DIARY FOR OCTOBER.

3. SUN ... 16*th Sunday after Trinity.*
2. Mon ... County Court and Surrogate Court Term com.
7. Sat .... County Court and Surrogate Court Term ends.
8. SUN ... 17*th Sunday after Trinity.*
9. Mon ... York and Peel Assizes.
15. SUN... 18*th Sunday after Trinity.*
18. Wed.... *St. Luke.*
22. SUN ... 19*th Sunday after Trinity.*
28. Sat. ... *St. Simon and St. Jude.*
29. SUN ... 20*th Sunday after Trinity.*
31. Tues... All Hallow Eve.

NOTICE.

Owing to the very large demand for the Law Journal *and* Local Courts' Gazette, *subscribers not desiring to take* both *publications are particularly requested at once to return the back numbers of that one for which they do not wish to subscribe.*

The Local Courts' AND MUNICIPAL GAZETTE.

OCTOBER, 1865.

DUNKIN'S ACT.

We notice that in several localities in Upper Canada, county and township votes are about to be taken, with a view of introducing the prohibitory provisions of the Temperance Act of 1864, otherwise known as "Dunkin's Act." We have already alluded* to some of the general provisions of this Act, which are intended for the prevention of drunkenness and for the protection of the wives, families and property of habitual drunkards generally. These enactments are theoretically good, so far as they go. The difficulty, as we before suggested, will probably lie in the working of them. As to the provisions for local prohibition, we entertain strong doubts as to the possibility of preventing the sale of intoxicating liquors by any legislative enactment of this kind, and more particularly so in the present divided state of public opinion on the subject. One of the worst things that can happen to a country is familiarizing the minds of the inhabitants with a systematic violation of the laws. Nothing weakens the force of a law so much as the knowledge that it can be broken with impunity, in fact it may almost be asserted that it is better to have no law at all than one which can be easily evaded or which cannot be enforced.

* 1 L. C. G. 36.

The sin of intemperance, however, is general, and some assert on the increase, and any course which the majority of a community think will check the evil should be tried; but only as an experiment, for, as we have just remarked, "the cure may be worse than the disease." But the voice of the majority should prevail; not the opinion of a few well meaning but in some cases mistaken enthusiasts, who, fully impressed with the evils of intemperance, do not care to think of the consequences which may result from their hasty, one-ideaed attempts to suppress it, and are not sufficiently conversant with human nature or sufficiently liberal in their ideas to form a correct opinion as to whether such attempts are likely to be successful.

In what some people call "the good old days," drunkenness was not considered either criminal or disgraceful even amongst the more intelligent and educated classes of the community. By degrees, however, the enlightenment of christianity and cultivated intellect prevailed, until the drunkard has at length come to be generally considered as despicable and a disgrace to humanity. This feeling is, for the reasons already given, stronger as we ascend in the social scale; but it has not yet descended to those who compose the class most strongly imbued with the vice of intemperance. The public opinion which operates so beneficially upon the higher classes has but little effect upon those for whom a cure is principally required.

The conclusion which may be drawn from this is, that some means should be devised which would bring forcibly before the intemperate the disgrace which attaches to the name of a drunkard. We may ask, would not a law which would make intemperance disgraceful in the eyes of all, and make the habitual drunkard contemptible, and which would place him on a level with a dangerous idiot, have a more salutary effect in suppressing this vice than a prohibitory law which we do not at present think can or will be rigorously enforced. Try what would be the effect of depriving the person adjudged to be an habitual drunkard of the rights of citizenship. Deprive him of all power to contract debts or to do any legal act respecting his property (if he has any) or place it in the hands of a committee, and disable him from voting at Parliamentary and municipal elections.

There is, however, a class too low to be

reached by any of these means, who would have to be punished in a more open way: in some way, the disgrace of which would be more patent to them—as, for instance, putting them in the stocks, or, as is done in some European countries, compel them to go through the street with a drunkard's badge on, or with the head showing through the top of a barrel, or by inflicting any other punishment which would render them ridiculous; and, if it is thought advisable, punish also in some such way the person convicted of giving liquor to the drunkard. We commend these remarks to those who are earnestly endeavoring, with often but scant assistance, to remedy a great social evil.

THE OFFENCE OF CONSPIRACY.

(*Continued from p.* 113.)

As already stated, the consultation and agreement between two or more persons, *wrongfully to prejudice or injure a third party in any manner*, is a conspiracy. A system of combination, common enough in England, to compel the payment of high wages, as sprung up in some parts of this country. These combinations, when intended to injure an employee by seducing or intimidating his workmen, come within the definition, and may be prosecuted as conspiracies. Workmen are not compellable to work at any particular rate of wages: like all other contracts, that between a builder or manufacturer and the workmen he employs, is a matter of contract; and whilst they are free from engagement, workmen have the option of entering into employment or not, and may agree among themselves that they will not go into any employment unless they can get a certain rate of wages.

But workmen have no right to combine together to persuade men already hired by and in the employment of other masters, to leave that employment for the purpose of compelling those masters to raise their wages; and a conspiracy to obstruct a manufacturer in carrying on his business, by inducing and persuading workmen who had been hired by him to leave his service, or by intending to alarm him, in order to force him to raise his wages, or to make an alteration in the mode of conducting and carrying on his trade, was held to be an indictable offence. So is an agreement to induce and persuade workmen under contract of servitude to absent themselves for such service, although no threats or intimidation be proved. It is likewise illegal to agree to molest, or intimidate, or annoy any workmen in the same line of business, who refuse to enter into an agreement not to work under a certain rate, but choose to work for their employers at a lower rate.

In these cases the essence of the offence is an unlawful combination to carry out an unlawful purpose; and the unlawful combination may be inferred from the conduct of the parties.

Another mode of injuring third parties is by conspiring to obtain goods and chattels from individuals by false pretences, without paying for them, with intent to defraud, and this also is an indictable offence; so when persons conspire to cause themselves to be believed persons of large property; and so when three persons agreed that one should accept a fictitious bill, and that the others should endorse and negotiate it.

If brokers agree together, before a sale by auction, that one only of them shall bid for each article sold, and that all articles then bought by any of them shall be sold again among themselves at a fair price, and the difference between the auction price and the fair price divided among them, this is a conspiracy for which they are indictable.

LATE ACTS.

We publish in this issue several of the acts of last session, which will be of interest to our readers. The act amending the Insolvent Act of 1864, and other acts for which we have no room, will be found in the current number of the *Law Journal*:—

AN ACT TO AMEND CHAPTER NINETEEN OF THE CONSOLIDATED STATUTES FOR UPPER CANADA, RESPECTING THE DIVISION COURTS.

[Assented to 18th September, 1865.]

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:—

1.—Notwithstanding anything in the said Act respecting the Division Courts, it shall and may be lawful for any Judge of a County Court, in his discretion, upon the petition of the Municipal Corporation of any Township or united townships in which no Division Court has already been established, praying that a Division Court may be established in and for such township or united township, to establish and hold a Division Court therein, and the Court so established shall be number-

ed and called the Division Court of the County or United Counties in which such Township or United Townships shall be situated, taking the number next after the highest number of the Courts then existing in such County or United Counties; and the Courts so established shall have the same jurisdiction as Division Courts established under the said Act respecting Division Courts, and all and singular the provisions of the said Act, not inconsistent with this Act, shall apply to all Courts established under this Act; Provided always, that no business shall be transacted in any such Court until after the establishment thereof shall have been certified by the County Judge to the Governor in Council, together with the petition praying for the same and the passing of an Order by the Governor in Council approving thereof.

