more easy, having established a foundation, thereon to raise a superstructure, than to erect a goodly edifice at once. Our best efforts are directed to ensure the *general* utility and accuracy of the work: were it confined to benefit any one class, we apprehend it would be prophetic of a temporary existence.

DIVISION COURTS.

(Reports in relation to)

U. C. SUPERIOR COURTS.

KENNETH FINLAYSON *v.* FELTON HOWARD.

Statement of venue—Division Court—Interpleader—Proceedings after interpleader summons—13 & 14 *Vic. ch.* 53, *sec.* 39 & *sec.* 102, *as amended by* 16 *Vic. ch.* 177, *sec.* 7.

A had claimed certain steers seized under an attachment from the Division Court against one F. The bailiff who seized obtained a summons to determine such claim, which was heard on the 24th of June, 1853; and on the 8th of July, 1853, an order was made by the judge of the Division Court deciding against A.'s claim. A. then brought trespass against the bailiff.

Held, that the regularity of the proceedings on the interpleader summons could not be enquired into, and that all proceedings in this action since the issuing of such summons must be stayed.

[CHAMBERS.]

Trespass for seizing the plaintiff's goods. The defendant obtained a summons to set aside the interlocutory judgment, or notice of assessment and all subsequent proceedings, and to quash this action, as contrary to 13 & 14 Vic. ch. 53, secs. 70 and 102, and 16 Vic., ch. 177, sec. 7; and that the plaintiff should pay all costs subsequent to the signing interlocutory or notice of assessment, on grounds disclosed in affidavits and papers filed:—or to set aside interlocutory judgment and subsequent proceedings, with costs, because the venue was "United Counties of Essex and Lambton," instead of one of the said counties, naming it; or for want of incipitur of roll; or why the notice of assessment should not be set aside as served too late.

The facts of the case are stated in the judgment.

DRAPER, J.—There is nothing in the objection about the venue, and the papers shew a sufficient signing of interlocutory judgment on the 18th of October, 1853. There is an affidavit rendering it unnecessary to take notice of the latter part of the application, unless, indeed, to discharge it with costs, for according to that affidavit it never should have been made; and the summons was obtained after the Sandwich assizes were over, and when the notice could not be acted upon.

The first part of the application, therefore, alone remains. It consists substantially of two parts—Firstly: To set aside interlocutory judgment, or notice of assessment, and all subsequent proceedings. Secondly, to quash the action.

It seems by the copy of interlocutory judgment put in, that the declaration was filed on the 28th of May, 1853.

The plaintiff was owner of a yoke of steers in January last. The defendant was bailiff of the sixth Division Court, and as such, under an attachment from the court, directing him to seize the goods, &c., of John Finlayson (dated the 21st of January, 1853), seized these steers, which were appraised on the same day at £9. The date of sale is not shewn; but it appears that there is a charge for keeping the steers for sixteen days, so that they were probably sold not much later than the 8th of February. One John McDonald was plaintiff in the division court suit against John Finlayson, and he recovered judgment on the 24th of June, 1853, for £8 and costs. On the 4th of June, 1853, the plaintiff filed particulars of a claim in the sixth division court, for these steers.—These particulars of claim are entitled in this cause, instead of that in the division court, and are signed by his attorney. When the claim itself was made is not shewn, but a copy of the summons served on the now plaintiff is put in, which shews that it was made before the 28th of March, 1853, which is the date of the summons. A notice bearing the same date is served on John McDonald, and in both the 24th of June, 1853, is appointed to hear and adjudicate on the claim. On the 8th of July, 1853, an order is made by the judge of the division court, amending the particulars of claim filed, by entitling them in this cause in the division court; determining that the oxen seized were not the property of John Finlayson; ordering the claimant to recover the proceeds of the sale (which therefore must have been on the attachment, not the execution, as Mr. Davis's affidavit states less the expenses for keeping; forbidding proceedings against the clerk or bailiff; and directing each party to bear his own costs of the interpleader. It is admitted that the plaintiff appeared to this interpleader by attorney; and this action had at that time proceeded as far as declaration being filed. But it is sworn by the plaintiff's attorney that though the case was fully heard on the return of the interpleader summons (which was on the 24th of June, 1853), no judgment was then given, nor was any subsequent day appointed for giving judgment, according to 13 & 14 Vic. ch. 53, sec. 39; and it is therefore objected that there has not been a legal or binding decision of the matter, and so that the plaintiff may proceed in his action; while the defendant contends, that under section 102 of that act, as amended by 16 Vic. ch. 177, sec. 7, he is entitled to succeed in setting aside all proceedings had since the judge's order on the interpleader summons; and to *quash* the proceedings in the action.