An Act in reference to the qualification of Justices of the Peace.*

[Assented to 18th September, 1865.]

Whereas certain of Her Majesty's Justices of the Peace in this Province have heretofore, in error, taken and subscribed the oath of qualification of Justices of the Peace mentioned and set forth in the third section of the one hundredth chapter of the Consolidated Statutes of Canada, intituled: *An Act respecting the qualification of Justices of the Peace*, before the Clerk of the Peace of the District or County, or before a commissioner assigned by *Dedimus Potestatem* to administer oaths and declarations, or before some person not being a Justice of the Peace for the District or County for which such Justices intended to act, and it is expedient to confirm such oaths so taken, and indemnify such Justices from and against all forfeitures, penalties, and proceedings in respect thereof: Therefore, Her Majesty, &c., enacts as follows:

1.—For and notwithstanding anything contained in the third section of the one hundredth chapter of the Consolidated Statutes of Canada, intituled: *An Act respecting the qualification of Justices of the Peace*, the oath of qualification therein mentioned and set forth may be taken and subscribed before any other Justice of the Peace, or before any person assigned by the Governor to administer oaths and declarations, or before the Clerk of the Peace of the district or county for which such justice intends to acts, and a certificate of such oath having been so taken and subscribed, shall be forthwith deposited by the person who has taken the same, at the office of the Clerk of the Peace for the district or county, and shall, by the said clerk, be filed among the records of the sessions of the said district or county, and this provision shall be construed and have effect as if it had been contained in the Act passed in the sixth year of Her Majesty's Reign, intituled: *An Act for the qualification of Justices of the Peace.*

2.—All oaths of qualification heretofore taken and subscribed by any Justice of the Peace in this Province before the Clerk of the Peace of the district or county for which such justice intended to act, or before a commissioner assigned by *Dedimus Potestatem*, to administer oaths and declarations, or before any person not being a duly qualified Justice of the Peace for the said district or county, are hereby declared to have been and to be good and valid in law and equity to all intents and purposes; and from and after the passing of this Act no civil action or information or other proceeding at law or in equity shall be brought under the aforesaid Act against any Justice of the Peace in and for any district or county in this Province, without having taken and subscribed the aforesaid oath before some Justice of the Peace for the district or county for which he intended to act: and if before the passing of this Act, any such civil action or information or other proceedings at law or in equity shall have been brought or is now pending against any Justice of the Peace for the reasons or causes aforesaid, or any matter arising thereout, and in which such civil action, information or other proceedings at law or in equity, judgment or execution has not been actually satisfied, the same shall be stayed absolutely without costs in favor of the plaintiff or informer or his attorney as against the defendant: and no further proceedings of any kind shall be hereafter had therein.

3.—Every judge and every junior and every deputy judge of a County Court in Upper Canada, shall, *ex officio*, be a Justice of the Peace for the county or union of counties in which he shall be such judge or junior or deputy judge, and no deputy judge shall be disqualified by being an attorney or solicitor.

4.—The Interpretation Act shall apply to this Act.

An Act to declare valid certain Sales of Lands in Upper Canada.

[Assented to 18th September, 1865.]

Whereas, by an Act passed in the Session of Parliament held in the thirteenth and fourteenth years of Her Majesty's Reign, chapter sixty-seven, intituled: "*An Act to establish a more equal and just system of Assessment in the several Townships, Villages, Towns, and Cities in Upper Canada*," it was amongst other things enacted that certain lands upon which any taxes should remain unpaid on the 1st day of January, one thousand eight hundred and fifty-one, or so much thereof as should be sufficient to discharge such taxes, with interest and costs, should be sold by the Sheriff or High Bailiff in manner in and by the said Act particularly mentioned and set forth. And whereas, it was further provided by the said Act, that the owner of any such lands so sold as aforesaid, might redeem the same within three years from day of sale, and in case the same should not be so redeemed within that period, then that the Sheriff or High Bailiff, at

* See *Herbert q. t.* v. *Dowswell*, page 156.—Eds. L. C. G.

any time after the expiration of that period, should execute and deliver a deed of sale of such land to the purchaser, his heirs and assigns.

And whereas, under the provisions of the said Act, various lands, upon which taxes were unpaid as aforesaid, were in the year one thousand eight hundred and fifty-two, sold by various Sheriffs of Counties in Upper Canada; which lands were never redeemed by the owners, according to the provisions of the said Act.

And whereas, after such sales were made, and before the said period for the redemption thereof had expired, that is to say, on the fourteenth day of June, one thousand eight hundred and fifty-three, a certain other Act was passed (sixteenth Victoria, chapter one hundred and eighty-two), which took effect on the first day of January, one thousand eight hundred and fifty-four, whereby the said first-mentioned Act (thirteenth and fourteenth Victoria, chapter sixty-seven), was repealed, and no provision was made thereby for completing the sales made under the authority of the said first-mentioned Act.

And whereas, in many cases, the lands sold under the said first-mentioned Act have never been redeemed, and the purchasers thereof have obtained deeds thereof from the respective Sheriffs, and gone into possession thereof, and made valuable improvements thereon.

And whereas, it has been decided and adjudged that by reason of the repeal of the first-mentioned Act, before the expiration of the period allowed for the redemption of such lands, and before the execution by the Sheriff to the purchaser, of a deed of the same, the title of such purchaser is defective, and unless a remedy be provided much loss and injury will be sustained by innocent purchasers; and it is expedient to provide a remedy in that behalf.

Therefore, Her Majesty, by and with advice and consent of the Legislative Council and Assembly of Canada, declares and enacts as follows:—

1.—In all cases where lands were legally sold for taxes under the authority of the said first-mentioned Act, and not redeemed within the period by that Act limited in that behalf, and the purchaser or those claiming under him shall have gone into actual possession, such sales shall be and are hereby declared legal and binding upon all parties concerned, and all deeds executed or that may be executed by the Sheriff for conveying such lands to the respective purchasers thereof, shall be held to be legal and valid, anything in the said statute secondly hereinbefore-mentioned or any other statute or law to the contrary notwithstanding.

2.—In all cases where the purchaser at such sales, or those claiming under him shall not have gone into actual possession of the lands sold, the owner of such last-mentioned land may redeem the same within one year from the passing of this Act by paying the amount of the taxes for which the lands were sold and the costs of the sale, and ten per cent. interest thereon, together with all taxes that may have been paid by the purchaser or his assigns, and ten per cent. interest thereon—and in default thereof such last-mentioned sales are hereby declared to be legal and binding upon all parties concerned, and all deeds executed or that may be executed by the Sheriff for conveying such last mentioned lands to the respective purchasers thereof shall be held to be legal and valid.

AN ACT TO AMEND CHAP. 75 OF THE CONSOLIDATED STATUTES FOR UPPER CANADA, INTITULED, "AN ACT RESPECTING MASTER AND SERVANT."

[Assented to 18th September, 1865.]

Whereas doubts have arisen as to the application in certain cases, of the provisions of the Act respecting Master and Servant, chapter seventy-five of the Consolidated Statutes for Upper Canada, and it is expedient that they should be removed: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:—

1.—If after the termination of an engagement between Master and Servant, any dispute shall arise between them in respect of the term of such engagement or of any matter appertaining to it, the Justice or Justices of the Peace who shall receive the complaint shall be bound to decide the matter, in accordance with the provisions of the Act respecting Master and Servant, and as though the engagement between the parties still subsisted; Provided that proceedings be taken within one month after the engagement shall have ceased.

2.—Whenever the Justice shall take the evidence of the complainant in support of his or her claim, the said Justice shall be bound to take the evidence of the defendant also, if tendered.