There is this curious feature in the case. The 16 Vic. ch. 177, is to take effect on the 1st of July, 1853. The judgment on the interpleader summons is dated on the 8th of July, and is clearly founded on the 13th & 14th Vic. ch. 53, sec. 102. I do not however think that so far as this case is concerned it makes any difference. The first enactment, though varied by the second, is not repealed, and so proceedings commenced under the one may be carried on and completed under the other. It is material to consider that both statutes provide for the issue of the interpleader summons on the application of the officer charged with execution of the process under which the goods claimed were seized, and therefore that probably the only claim originally made was made by the bailiff seizing—the now defendant—who may apply either before or after the action brought against him for such interpleader. The summons addressed to the plaintiff requires him to put in particulars of his claim, which are before me, and then the judge of the division court has to adjudicate. On the face of his adjudication there is nothing but what he had authority to do, and I do not feel at liberty to enquire, on this application, into the regularity or mode of the proceedings themselves which end in this adjudication. If the plaintiff is advised that the adjudication is void, or even voidable, on the grounds suggested, he can raise the question hereafter in term, by moving to quash my order for staying proceedings.

But it does not appear to me that I should treat it as void, or even as voidable on the grounds suggested. Certainly there may be great hardship, as was suggested, in a man having his property seized to satisfy an execution against a stranger, and sold as perishable, without his having any remedy against the party who seizes and sells, except for the price which the property brought at such sale, and be left for the recovery of damages to sue the plaintiff who issued the writ, who may be living in another part of the province, or even out of it, and who may be worth nothing; and the hardship is greater when such seizure and sale is on attachment, when possibly the plaintiff suing it out may fail in maintaining his suit; and when the property is not to be restored, even though the defendant against whom the suit is brought should promptly come in and defend—for the only section I see providing for a restoration is section 77 of 13 & 14 Vic. ch. 53, which authorises it only on a bond, with good and sufficient sureties, with condition that the *debtor* (*quære*, defendant) shall, in the event of the claim being proved, and judgment being recovered thereon, pay the same, or the value of the property seized, or produce such property whenever required to satisfy the judgment. This provision certainly would be of no help to the present plaintiff, whose only mode of getting relief would apparently be by at once replevying the goods out of the bailiff's hands, a remedy which *perhaps* would not be stayed by an order under sec. 102 of this act, or sec. 7 of 16 Vic. ch. 177.

As to the defendant in the division court suit, whose property is seized under an attachment, that writ seems to operate very much like an execution before judgment. If a plaintiff makes the affidavit necessary for getting out the attachment, the defendant can only get his goods back by giving a bond, as already referred to; and then the plaintiff, although he may not have a reasonable or probable cause for suing out the attachment, may get either the goods which are seized here, or sold if perishable, or a sufficient bond securing his debt, before he even issues a summons to his alleged debtor to appear; and though the defendant should appear, the plaintiff has the security, and is subject to no penalty by the statute except the loss of costs, though of course an action would lie against him for maliciously suing out the attachment without reasonable or probable cause. The remedy is at least equally advantageous with that in the Superior Courts, who have power to issue writs to arrest to person, and in which, when attachments are sued out, the defendant may relieve his goods, as he may his person, by putting in special bail. However this is only a consideration for the legislature, and inapplicable to the present case.

The summons in this case certainly does not in terms ask the relief the statute authorises to be given to the bailiff or the clerk. It asks to *quash*, instead of *to stay, proceedings* in the action. I think, however, that I may make the order in the form authorised by the statute, particularly as no objection was urged on this particular point. It will of course be open to the plaintiff to make this a ground of objection to the order, if he so desires.

[The question in this action as to the validity of the County Judge's order appears to have been raised before the new Rules came into force. The 53rd Rule provides that an Interpleader claim may by consent be tried, although certain requisites as to service, giving particulars, &c., are not complied with. The regularity of the proceeding which ended in the adjudication—order made by the County Judge, was not enquired into by Mr. Justice Draper, as the adjudication upon the face of it appeared to have been made with authority. There is abundant authority to shew that this is

the position assumed by the Superior Courts in England in reference to the County Courts. But it seems to us that there was some irregulatity in the proceeding in the D. C. There can be no doubt that the determination of the D. C. Judge on an Interpleader is a judicial act, and such decision should therefore have been openly pronounced in court (see sec. 39, D. C. Act,) or if postponed till a subsequent day to be named, (see latter part of same section) have been transmitted in writing to the clerk, when both parties could have an opportunity to be present. How, otherwise, could parties be able to comply with the regulations, in moving for a new trial, or be informed directly or inferentially of the judgment rendered? As a general rule, the County Judge ceases, for the purpose of a final adjudication, to be Judge of the D. C. for which he acts for the time being when its sittings are concluded, and cannot afterwards, even on the same day, alter a judgment given in Court.