AN ACT TO EXTEND THE ACT TO IMPOSE DUTIES ON PROMISSORY NOTES AND BILLS OF EXCHANGE TO ALL NOTES & BILLS OF WHATEVER AMOUNT, AND OTHERWISE TO AMEND THE SAID ACT.

[Assented to 18th September, 1865.]

Whereas it is expedient to impose duties on promissory notes and bills of exchange now excepted from the operation of the Act passed in the session held in the twenty-seventh and twenty-eight years of Her Majesty's Reign, chapter four, and otherwise to amend the said Act: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1.—Upon and in respect of every promissory note, draft or bill of exchange, for an amount less than one hundred dollars, made, drawn or accepted in this Province upon or after the first day of January, in the year one thousand eight hundred and sixty-six, there

shall be levied, collected and paid to Her Majesty, for the public uses of the Province, the duties hereinafter mentioned, that is to say:—

On each such promissory note, and on each such draft or bill of exchange, a duty of one cent, if the amount of such note, bill or draft, does not exceed twenty-five dollars;—a duty of two cents if the amount thereof exceeds twenty-five dollars but does not exceed fifty dollars,—and a duty of three cents if the amount thereof exceeds fifty dollars but is less than one hundred dollars.

2.—The Governor in council may from time to time direct stamped paper to be prepared for the purposes of the Act cited in the preamble and of this Act, of such kinds and bearing respectively such device as he thinks proper, and may defray the cost thereof out of any unappropriated monies forming part of the Consolidated Revenue Fund; but the device on each stamp shall express the value thereof, that is to say, the sum at which it shall be reckoned in payment of the duties imposed by the said Act, and by this Act; and any such stamp on the paper on which any note, bill or draft is written shall have in all respects the same effect as an adhesive stamp of the same value; and all the provisions of the thirteenth section of the Act cited in the preamble shall apply to the stamps on paper stamped under this section as fully as to the adhesive stamps mentioned in the said Act, as shall also all other provisions of the said Act which can be so applied, and are not inconsistent with this Act.

3.—Upon, from, and after the first day of October next after the passing of this Act, it shall not be necessary that the signature or part of the signature of the maker or drawer, or in the case of a draft or bill made or drawn out of this Province, of the acceptor or first endorser in this Province, or his initials, or some integral or material part of the instrument, be written on any adhesive stamp affixed to any promissory note, draft, or bill of exchange, but the person affixing such adhesive stamp, shall, at the time of affixing the same, write or stamp thereon the date at which it is affixed, and such stamp shall be held *primâ facie* to have been affixed at the date stamped or written thereon, and if no date be so stamped or written thereon such adhesive stamp shall be of no avail; any person wilfully writing or stamping a false date on any adhesive stamp shall incur a penalty of one hundred dollars for each such offence.

4.—No party to or holder of any promissory note, draft, or bill of exchange, shall incur any penalty by reason of the duty thereon not having been paid at the proper time and by the proper party or parties, provided that at the time it came into his hands it had affixed to it stamps to the amount of the duty apparently payable upon it, that he had no knowledge that they were not affixed at the proper time and by the proper party or parties, and that he pays such duty as soon as he acquires such knowledge,—and any holder of such instrument may pay the duty thereon, and give it validity, under section nine of the Act cited in the preamble, without becoming a party thereto;—In this section the word "duty" includes any double duty payable under the said section nine.

5.—This Act shall be construed as one Act with the Act cited in the preamble, and hereby amended, all the provisions whereof not inconsistent with this Act, shall apply to the duties and penalties hereby imposed as if such duties and penalties were imposed by the said Act.

An Act to prevent the spreading of Canada Thistles in Upper Canada.

[Assented to 18th September, 1865.]

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:—

1.—It shall be the duty of every occupant of land in Upper Canada, to cut, or to cause to be cut down all the Canada thistles growing thereon, so often in each and every year as shall be sufficient to prevent them going to seed; and if any owner, possessor, or occupier of land shall knowingly suffer any Canada thistles to grow thereon and the seed to ripen so as to cause or endanger the spread thereof, he shall upon conviction be liable to a fine of not less than two nor more than ten dollars for every such offence.

2.—It shall be the duty of the Overseers of Highways in any Municipality to see that the provisions of this Act are carried out within their respective highway divisions, by cutting or causing to be cut all the Canada thistles growing on the highways or road allowances within their respective divisions, and every such overseer shall give notice in writing to the owner, possessor, or occupier of any land within the said division whereon Canada thistles shall be growing and in danger of going to seed, requiring him to cause the same to be cut down within five days from the service of such notice; And in case such owner, possesser, or occupier, shall refuse or neglect to cut down the said Canada thistles, within the period aforesaid, the said Overseer of Highways shall enter upon the land and cause such Canada thistles to be cut down with as little damage to growing crops as may be, and he shall not be liable to be sued in action of trespass therefor: Provided that no such Overseer of Highways shall have power to enter upon or cut thistles on any land sown with grain: Provided also, that where such Canada thistles are growing upon non-resident lands, it shall not be necessary to give any notice before proceeding to cut down the same.

3.—It shall be the duty of the Clerk of any Municipality in which Railway property is situated, to give notice in writing to the Station Master of said Railway resident in or nearest to the said Municipality requiring him

to cause all the Canada thistles growing upon the property of the said Railway Company within the limits of the said Municipality to be cut down as provided for in the first section of this Act, and in case such Station Master shall refuse or neglect to have the said Canada thistles cut down within ten days from the time of service of the said notice, then the Overseers of Highways of the Municipality shall enter upon the property of the said Railway Company and cause such Canada thistles to be cut down, and the expense incurred in carrying out the provisions of this section shall be provided for in the same manner as in the next following section of this Act.

4.—Each Overseer of Highways shall keep an accurate account of the expense incurred by him in carrying out the provisions of the preceding sections of this Act, with respect to each parcel of land entered upon therefor, and shall deliver a statement of such expenses, describing by its legal description the land entered upon, and verified by oath, to the owner, possessor, or occupier of such resident lands, requiring him to pay the amount: In case such owner, possessor, or occupier of such resident lands shall refuse or neglect to pay the same within thirty days after such application, the said claim shall be presented to the Municipal Council of the Corporation in which such expense was incurred, and the said Council is hereby authorized and required to credit and allow such claim, and order the same to be paid from the funds for general purposes of the said Municipality. The said Overseer of Highways shall also present to the said Council a similar statement of the expenses incurred by him in carrying out the provisions of the said section upon any non-resident lands; and the said Council is hereby authorized and empowered to audit and allow the same in like manner: Provided always that if any owner, occupant, or possessor, amenable under the provisions of this Act, shall deem such expense excessive, an appeal may be had to the said Council (if made within thirty days after delivery of such statement) and which the said Council shall determine the matter in dispute.

5.—The Municipal Council of the Corporation shall cause all such sums as have been so paid under the provisions of this Act, to be severally levied on the lands described in the statement of the Overseers of Highways, and to be collected in the same manner as other taxes; and the same when collected shall be paid into the Treasury of the said Corporation to reimburse the outlay therefrom aforesaid.

6.—Any person who shall knowingly vend any grass or other seed, among which there is any seed of the Canada thistle, shall for every such offence, upon conviction, be liable to a fine of not less than two or more than ten dollars.

7.—Every Overseer of Highways or other other officer who shall refuse or neglect to discharge the duties imposed on him by this Act, shall be liable to a fine of not less than ten nor more than twenty dollars.

8.—Every offence against the provisions of this Act shall be punished, and the penalty hereby enforced for each offence shall be recovered and levied, on conviction, before any Justice of the Peace; and all fines imposed shall be paid into the Treasury of the Municipality in which such conviction takes place.