A third party, whose goo ls have been illegally seized, has undoubtedly a remedy by replevin; and the learned Judge *seems* inclined to the opinion that an interpleader order, under the D.C.E. Act, s 7, would not have the same effect in replevin suits as in ordinary actions of trespass or the like. No such question has as yet arisen under the English County Court Act (the Enactment and the Rules m de under it, are much the same as in the D. C's), all the cases hitherto reported having been on ordinary actions of trespass. The words of the section are, if any claim shall be made to, &c., goods seized, &c., by any person not being a party against whom such proceeding (meaning execution or attachment) has issued, the Clerk, on application of the officer, &c., shall issue a summons calling before the Court, &c., the creditor and the claimant, and thereupon any action which shall have been brought in any of Her Majesty's Superior Courts, &c., "in respect to such claim shall be stayed," &c., and the Judge is to adjudicate upon the claim, "and make such order between the parties in respect thereof," &c., as to him shall seem fit, and "such order shall be final and conclusive between the parties."—Now the parties to an Interpleader are the officer, the creditor and the claimant. It would certainly seem that the language here used would include an action of Replevin,—but as the clause speaks of any action in the Superior Courts, or "in any local or *Inferior* Court," and as actions of Replevin cannot be brought in the Inferior Courts, e.g. the Division Courts, it may turn out that such actions would not be stayed. But the object of the clause was to protect officers against actions when a claimant had an opportunity given of making good his claim under the summary proceeding pointed out in this clause; and in principle the action of Replevin is not substantially different from the action of Trespass. To hold that it was for the purposes of a stay under the 7 section of the D. C. E. Act, would be to do away with the main benefits of the clause.—*Ed. L. J.*]

(Seventh D. C. Essex and Lambton.—A. Chewitt, Judge.)

TREBACE *vs.* COVINGTON. } 17th April,
MOWATT *vs.* COVINGTON. } 1853.

Attachment.

In these cases attachments were sued out, in the former on the 16th February, in the latter on the 11th April, 1853. The summonses issued thereon were personally served, and at the hearing the plaintiff in each case proved his debt to the satisfaction of the Judge.

The following objections were, amongst others, taken and thereupon decided by the Judge:

1st. That the defendant was a resident in a foreign country, and could not, therefore, be sued here.

2nd. That in the second case there was no *actual* seizure, which was urged as necessary, although a seizure under the first attachment had been made.

3rd. That the affidavits for attachment were insufficient, not being conformable to the language used in the statute.

4th. That the property seized was never actually delivered over to the Clerk.

HIS HONOR said, in substance, to the first objection: I think a non-resident can be sued here where summons can be personally served, no matter where debt was contracted.

2nd. A seizure was made by the Bailiff on a boat, &c., under the first attachment, and the same delivered in charge by putting the boat tackle and apparel in the hands of a proper person, and there was no necessity for an actual seizure under the attachment in the second case.

3rd. The affidavits for attachment are insufficient, the words used, "absents himself," are not equivalent to the word "abscond;" and indeed it may be a question whether *any* equivalent words will satisfy the statute, and if it is not absolutely necessary, in such a proceeding, to follow the exact words prescribed by the Act.

4th. In many instances, cumbrous goods at a distance cannot be delivered to the Clerk.

This was such a case, and the person to whom the bailiff gave the boat in charge holds it for the clerk as well as for the bailiff: the boat seized was frozen in the ice at the River Salle, 30 miles or more from the clerk's office, and difficult to get at.

The 2nd, 3rd and 4th objections all hang together, and depend on the affidavit on which attachment issued: if it was defective, the seizure and delivery of goods to the clerk would be unsupported, and like the bond given to obtain possession of the goods, would be liable to an application to set them aside, or (in case of the bond) to be delivered up to be cancelled; though setting aside proceedings is not mentioned in the statute, quashing and vacating are. The judgment in this case is given on the personal service, and is independant of any aid from the attachment proceedings.

The plts are deprived of costs in both cases, there being no reasonable or probable grounds for taking such attachment proceedings against defendant, he never having had a place of abode, trade or dealing, &c., in this province.—The loss of all costs is apparently *here* the only penalty for want of probable cause. If the affidavit, attachment and proceedings, are otherwise sufficiently valid in the face of them, the goods *seized* and *held* are liable to the execution for the debt only. Where attachment proceedings are void or voidable, in addition to the loss of costs, the bond, when given, may be ordered to be delivered up to be cancelled, which deprives plt. of his remedy for return of goods, and so defeats his judgment execution, which may stand, if warranted by the usual course of practice, either under personal service, or service under 24th sec. under £2 substituted for personal service, which is rather more stringent than the substituted service allowed after attachment issued.

Judgment for plt. in each case, without costs.

MONTHLY REPERTORY.

Notes of English Cases.

COMMON LAW.

Q.B. PRICE & ANOTHER *v.* BARKER. Jan. 19 & Feb. 22.

Bond—Principal & Surety—Release of principal—Liability of surety.

A. & B. entered into a joint and several bond, B. being surety for A. After the accruing of the cause of action, the obligees, without the privity or consent of B., release A. from his liability, with a proviso that such release shall not extend to release any other party to the said bond. Upon an action brought against B. upon the bond,

Held, That B. was not discharged from his liability by virtue of such release to A., it operating merely as a covenant not to sue.

Q.B. CAREW *v.* PULLEN. April 18.

Bill of Exchange—Indorsee against Indorser—Time given to drawer and acceptor—Effect of promise by indorser after action brought.

A promise made by the defendant, the indorser of a bill of exchange, to the plaintiff, his indorsee, that he will pay the bill, after time has been given to the acceptor and drawer, will not support an action upon it when such promise is made after action brought.

Q.B. RICHARDSON *v.* MARTYR. *April* 18, 1855.

Promissory note—Conditional indorsement.

An instrument in the form of a promissory note was indorsed with a memorandum, "In event of my (the payee's) death, the within mentioned amount is not to be demanded of the maker, but the same is to remain at interest and ultimately to be divided among the children of Mrs. M., my daughter."

Held, that this note is conditional and therefore that the instrument was not a promissory note.

Action on a promissory note by the payee against the maker was for payment by the defendant on demand to Mrs. Richardson, or order, of £2,000, for value received; and there was an endorsement on the back, dated November 1st, 1851, "In the event of my death the within mentioned amount of £2,000 is not to be demanded of the maker, but the same is to remain at interest, and ultimately to be divided among the children of Mrs. Malcolm, my daughter."

Plea, denial of the making of the note.

Q.B. KITSON *v.* JULIAN. *April* 20.

Principal and surety—Bond—Continuance of liability—Recital of appointment in the Bond.

The condition of a Bond given by the sureties of a clerk recited the fact of his appointment, but not that he was appointed clerk for one year only, and provided that if he should duly account and pay over from to time, and at all times, so long as he should continue to hold the said office, the bond was to be void. After the year expired the clerk continued in office for a long time, but no fresh bond was entered into:

Held, that the sureties were not liable after the year for which the clerk was appointed, and that the fact of the appointment being for one year only, might be shown by pleading.

CHANCERY.

M.R. HUGHES *v.* ELLIS. March 1st.

Will—Construction—Void gift.

Gift of residue to testator's wife, her executors, administrators and assigns, and, "if he died intestate," over. The wife having died in testator's life time,

Held, That the gift over was inoperative, and the bequest lapsed.

V.C.W. FIRTH *v.* GREENWOOD. March 26.

Vendor and purchaser—Specific performance—Delay.

A purchaser who has taken no steps for more than three years after the contract to complete his purchase or compel specific performance, will be precluded by such delay from enforcing his right to have the contract specifically performed.

The VICE-CHANCELLOR, in dismissing the bill with costs, said:—The case of Harrington *v.* Wheeler was singularly like the present, for there, with the exception of a longer delay, nothing had been done to determine the agreement. The cases of Alley *v.* Deschamps, 13 Ves. 225; and Milward *v.* Earl of Thanet, 5 Ves. 720 N., clearly established the principle that time was of the essence of the contract, and that where there had been gross laches on the part of the plaintiff, his bill for specific performance would be dismissed with costs. A purchaser must show himself "ready, desirous, prompt, and eager," to complete his contract.

V.C.W. COOK *v.* WALKER. Mar. 29, 30.

Bill of sale—Creditor—Fraudulent assignment.

A bill of sale by way of security, but containing no proviso for possession until default,

Held, under the circumstances, valid against creditors, notwithstanding continued possession of the party executing such bill of sale.

V.C.S. CROOK *v.* WILSON. *April* 23.