SELECTIONS.

ADVERTISING "DODGES."

The case of *Glenny* v. *Smith* contains an important question as regards traders in these days of "advertising dodges," and artful ways of making money. His Honour in delivering judgment said:—The plaintiffs represent the well-known firm of Thresher & Glenny, hosiers of the Strand, and the defendant was for above two years in their employ. He then set up for himself at No. 122, Oxford-street, where he carries on the same species of business, and it was the mode in which he advertised his trade on his shop that is now the subject of dispute. On the upper part of the house were the words "shirt maker," in large characters; below that, and immediately over the shop (still on the wall) "and Indian outfitter." Then came a striped blind, on which were the words "from Thresher & Glenny," the words "Thresher & Glenny," being in large characters, and "from" in comparatively very small ones, and oblique in position; and the same thing was repeated on two brass plates —one beneath each window—the defendant's name being alone placed over the windows in large characters, but when the blind was down this could not be seen from the opposite side of the way, although it might by a person near the window looking up under the blind. The defendant had set up business in May last, and it appeared that a conversation had taken place between him and a person named Atkins, with reference to this use of the names of his employers. The plaintiffs filed their bill to restrain this use of their names by the defendant, and the Vice-Chancellor granted a perpetual injunction in the terms asked.

This case will, no doubt, be quoted hereafter as regulating the law on this subject, and it ought to be well understood that it is easy to go too far in indicating a former connexion with another firm in advertising a business.

The Vice-Chancellor, in his judgment, referred minutely to the various phases in which names exhibited might appear, observing that the plaintiffs and their predecessors had carried on business for a century and a-half, and for twenty-five years had done so with considerable reputation. "Lord Kingsdown, in the *Leather Cloth Company's case*, has laid down the principle that a man has no right to put up his goods for sale as the goods of a rival tradesman; and, though that was the case of rival

manufacturers, the same principle applies here. A man has a right to take advantage of the character and reputation of a firm with which he has been connected, but if he uses the name he must do it in connexion with his own. The real question is whether the defendant has so used the names as to deceive the public. Persons knowing of the question would be affected by a foregone conclusion, and I, having several times passed the shop since the case was heard, was in that position. But the question was whether the heedless, incautious, unwary persons might not be deceived. I think that many persons might be misled, without saying that there was an intention to deceive, still what was done was calculated to mislead the public to suppose that the defendant's shop was the shop of the plaintiffs'." The point is by no means a new one, but we do not remember to have met with a case so readily to be understood and applied to the daily experience of both shopkeepers and their customers.—*Solicitors' Journal.*

THE FRENCH LAW OF MARRIAGE.

A contract of marriage extraordinary was brought under the consideration of the Paris Court of First Instance, presided over by M. Benoit Champy a short time ago. A count and a countess, whose names are not given by the legal journals which report the case, refused their consent to the marriage of their daughter Helen with the man of her heart. She thereupon retired to a a convent, from which she addressed to her parents those *actes respectueux*, which by the French code enable persons of full age to marry without the consent of father and mother, which is *prima facie* necessary. Thereupon the parents instituted a suit to stop the marriage on the ground that their daughter was insane, and the principal evidence produced in support of the allegation was that she had signed a contract of marriage in the following form:

"OUR MARRIAGE CONTRACT.

"Art. 1. Loving each other, and knowing each other well enough to be certain that one cannot be happy without the other, we join ourselves together to live for ever hereafter as good married people. She will be I and I shall be she, he will be I and I shall be he.

"Art. 2. *Charles*—I promise Helen to devote all my mind, all my strength, and my whole being to the purpose of maintaining her, and the children that she may give me, honestly and decently.

"Art. 3. *Helen*—I promise Charles to second him in keeping our household from want and difficulty; with that view I shall make economical habits a duty.

"Art. 4. *Charles*—I admit that I am sometimes hasty and violent. I hope to be excused from any sudden burst of anger.

"*Helen*—It will perhaps, be hard to endure, but the condition is acceded to.

"Art. 5. *Helen*—I must also be pardoned something. My temper is a little uneven, and I am greatly disposed to be jealous.

"—*Charles*I will not mind caprices, if they are not too frequent. As to the other fault, I am disposed to rejoice at it rather than otherwise, for a jealous person is not likely to give cause for jealousy.

"Art. 6. *Charles and Helen*—We are persuaded that, between lovers, disputes and coolnesses almost always arise from petty causes. On this account we mutually promise never to follow our own desires in things of small importance, but always to give way to each other.

"*Helen*—In important matters it will be right that Charles should decide, for he has more knowledge and judgment than I.

"*Charles*—Helen is too modest. I shall never decide anything without consulting her, and either converting her to my views or adopting hers if I think them best.

"Art. 7. As a consequence of the last preceding article, each of us shall always be dressed according to the taste of the other.

"Art. 8. The words 'I will,' 'I expect,' 'I require,' and other similar expressions, are absolutely erased from our dictionary.

"Art. 9. Charles will honor his wife, that she may be honored by others. He will always exhibit towards her esteem and confidence, and will be especially careful never in her presence to allow any advantage over her to any other woman upon any point whatsoever.

"Art. 10. We shall ever bear in mind that want of cleanliness and attention to personal appearance must necessarily produce repugnance and disgust. Neatness is to the body what amiability is to the soul. It is that which pleases.

"Art. 11. *Helen*—The majority of women nurse their own children. I hope Charles will approve of my performing my duties as a mother.

"*Chasrle*—I approve—subject to the doctor's advice.

"Art. 12. *Charles*—Helen will take great care not to spoil our children's intellects in their early years. She must not talk or suffer others to talk to them, any of that nonsense which gives false ideas and dangerous impressions throughout life.

"*Helen*—I will pay great attention to this part.

"Art. 13. Although our mutual tenderness is a guarantee that we shall never fail in the engagments hereinbefore set forth, each of us will keep a copy of these presents, and in case of the breach of any article shall be entitled to lay it before the other party to remind him or her of the covenants entered into.

"Art. 14. Inasmuch as neither will have anything that does not belong to the other, there is no occasion to take any account of the contribution of each to the common stock. Affection and courage, our only fortune, cannot be counted, and each of us will endeavor to bring as much as possible.

"Done in duplicate at Paris, in the year of grace 1864.

"With all my heart,

CHARLES D——.

"With all my heart, and for all my life,

"HELEN, future wife of Charles D——."

The Court held that this eccentric contract afforded no evidence of insanity, for which imputation there was, moreover, no pretence. Judgment was accordingly given against the parents, and the Mayor is ordered to proceed at once to perform the marriage ceremony.

THE LAW & PRACTICE OF THE DIVISION COURTS.

(*Continued from page* 116.)

In proceeding under what are called the judgment summons clauses it may be briefly noticed here that the jurisdiction as to place is expressly limited by the enactment being regulated chiefly by the residence of the defendant. If the judgment debtor resides or carries on business in any part of the country in which the judgment was obtained, the judgment creditor can issue the summons from the court wherein the judgment was obtained, but if the debtor be in another county the judgment must be removed under the 139th sec. of the act into the Division Court within the limits of which the judgment debtor resides or carries on business, and upon its removal the judgment summons may be obtained from the last mentioned court (sec. 160). There does not appear to be any authority for transferring a judgment from one court to another in the same county, so if the judgment creditor has not left the county the proceeding must be in the court in which he was originally sued.

Having noticed the special provisions as to the place of jurisdiction, varying the broad enactment contained in section 71, that general provision will now require a more full examination.

Any suit cognizable by the courts may be entered and tried,

(A) *In the court holden for the division within which the cause of action arose.*

The terms used in this clause and those used in the Imperial Act, 9 & 10 Vic. c. 95, sec. 60 ("*in which the cause of action arose*"), are nearly identical, and from the cases which have been decided upon that statute in England, it would appear that to found jurisdiction upon the fact of the cause of action having arisen within the court limits it must appear that the whole cause of action has arisen within such limits, and that a cause of action within the meaning of the section is a demand complete in itself. The term does not necessarily mean a cause of action on one single entire contract, for there may be one cause of action on several debts contracted at different times (*Buckley* v. *Hann*, 5 Ex. 43; *Grimbly* v. *Aykroyd*, 1 Ex. 479; *Wood* v. *Perry*, 3 Ex. 442; *Bonsey* v. *Wordsworth*, 18 C. B. 325; *Borthwick* v. *Walton*, 15 C. B. 501; *Kemp* v. *Clark*, 12 Q. B. 647).

A carrier and warfinger at *Swinden* agreed in writing with the defendant, who lived in *Surrey*, to barge lumber from a wharf in Swinden to London at any wharf there at so much per ton, to include all charges except wharfage. It was necessary to haul the lumber from the place where it lay to be loaded on board the barges, and at times when the horses of the defendant were not on the spot the plaintiff provided horses and hauled the timber. A suit was brought in the court where the plaintiff lived for a balance of the account, including items for hauling, but it was held that the hauling the timber and the carriage to London constituted but one cause of action, and that as such cause of action did not arise until the delivery of the timber in London, the judge of the Swinden county court had no jurisdiction to try the plaint under 9 & 10 Vic. c. 95, sec. 60 (*Barnes* v. *Marshall*, 2 Cox & Mac. 32).

Where an action was brought for the recovery of a reward offered for the apprehension and conviction of a felon, to be paid on his conviction, and the felon was apprehended by the plaintiff within the jurisdiction of the N. county court, and was tried and convicted at H., which was out of the jurisdiction of that court. It was held that the whole cause of action did not arise within the jurisdiction of the N. court, since by the terms of the contract the conviction was a material part of the cause of action (*Hernaman* v. *Smith*, 10 Ex. 659).

A bill of exchange was drawn and accepted and the defendant indorsed it within the city of London, but sent it by a messenger to the plaintiff, who lived out of the city. It was held that the cause of action did not arise within the city, such cause of action not being complete till the bill was delivered to the plaintiff (*Buckley* v. *Hann*, 5 Ex. 43).

In an action by a carrier for freight, the cause of action was considered to arise at the

place where the goods were delivered to the consignee (*Kemp* v. *Clark*, 12 Q. B. 647).

A suit was brought in the Liverpool county court on a written contract entered into there between the plaintiff and a broker who professed to act for the defendant, by which it was agreed that a cargo on board a ship at Queenston should be sold and delivered in any part of the kingdom which the plaintiff might direct, and that the shipping documents and policy of insurance were to be handed over at Liverpool. The plaintiff required the ship to be sent to Drogheda, but the defendant sold the cargo to another person and delivered to him the shipping documents and policy. The plaintiff at Liverpool made a demand of these documents, &c. The plaintiff sued in Liverpool, and in his particulars of demand claimed for damages sustained by the defendant not delivering the cargo. On application for prohibition the court of Queen's Bench said, "if the action were only for not delivering the cargo the cause of action would certainly not arise within the jurisdiction of the Liverpool court, because the cargo was to be delivered at Drogheda, but under the particulars it was possible that the plaintiff might be proceeding for a cause of action arising within the jurisdiction, namely, for not handing over the shipping documents and policy of insurance at Liverpool, and the court granted a prohibition as far as related to that breach of the contract which was not within the jurisdiction of the county court, thus enabling the plaintiff to proceed for that breach of contract in not delivering over the shipping documents and policy of insurance." (*Walsh* v. *Ionides*, 1 E. & B. 383.)

If the cause of action be one and indivisible, it must therefore have wholly arisen within the jurisdiction, but if there be two distinct causes of action stated in the particulars, or the cause of action there stated be capable of modification, so as to make it appear a cause of action which has wholly arisen within the jurisdiction, the particulars may be amended, so as to exclude such portion of the cause of action as did not arise within the jurisdiction. Thus, in *Walsh* v. *Ionides*, it was left to the County Judge, if he thought fit, to allow the particulars to be amended, and to be restricted to that breach of the contract which occurred within the jurdisdiction of the particular court.

SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

NOTES OF NEW DECISIONS AND LEADING CASES.

PRINCIPAL AND SURETY.—A. guaranteed to B., a creditor of C., certain composition notes, which B. was to indorse for the other creditors of C. B. represented to one or more of the creditors, before the composition was agreed to that he B. was to accept a like composition himself, but he had a secret bargain with C. that he should be paid in full:

Held, on grounds of public policy, that this secret bargain violated the whole transaction, and that A. was not liable to B. on his guarantee.

Various proposals having been made for a composition by all the creditors of an insolvent person, A. executed a deed to a trustee, reciting that an agreement to that effect had been come to, and conveying certain property to the trustee to seeure any person or persons who might indorse the composition notes which the debtors were to receive. B., a creditor, indorsed the notes of the other creditors, but was to receive payment in full of his own demand:

Held, that the trust deed was not a security for the notes he indorsed, the deed being available only if the composition was accepted by all the creditors.—*Clarke* v. *Ritchey*, 11 U.C. Ch. R. 499.

COMPANY—PROSPECTUS—MISREPRESENTATION—CONTRACT—NOTICE.—A court of equity requires that where a contract is founded on the statements of one of the parties to it, those statements should be made *bonâ fide*; and accordingly, where persons are induced to become holders of shares in a company by untrue and deceptive statements in the company's prospectus, there is an equity to undo the contract founded on those statements.

Where a prospectus of a company withholds information as to a fact material to the position of the company, and on which it is necessary that an intending shareholder should exercise his judgment, the court will set aside a contract founded on the prospectus.

Though a shareholder may be bound by the contents of the memorandum and articles of association of the company, he is not thereby affected with notice of documents referred to in them. Mere exaggerated, loose, or even suspicious statements in a wrospectus will not justify the court in setting aside a bargain founded upon it.—*Kisch* v. *The Central Railway Co. of Venezuela*, 18 W. R. 1006.

PARTNERSHIP — DISSOLUTION — RIGHT TO USE NAME OF FIRM.—On the dissolution of a partner-

ship, each partner is, in the absence of any special agreement, entitled to trade under the name or style of the old firm.

The plaintiff's husband, B., and the defendant, for many years carried on business under the style of B. & Co. The plaintiff, on the death of her husband, continued the partnership in pursuance of a proviso in the articles of partnership. The plaintiff and defendant afterwards dissolved partnership by mutual consent, and no stipulation was made with respect to the use of the name of the firm. The defendant continued to trade under the style of B. & Co., while the plaintiff traded in her own name, B. It was proved that orders intended for the plaintiff were sent to the defendant, but no fraud was shewn.

Held, that the plaintiff was not entitled to an injunction to restrain the defendant from trading as B. & Co.—*Banks* v. *Gibson*, 13 W. R. 1012.

MARRIED WOMAN—GIFTS BY HUSBAND TO WIFE—SEPARATE PROPERTY—EVIDENCE OF VOLUNTARY GIFTS.—In order to establish the fact of a gift of chattels from a husband to his wife, there must be clear and distinct evidence corroborative of the wife's testimony. It is not necessary that he should deliver them to a trustee for his wife; it is sufficient if he constitutes himself a trustee for her by making the gift in the presence of a witness, or by subsequent statements to a witness that he has made the gift; but a mere declaration of intention to give is not sufficient.