Injunction—Obstruction of lights in a manufactory—Holding under common landlord—Acquiescence.

Where the plt. and dft. held adjoining pieces of ground under a common landlord and the plt. with the license of the landlord and without objection by the deft. had erected a manufactory, an injunction was granted to restrain the dft. so building as to obstruct the lights of the plt's. manufactory, pending a trial at law.

CORRESPONDENCE.

To the Editor of the "Law Journal."

SIR,

As one who takes an interest in the *Law Journal*, I trust you will permit me to offer a suggestion through your columns on a matter very interesting to the officers of Division Courts; the desire you have shewn to inform every one connected with them makes me sure that if you agree in my view you will do all you can to give it a helping hand. It would have been, perhaps, expecting too much of the Commissioners of County Judges, to have included in the forms provided by them forms suited to all possible circumstances. The forms given are those *commonly* required; but as it will occasionally happen that one is required which the Commissioners have not provided, the Clerk who has the drawing of it is not always sure that that which he prepares will "hold water,"

as the phrase goes; and under the 14th section of the last Division Court Act, it stands him to look out sharp for the correctness of his forms.

In the first rule, there is a general direction for preparing forms: "with reference to the forms not contained in the "Schedule to these Rules appended, where practicable the "forms prescribed in the said Schedule shall be used as "guides in framing the same," &c. This is all very well for the legal practitioner, and for those clerks who have had the benefit of large practice and legal experience, but out of the two hundred or more clerks in Upper Canada, probably not fifty would come within this description. What are the rest to do? If the Judges were always near them they might get a clue to set about the thing rightly; but as they are not, and moreover, as many clerks are far away from where they could get the assistance of a lawyer, I consider the suggestion I offer one of great importance. If every clerk who has had a form, not contained in the general forms, revised or approved of by the Judge of his county, would send it to the *Law Journal* for publication, it would soon produce a useful supply; which perhaps it would not be too much to ask you to increase.

To illustrate what I say: In actions against executors, the "general" forms only give one form of execution, while many forms differing much are required,—and forms of commitment are not provided in some cases in which the Courts exercise the power to commit. Also for proceeding in a Division Court under the 100th section of the Act, there are no forms whatever given, and I might mention other cases in which they are required, but I think I have said enough to draw attention to the matter, and I hope it may have a beneficial result.

Your ob't serv't,

C.

[*We think C.'s suggestion a good one, and will willingly assist in carrying it out by inserting approved forms furnished to us.*

We may add that the subject of forms has already engaged our attention, and it is probable that before long we may be able to supply some special forms, with marginal notes for guidance as to the proper mode of filling them in.—*Ed. L. J.*]

To the Editor of the "Upper Canada Law Journal."

SIR,

I was glad to find in your last number that notice was taken, by a letter of your correspondent Æ. N., of the "Round Robin" signed by certain professional gentlemen in Toronto, raising their own agency fees, without any other notice to their principals of such decision on their part beyond the transmission of the printed circular containing such decision on the point, with the names appended.

In your correspondent's remarks I concur, as I am aware do also many other country practitioners with whom I have spoken on the subject.

It is not that I object to the fees being raised. If the fees lately received by agents in Toronto did not compensate for their time and trouble expended on the business of the country principal, I by no means oppose the substitution of a higher rate and scale of agency fees. But I certainly think that the mode adopted by those signing to effect such change was contrary to professional etiquette, and I believe the whole process originated in the fact of one or two parties sitting in conclave on the circular, and having determined on its terms, procured the signatures of others who did not care to give a moment's thought thereto.

It appears to me that the proper plan which should have been adopted, would have been for each agent to write to his several principals throughout the country, with a copy of the proposed amendment in the scale of fees, stating that a meeting would be held at Osgoode Hall, in the ensuing Term, for the consideration of the subject, and requesting all principals either to attend, or by letter to their agents or through others attending Term, to express their views on the subject; or, should this plan have been deemed impracticable, then to refer the matter to the Benchers, asking for an expression of their opinion, by which all should be bound.

I suppose nothing will be now done, but I think the Toronto principals should understand that their mode of proceeding in the matter has not met the approbation of gentlemen in the country, and I shall be glad to find in your May number that the remarks of Æ N. have led to some discussion of the subject.

Yours obediently,

May 12th, 1855. J. J.

NOTICES OF NEW LAW BOOKS.

The Doctrine of Equity. A Commentary on the Law as administered by the Court of Chancery, by John Adams, Jun., Esq. Barrister-at-law. *Third American Edition, with additional Notes and References to recent English and American decisions*, by Henry Wharton; p.p. 918.—Philadelphia: T. & W. Johnson, 197, Chesnut-street. 1855.