Semble, presents made by a husband to his wife, whether in contemplation of or subsequent to their marriage, are the separate property of the wife, and do not form part of the husband's personal estate.—*Grant* v. *Grant*, 13 W. R. 1057.

WRITTEN AGREEMENT BY PARTIES SEVERALLY PROMISING TO PAY CERTAIN SUMS, A SEVERAL PROMISSORY NOTE.—Defendant, with others, signed the following instrument, his subscription being $100:

"We, the undersigned, do hereby severally promise and agree to pay to F. W. Thomas, Esq., [the plaintiff,] agent of the Bank of Montreal in Goderich, the sums set opposite our respective names, for the purpose of building an Episcopal church and rectory in the town of Goderich."

The declaration thereon alleged, that in consideration that W. and others would promise defendant to pay the plaintiff certain specified sums, for the purpose, &c., and that plaintiff would pay $100 for the same purpose, defendant promised to pay the plaintiff $100 therefor; that W. and the others did promise and pay accordingly, and the plaintiff paid $100, yet defendant had not paid.

At the trial the plaintiff's promise to contribute $190 was not proved.

Held, that on this ground defendant was entitled to succeed.

Held, also, that the instrument declared on was the several promissory note of each subscriber; and as it seemed that the plaintiff was entitled to recover, though not upon these pleadings and evidence, a new trial was ordered upon payment of costs.—*Thomas* v. *Crace*, 15 U. C. C. P. 462.

MAGISTRATES, MUNICIPAL & COMMON SCHOOL LAW.

NOTES OF NEW DECISIONS AND LEADING CASES.

SALE FOR TAXES—TREASURER'S WARRANT.—*Held*, affirming the judgment of the Court of Queen's Bench, that the provision of the statute 16 Vic. ch. 182, secs. 55 and 56, Con. Stat. U.C. ch. 55, requiring the county treasurer in the warrant issued by him for the sale of lands in arrear for taxes, to distinguish those that have been patented, from those under lease or license of occupation, is compulsory; and that sales effected under a warrant omitting such particulars are void.—*Hall* v. *Hill*, 2 E. & A. Rep. 569.

TEMPERANCE ACT, 27-28 VIC. CAP. 18—APPLICATION TO QUASH BY-LAW—INSUFFICIENT NOTICE.—Under the 27-28 Vic. cap. 18, a requisition for the by-law must be published by the clerk for four consecutive weeks in some newspaper published weekly or oftener within the municipality, with a notice that on some day within the week next after such four weeks, a poll would be taken. The notice in this case, first published on Thursday, 12th January, appointed Tuesday, 7th February, for the poll. *Held*, too soon, and the by-law was quashed.

It was contended that the four weeks must be computed from the first day of the week in which the first publication takes place, not from the day of such publication, but *Held*, clearly not.

Quære, whether on motion to quash such by-laws, it could have been intended that the court, in term, should enter into a scrutiny of votes.—*In the matter of Coe and the Corporation of the Township of Pickering*, 24 U. C. Q. B. 439.

SALE FOR TAXES—13 & 14 VIC. CAP. 67—SALE UNDER—POWER OF SHERIFF TO CONVEY AFTER REPEAL OF BY 16 VIC. CAP. 182—CASUS OMISSUS.—The 13 & 14 Vic. cap. 67, allows three years for redemption of land sold for taxes, before the sheriff can convey. It was repealed by 16 Vic. c. 182, which came into force on the 1st January,

1854, except in so far as it might affect "any rate or taxes of the present year," 1853, "or any rates or taxes which have accrued and are actually due, or any remedy for the enforcement or recovery of such rates or taxes not otherwise provided for by this act." The plaintiff purchased, under 13 & 14 Vic., in 1852; so that he was not entitled to a conveyance until the act had been repealed.

Held, that as the exemption in the repealing clause gave no power to complete inchoate proceedings, the sheriff could not convey, although such a result was clearly not intended.--*McDonald* v. *McDonell et al.*, 24 U. C. Q. B. 424.

RECOGNIZANCE—RELIEF UNDER C. S. U. C. CAP. 117, SEC. 11.—Defendant having entered into a recognizance to appear at a certain assizes, attended until the last day, when he left, assuming, as no indictment had been found, that the charge against him, of a breach of the Foreign Enlistment Act, was not intended to be prosecuted. He was, however, called, and his recognizance estreated.

The court, under the circumstances, relieved him and his sureties, under C. S. U. C. cap. 117, sec. 11, on payment of costs, and on his entering into a new recognizance to appear at the following assizes.—*Reg.* v. *McLeod*, 24 U. C. Q. B. 485.

UPPER CANADA REPORTS.

QUEEN'S BENCH

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

MASON v. MORGAN.

Injury by domestic animals—Trespass maintainble—Evidence of scienter—Right of bailee or owner to recover—General verdict on two counts—Plaintiff not bound to elect.

(Continued from p. 134.)

1. That trespass *quære clausum fregit* is not maintainable on the facts adduced in support of the first count, and the remedy of the plaintiff, if any, is case, not trespass.

2. That were the law otherwise, the mare killed not being shewn to be the property of the plaintiff, but of his father, and no injury to the soil being shewn, the plaintiff is not on the first count entitled to substantial damages.

3. That there was no sufficient evidence to support the averment of *scienter* in the second count, and, on the contrary thereof, the evidence wholly disproved that averment.

4. That there was no sufficient evidence to sustain the issue of property in the mare killed as being the property of the plaintiff, but, on the contrary thereof, the evidence wholly disproved the issue joined as to property on the second count.

5. That the plaintiff proved only one wrong, and having proved no more is not entitled to hold a general verdict on two independent counts charging two distinct wrongs; and the jury, though polled, were wholly unable to decide in respect of which counts the plaintiff was entitled to recover.

6. That the plaintiff failed on the evidence to sustain the first and second counts, or one or other of them, and the verdict being general on both counts, there ought to be a new trial.

Robert A. Harrison, for the appellant, cited *Mason* v. *Morgan*, 10 U. C. L. J. 189; *Blacklock* v. *Millikan*, 8 C. P. 34; *Beckwith* v. *Shoredike*, 4 Burr. 2092; *Millen* v. *Fawtrey*, Sir W. Jones, 131. Popham, 161; *Brown* v. *Giles*, 1, C. & P. 118; Anon. Ventr. 295; Chy. Plg. Vol. I., p. 93; *Thomas* v. *Morgan*, 2 Cr. M. & R. 496; *Holford* v. *Dunnett*, 7 M. & W. 848; *Haacke* v. *Adamson*, 14 C. P. 201; *Midland R. W. Co.* v. *Bromley*, 17 C. B. 372, 382; *Trew* v. *R. W. Passengers Assurance Co.*, 6 Jur. N. S. 759.

John Bell, Q. C., contra.

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

That portion of the appeal which insists that the second count fails in proof of the "scienter" may be disposed of by referring to the view of the law expressed in *Thomas* v. *Morgan*, referred to by the learned judge of the court below. The expressions of the defendant were proper to be submitted to the jury, accompanied by the caution as to their weight. It is contrary to the practice of this court in appeals to weigh the evidence legally entitled to be submitted to them; and the learned judge below is not dissatisfied with the finding.

As to the right of property in the animal killed, it seems immaterial, as the plaintiff in any event could recover its value against a wrong-doer, although a mere bailee. This point was discussed in the case of *Irving* v. *Hagerman*, in this court (22 U. C. Q. B. 545).

On the first count, the law is not in a very clear state. Defendant's bull breaks and enters the plaintiff's close, and there kills his mare, defendant not being present or aware of the act: can trespass be maintained? The late Sir J. Macaulay, in the case cited in 3 C. P. 34, says, "I have always been of opinion, that or trespasses by domestic animals, such as horses, cattle, pigs, &c., the owner of the close might maintain trespass against the owner of the animals, unless he can excuse the act for defect of fences," &c.

One of the cases which he cites in support of that view, *Mason* v. *Keeling*, is reported in 1 Ld. Raym. 606, but more fully in 12 Mod. 332. Holt, C. J., says: "The difference is between things in which the party has valuable property, for he shall answer for all damages done by them," &c., and explains how as to dogs, &c., "notice of all their ill quality" is necessary: "If any beast in which I have a valuable property do damage in another's soil, in treading his grass, trespass will lie for it; but if my dog go into another man's soil, no action will lie."

The report in Ld. Raym. 606, is not very clear as to Holt, C. J.'s view. He says: "If the owner puts a horse or an ox to grass in his field, which is adjoining the highway, and the horse or the ox breaks the hedge, and runs into the highway, and kills or gores some passenger, an action will not lie against the owner; otherwise if he had notice that they had done such a thing before.

* * * But if a servant leaves open the stable door, and a coach-horse runs out and does mischief, it is otherwise."

Perhaps the distinction meant, is, that when the animal in the highway attacks or injures a passenger, the owner is not liable, without previous knowledge of the beast's ferocity; but that if such an animal trespass on lands, the owner is liable.

My brother Morrison has fortunately noticed a very late case, reported in 34 L. J., N. S., C. P. 31, but much more fully in 17 C. B., N. S. 245, *Read* v. *Edwards*. There the distinction between trespasses by dogs and by animals like oxen seems clearly recognised. A case in the Year Book 20 Edw. IV., fol. 10, *b*., is cited. Littleton says: "If a common road lies over the land of divers men, and if a drover comes with his beasts and some of them go out of the way, he shall be punished in an action of trespass; and so here." The case in the Year Book was trespass for depasturing the plaintiff's land with beasts. There was a commom from which defendant's beasts got into the plaintiff's adjoining lands without his knowledge, and immediately he knew it he (defendant) drove them out.

In *Read* v. *Edwards*, after very elaborate argument, *Willes*, J., delivers judgment, and says, "The question was much argued, whether the owner of a dog is answerable in trespass for every unauthorized entry of the animal into the land of another, as in the case of an ox. And reasons were offered, which we need not now estimate, for a distinction in this respect between oxen and dogs or cats, on account,—first, of the difficulty or impossibility of keeping the latter under restraint,—secondly, the slightness of the damage which their wandering ordinarily causes,—thirdly, the common usage of mankind to allow them a wider liberty,—and, lastly, there not being considered in law so absolutely the chattels of the owner as to be the subject of larceny. It is not, however, necessary in the principal case to answer this question."

We cannot see our way to deciding that the opinion of that very careful and experienced judge, Sir James Macaulay, was not resting on binding authority, and we therefore think the appeal fails on this point also.

We see no difficulty in the objection that the verdict is general, and that the plaintiff was not put to his election. As we understand *Haacke* v. *Adamson*, 14 U.C.C.P. 207, it is not held that the election must be necessarily made at the trial, but that in term the plaintiff can be forced to elect on which count to enter his verdict, where only one cause of action is proved, and the verdict is general. Here we find two counts, on either of which the plaintiff could recover damages. We suppose in strictness he may be said to have a cause of action on each, for the trespass to the realty, and for the damage done by the defendant keeping a mischievous bull. In any event it is no ground (as we understand the rule) for nonsuit or arrest of judgment, where there is no misjoinder, and where each count shews a good cause of action, or for new trial. The court can always make the plaintiff elect on which count to enter up his verdict; and after all it is a mere question of distribution of costs.

Appeal dismissed, with costs.

HERBERT QUI TAM V. DOWSWELL.*

Magistrates—Oath of qualification—Consol. Stat. C. ch. 100.

Under Consol. Stat. C. ch. 100, section 3, the oath of qualification by a Justice of the Peace must be taken before some J. P. of the County for which he intends to act. It cannot be administered by the Clerk of the Peace for such County, under the writ of *Dedimus Potestatem* issued with the Commission of the Peace.

[Q. B., E. T. 1865.]

This was an action of debt brought to recover from defendant, a Justice of the Peace for the United Counties of Lanark and Renfrew, a penalty of $100, under Consol. Stat. C. ch. 100, and a penalty of $80 under ch. 124, Con. Stat. U. C.

The declaration contained three counts. 1st, for acting as a J. P. without taking the oath required by the third section of the act first mentioned before a J. P. of the United Counties of Lanark and Renfrew. 2nd, for acting as a J. P. without having the necessary property of qualification required by that statute. 3rd count, defendant having convicted the plaintiff upon a certain charge, for wilfully receiving from plaintiff a larger amount of fees than by law authorized in respect of such conviction, contrary to the provisions of Con. Stat. U.C. ch 124.

Pleas—Not guilty, by statute, to all the counts.

At the trial before *Morrison*, J., at the last Perth assizes, it appeared from the testimony of Mr. Berford, the Clerk of the Peace for the United Counties of Lanark and Renfrew, that the defendant's name was in the commission of the peace for those counties: that after the issuing of the commission, on the 17th of June, 1859, he made oath to his property qualification before him, the Clerk of the Peace, who stated that he administered the oath to defendant under the authority of the writ of *Dedimus Potestatem* (which the Crown issues with and which accompanies the Commission of the Peace) directed to those named therein, to take the oath of office of the justices named in the commission, and it also appeared that the defendant took no other oath of qualification except the one referred to.

Evidence was also given to shew that the defendant acted as a Justice of the Peace, under the first count. The evidence given to establish the second and third counts was not sufficient.

The defendant's counsel moved for a nonsuit, contending that the oath of qualification sworn before the Clerk of the Peace was a good and valid oath, notwithstanding the provisions of sec. 3, of Consol. Stat. C. ch. 100; and it was agreed that a nonsuit should be entered, with leave reserved to the plaintiff to move to enter a verdict for him on the first count for the penalty of $100, if the court should be of opinion that the defendant should have taken the oath of qualification before a Justice of the Peace.

Robert A. Harrison obtained a rule *nisi* to set aside the nonsuit and to enter a verdict for the plaintiff on the first count for $100, in the pursuance of the leave reserved, on the ground that the oath of qualification of defendant should have been taken before a Justice of the Peace.

Deacon shewed cause.

MORRISON, J., delivered judgment.

By the third section of ch. 100, of the Consol. Stat. C. it is enacted, that when not otherwise

* See the act of last session, at page 147, introduced to obviate the difficulty.—EDS. L. C. G.

provided for by law, no person shall be a Justice of the Peace, or act as such within any District or County of this Province, who has not in his actual possession, to and for his own proper use and benefit, a real estate, &c. (as mentioned in the section); "or who before he takes upon himself to act as a Justice of the Peace, does not take and subscribe the oath following, before some Justice of the Peace for the District or County for which he intends to act, that is to say:—I. A. B. swear," &c., (as set out in the section).

The fourth section requires that a certificate of such oath having been so taken and subscribed as aforesaid, shall be forthwith deposited by the Justice of the Peace who has taken the same at the office of the Clerk of the Peace for the said County, and shall by the said clerk be filed among the records of the sessions. And the sixth section enacts, that when not otherwise provided, any person who acts as Justice of the Peace in and for any District or County in this Province, without having taken and subscribed the aforesaid oath, or without being qualified according to the true intent and meaning of the act, shall for every such offence forfeit the sum of $100, &c., to be recovered, &c.