This valuable work, originally from the pen of the late John Adams, comprises the substance, with additions, of three series of Lectures, delivered before the Incorporated Law Society, in London, in the years 1842-5. It has passed through three editions in America, the second of which was under the superintendance and annotation of Messrs. Ludlow & Collins, in 1852, adapted to the wants of the profession in the United States. The present, or third American Edition, from the prolific press of the Messrs. Johnson, of Philadelphia, supplies notes and references embodying the more important English and American decisions.

The work, though divided into four Books, which are again sub-divided into chapters, forms in fact but two distinct heads, the first three books treating "Of the Jurisdiction of Courts of Equity as regards their power of Enforcing Discovery—of their Jurisdiction in cases in which the Courts of Ordinary Jurisdiction cannot enforce a right—of their Jurisdiction in cases in which the Courts of Ordinary Jurisdiction cannot administer a right."

Under these several heads, the minor divisions of chapters investigate the subjects of Discovery—Commissions—Trusts, both Ordinary and Charitable—Specific Performance—Election—Imperfect Consideration—Discharge by matter *in pais*—Of Mortgages, Conversion, Priorities, and Tacking, Re Execution, Correction, Rescission and Cancellation,—Injunctions and Bills of Interpleader—Account—Partition—Dower—Partnership—Administration of Testamentary Assetts—Contribution—Infancy.

The fourth Book, as to the practice of pleading and procedure in the Courts of Equity treat of the Bill—Parties—Process and Appearance—Defence—Interlocutory Orders—Evidence, Hearing and Decree—Re-hearing and Appeal—Cross Bills, Revivor, Supplemental, and Executing and Impeaching a Decree.

In this last Book, the text of the author is preserved, although written at a period when the valuable practical reforms since introduced into the working of the Court of Chancery in its process had not been adopted: but Mr. Wharton, the present Editor, has added annotations which are of benefit to the English and American readers, in exposing those alterations which have added so much to the efficiency of the Court. The principles by which Courts of Equity are governed are of course still the same as heretofore; and in the present work are ably set forth in the first three Books.

So many questions now constantly arise through the Province, which are solely within the scope of the Court of Chancery,—and the simplifying of its process which has of late years been the object of its Judges, is now so well known, that it behoves every one to be more conversant with the principles and practice of Equity than was, but a few years since, thought necessary. This is the more requisite by the late institution of Equity Jurisdiction in our County Courts; and though we think the objects of the Legislature in passing the County Courts Equity Act have been defeated by the rules which have been promulgated for its guidance by the Judges of the Court of Chancery, yet the fact of the existence of those rules, and of the increase of matter in the Court of Chancery itself, will render this work an acquisition to those engaged in practice in this Province. It ought, indeed, to be by the side of Spence's Equitable Jurisdiction of the Court of Chancery, in the library of every Equity Lawyer.

A full and carefully arranged index completes the volume, which in its type, paper, and general appearance, keeps up the character which the Messrs. Johnson, of Philadelphia, have acquired as Law publishers.

We cannot close our mention of the work without extracting from the Preface Mr. Wharton's view of the contrast between the English and American reform in Chancery as follows:

"Before long the English Chancery, once the stronghold of abuses and delay, will be made one of the simplest, most effective, and cheapest tribunals in the world. Even now the radical, though well regulated reforms in this and other branches of the Law, in England, patiently effected in the face of a thousand obstacles, present a marked contrast to the slow progress made in this direction by most of the United States."

English Reports in Law and Equity; edited by Edward H. Bennett and Chauncey Smith, Counsellors-at-Law; volume XXVI., *Containing Cases in the House of Lords, the Privy Council, the Courts of Common Law, and the Admiralty and Ecclesiastical Courts, during the years* 1853-54. Boston: Little, Brown & Co. 1855.

Following up the late arrangement, by which a greater number of volumes of reports of Law and Chancery Cases are to be given in the year, this volume has just appeared. The low price, the frequency with which they appear, and the number and variety of cases contained in each volume of the English Reports, in the several Courts, tend to their value. An advertisement in the columns of our present number details the particulars of the arrangements of the series.

An Analytical Digest of the Reports of Cases decided in the English Courts of Common Law, Exchequer and Exchequer Chamber and Nisi Prius, in the year 1854, by William Tidd Pratt, of the Inner Temple, Esq., Barrister-at-Law; p.p. 83. Philadelphia: T. & W. Johnson. 1855.

This pamphlet comprises, in small and very portable size, a digest of the English Common Law Cases reported for the past year. It is presented without charge by the Messrs. Johnson, of Philadelphia, to subscribers to their Reprints of the English Reports.

THE STUDENT'S PORTFOLIO.

THE ADVOCATE—EDUCATION—MORAL TRAINING.

(Continued from page 80.)

His path, though exalted, is beset with temptations, so insidious, so urgent, so instant, that it needs something more prompt than the slow calculations of reason to resist them. In the hurry of a trial the Advocate cannot pause to reflect upon the rectitude or otherwise of some suggested course; he must rely upon that inward monitor which whispers in the heart of the Christian Gentleman before the slow voice of reason can be sounded; that instructive *sense of right* at the touch of whose Ithuriel spear all wrong, whatever lurid shape it may have assumed, starts up—the fiend confessed![1] The desire to please a client, the still stronger desire for a triumph, continually tempts the advocate to practices, for which, indeed, he may appeal to high authorities, but which religion and reason *forbid.*

Hereafter we shall endeavour to show, that the arts to which we allude, however they may contribute to temporary success, are in the end injurious to those who practice them;

[1] There is, perhaps, no profession after that of the sacred ministry, in which a high-toned morality is more imperatively necessary than that of the Law. There is, certainly, without any exception, no profession in which so many temptations beset the path to swerve from the line of strict duty and propriety: in which so many delicate and difficult questions of casuistry are continually arising. There are pit-falls and man-traps at every step, and the youthful adventurer needs often the prudence and self denial, as well as the moral courage, which belong commonly to riper years. High moral principle is his only safe-guide; the only torch to light his way amidst darkness and obstruction. It is like the spear of the guardian angel of Paradise:

> No falsehood can endure
> Torch of celestial temper, but returns
> Of force to its own likeness.

Professional Ethics page 9, (an admirable compendium of the aims and duties of the profession of the Law, by *Sharswood*, an American writer.)

but for the present purpose, admitting that they *are* too often resorted to, and that they offer very great temptations to an advocate not already morally and religiously schooled to resist them, it will suffice to indicate their presence. The acts to which we particularly allude are those, which, as we must confess, not altogether without foundation, form the staple of popular declamation against the morality of the Bar:—the browbeating of witnesses with intent to perplex the honest, and not with purpose to confound the perjurer and wring the truth from the liar :[2] the solemn asseveration of belief in the innocence of a prisoner whom the advocate knows to be guilty; the yet more fearful, but, as unhappily shewn by instances, not impossible, wrong of charging the innocent with the crime for the purpose of shifting it from the guilty :[3] the taking advantage of the privilege of his gown to asperse the characters of individuals, though not at issue in the cause.

We are aware that for some of these practices, and especially for the latter of them, high authorities may be adduced. But believing them to be opposed to the dictates of morality and religion: assured, that "to be just and fear not" is everywhere and at all times a safe rule of conduct,—that *honesty is wisdom as well as virtue*, equally in the profession of an Advocate as in all other pursuits—we are compelled to pronounce these practices incompatible with the character of a Christian Gentleman,—and therefore to be contemned and spurned by the Advocate who rightly reads the duties of his office.

There will be no disputing as to the advantages of the character of a Christian Gentleman in the influence it gives him with all whom he has occasion to address, and it would be difficult to overrate the value of that influence. Whatever temporary profit he may sacrifice by the abandonment of the questionable acts above alluded to, he regains fifty fold in the path thus cleared and made straight for him to the ears, and hearts and convictions of Judges, Juries, and audiences. The confidence they all have in his honesty, not merely predisposes them in his favor, but makes them listen, because they know, that what he says he *means;* induces them to put faith in his assertions, because they are sure he will not deceive them; and inclines them to follow his argument with attention, because they are certain that all is *fairly, candidly, truthfully* conducted. The very appearance of such a man is an advantage to a cause; he imparts something of his own reputation to whatever is associated with him: and when we come to examine the details of practice, and to trace step by step the progress of a cause under his management, it will yet more plainly appear, how, in every stage of it, the client reaps the benefit of being represented by an Advocate who is a Christian Gentleman.

[2] By means of the examination of witnesses, when skilfully managed, falsehood is unmasked, truth revealed, and the cause of justice vindicated. The knave, the fool, the daring, the diffident, the cunning, the simple, all in turn present themselves. Now the Lawyer has carefully studied the phases of truth and falsehood, and exerts his power to reveal the one, and unmask the other: his eye is single and his course straight: Truth is his game, and his heart is in the chase; and in confidence he follows her foot-marks, no matter whither they lead. In the examination of witnesses, the lawyer derives no small aid from the religious sanction of the oath, which the Court administers to the witness: not harshly and carelessly, in the way of astonishment and terror; but meekly, religiously and devoutly reminding him, how by the solemn oath he has taken he has called the searcher of all hearts to witness to the truth of that which he alleges. Not that he dares confide to this, which should of right be an all-sufficient test of truth: his knowledge of mankind teaches him far otherwise. Hence, if he sees a witness attempt to prevaricate or conceal the truth, notwithstanding the solemn oath he has taken to disclose it simply and wholly, he spares no weapon, which the storehouse of his art affords, whereby to overcome the devices of falsehood. Not that he uses these weapons indiscriminately, attempting by artifice to extort that alone which may favor his client, and to draw attention from all else. If he browbeat a witness, it is because he believes him of set purpose to conceal the truth: if he startle him by sudden transitions, it is because he believes him to be moving in the narrow circle of perjury: if he impeach his character, it is because he believes him unworthy of credit.

The Lawyer.

And Mr. Sharswood, in the little work already mentioned, says: "There is no point in which it becomes an Advocate to be more cautious than in his treatment of witnesses. In general fierce assaults upon them, unnecessary trifling with their feelings, rough and uncivil behaviour towards them in cross-examination, whilst it may sometimes exasperate them to such a pitch, that they will perjure themselves in the drunkenness of their passion, still, most generally, tells badly on the jury. They are apt to sympathise with a witness under such circumstances. It is as well unwise, as unprofessional, in counsel to accuse a witness of having forsworn himself, unless some good ground, other than the instruction of the client, is present in the evidence to justify it. He may sift most searchingly, and yet with a manner and courtesy which affords no ground for irritation either in witnesses or opponent; and in such a case if his questions produce irritation, it is a circumstance which will weigh in his favor."

[3] Mr. Sharswood enters at some length on this point: he refers (Professional Ethics, page 41) to the celebrated case of Courvoisier, indicted for murder, and gives in an appendix Mr. Phillips' vindication of himself from the charge of having, notwithstanding the prisoner's confession to him of his guilt, endeavored to fasten suspicion on others, and to impress the jury with his personal belief in the innocence of his client. It is too long for a note—we refer to the work itself: indeed, it should be in the hands of every law student. It is published by T. & W. Johnson, Law Booksellers, Philadelphia.

APPOINTMENTS TO OFFICE, &c.

JUDGE OF SURROGATE COURT.

GEORGE M. BOSWELL, of Cobourg, Esquire, to be Judge of the Surrogate Court of the United Counties of Northumberland and Durham, in place of Thomas Ward, Esquire, resigned.—[Gazetted 28th April, 1855.]

REGISTRAR OF SURROGATE COURT.

GEORGE WILLIAMS, of Chatham, Esquire, to be Registrar of the Surrogate Court of the County of Kent, in place of John B. Williams, Esq., resigned. [Gazetted 28th April, 1855.]

NOTARIES PUBLIC IN U.C.

WILLIAM PROUDFOOT, of Hamilton, Esquire, Barrister and Attorney-at-Law, and JOHN ALLCHIN, of New Hamburg, Township of Wilmot, Gentleman, to be Notaries Public in U. C.—[Gazetted 28th April, 1855.]

AUGUSTUS G. BOSWELL, of Cobourg, and CALEB P. SIMPSON, of Belleville, Esquires, Barristers-at-Law, to be Notaries Public in U. C.—[Gazetted 5th May, 1855.]

JAMES O'REILLY, of the City of Kingston, Esquire, Barrister and Attorney-at-Law, and VALENTINE PHELAN, of the Town of Woodstock, Esquire, Attorney-at-Law, to be Notaries Public in U. C.—[Gazetted 12th May, 1855.]

CORONERS.

ROBERT J. HINTON, Esquire, to be an Associate Coroner for the County of Carleton.—[Gazetted 21st April, 1855.]

ABELH DOWSWELL, Esquire, to be an Associate Coroner for the United Counties of Lanark and Renfrew.—[Gazetted 12th May, 1855.]

CLERKS OF COUNTY AND SURROGATE COURTS.

DUNCAN CAMERON, of Brantford, Esquire, to be Clerk of the County Court of the County of Brant, in place of E. B. Wood, Esq., resigned.—[Gazetted 21st April, 1855.]

ALFRED A. BAKER, of Guelph, Esquire, to be Clerk of the County Court of the County of Wellington, in place of John Smith, Esquire, resigned.—[Gazetted 28th April, 1855.]