We are of opinion that the rule ought to be absolute to enter a verdict for the plaintiff on the first count of the declaration. We are bound by the plain language of the statute, which expressly requires the oath of qualification to be taken before some Justice of the Peace for the County for which the defendant intended to act, which in the present case would have been before one of the Justices of the Peace for the United Counties of Lanark and Renfrew. Instead of which the defendant took the oath before the Clerk of the Peace for the United Counties, who, supposing he had authority to do so, administered it under a writ of *Dedimus Potestatem*.

The rule must be absolute to set aside the nonsuit and enter a verdict on the first count for the plaintiff and $100 damages, and for defendant on the second and third counts.

COMMON LAW CHAMBERS.

(*Reported by* ROBT. A. HARRISON, ESQ., *Barrister-at-law.*)

IN RE BRIGHT.

Canadian Foreign Enlistment Act, 28 Vic., *cap.* 2, *sec.* 1—*Sufficiency of warrant of commitment—Statement of offence—Adjudication—Costs.*

Held 1. That a commitment under Stat. 28 Vic., cap. 2, sec 1, stating the offence as follows, "for that he on &c., at &c., did attempt to procure A. B. to serve in a warlike or military operation in the service of the Government of the United States of America," omitting the words "*as an officer, soldier, sailor, &c.*" was bad.

Held 2. That a judgment for too little is as bad as a judgment for too much, and so a condemnation to pay $100 and costs, when the statute creating the offence imposes a penalty of $200 and costs, is bad.

Held 3. That a commitment, on a judgment for a penalty and costs, not stating in the body of the commitment or a recital in it, the amount of costs, is bad.

Quære, is the jurisdiction of the officers named in 28 Vic., cap. 2, a general or local one?

[Chambers, April 21, 1865.]

This case came before the presiding judge in Chambers, on a return to a writ of *habeas corpus*. The prisoner's presence having been dispensed with at his own request.

The return showed that the prisoner was in custody on four warrants. The first was dated the 28th day of March, 1865, "at Chatham in the county of Kent," and recited that the prisoner was on that day charged before T. M., Esq., "Police Magistrate and one of the Justices of the Peace in and for the said county of Kent," for that he on the 22nd March last, at Chatham, did attempt to procure Thomas Livingood to serve in a warlike or military operation in the service of the Government of the United States of America, for which offence he was on the 28th March convicted "before me the said Police Magistrate, and condemned to pay a penalty of $100, and in default of payment forthwith to be committed to the Common Gaol of the county, until paid," and "that the prisoner has not paid, &c.," and directed him to be taken and conveyed to the gaol—there to be kept until he should pay the said penalty together with the costs of this "comment," or be thence delivered by due course of law.

The second was dated 30th March, 1865, at Chatham in the county of Kent aforesaid. The magistrate was described as in the first warrant, and the offence was set out in terms precisely similar, except that the name John F. Russell is introduced in place of Thomas Livingood. The adjudication was that the prisoner pay a penalty of $100 and costs forthwith, and be imprisoned at hard labor in the Common Gaol for a period of six months, and in default of payment of the penalty and costs, forthwith for such further time as the same remain unpaid—and the committal was at hard labor for a period of six months and for such further time as the said penalty and costs remain unpaid, also the charges of the commitment and conveyance to gaol.

The third was dated the 28th March, 1865, and was like the first, correcting the word "comment" by substituting "commitment," but it ordered the prisoner to be kept "until said fine and costs together with costs of commitment and conveying the said James Bright to the said Common Gaol"—not finishing the sentence but at once proceeding with "Given under my hand &c." In the margin of this warrant is the following memorandum or entry:

Fine	$100 00
Information and warrant	0 50
Hearing case	0 50
Return of conviction	1 00
Arrest and attendance by constable	2 00
1 Witness	0 50
Commitment	0 25
Conveying to gaol	1 00
	$105 75

The fourth was dated 30th March, 1865, and was like the second, but contained a marginal entry or memorandum like that on the third warrant.

James Paterson, for the crown.
John B. Read, for the prisoner.

DRAPER, C.J.—The statute 28 Vic., ch. 2, sec. 1, enacts that if any person whatever in this Province shall hire, retain, engage or procure, or shall attempt or endeavour to hire, engage or procure any natural born subject of Her Majesty, person or persons whatever, to enlist or to enter or engage to enlist or to serve or to be employed

in any warlike or military operation in the service of or for or under or in aid of any foreign power, state, potentate, colony, province or part of any province or people, or of any person or persons exercising or assuming to exercise the power of government in or over any foreign country, colony, province or part of a province or people, either as an officer, soldier, sailor or marine, or in any other military or warlike capacity—or (the other definition of offence not bearing on this case) such offender may be prosecuted either in the manner provided in the 59 Geo. 3, ch. 69, (the Foreign Enlistment Act) or in a summary way before (among others) any judge of either of the Superior Courts of Common Law for Upper Canada, or any judge of a County Court, recorder, judge of the Sessions of the Peace or police magistrate, or before any two justices of the peace for the district or county where the offence shall have been committed, and if convicted on the oath of one or more credible witness or witnesses, may be condemned to pay a penalty of $200 with costs, and may be committed to the common gaol of the district, county or city, for a period not exceeding six months at hard labor. And if such penalty and costs be not forthwith paid, then for such further time as the same may remain unpaid; and such penalty shall belong one-half to the prosecutor and one-half to Her Majesty, for the public uses of the Province.

It is objected,

1. That it does not appear for what place the convicting magistrate is police magistrate. Each warrant has in the margin these words, "Province of Canada, county of Kent, to wit," and is dated "at Chatham in the county of Kent," but there is a township of Chatham as well as a town of Chatham in that county, and *non constat*, the magistrate was a police magistrate for the town, nor that he was exercising jurisdiction within the town.

2. That the offence is not sufficiently described according to the statute which prohibits the hiring, retaining, &c., any person to enlist or to serve in any warlike or military operation, for any foreign power, &c., "*as an officer, soldier, sailor or marine, or in any other military or warlike capacity.*" The latter words are not set out as part of the prisoner's offence.

3. The penalty is not discretionary in amount. The statute fixes it at $200, peremptorily. The adjudication is for a fine or penalty of only $100.

4. The amount of costs is not stated in the body of the commitment, nor in the recital of the conviction.

I incline to hold that each of these objections is fatal.

But as to the first it may be said that a general and not a local jurisdiction is given by the letter of the statute to the judges of the county courts, recorders, judges of the sessions of the peace and police magistrates, and that it is only where two justices of the peace are acting that they must be justices of the country where the offence is committed. For the purposes of this case it is not necessary to determine this point.

The second objection is clearly fatal—for the offence is not simply hiring, &c., any person to enlist or serve in any warlike or military operation for a foreign power, but hiring, &c., such person to enlist, &c., as an officer, soldier, &c. The statutory definition is only half followed, and the prisoner is convicted of part and not the whole of what the statute declares to be punishable.

The third objection is clearly fatal, "A judgment for too little is as bad as a judgment for too much," *R.* v. *Salomons*, 1 T. R. 252. See also *Whitehead* v. *Reg.* in Error 7 Q. R. 582, where a sentence of seven years transportation was passed on a conviction for an offence punishable by statute by transportation for not more than fifteen nor less than ten years.

The fourth objection is supported by Lord Mansfield's judgment in *Rex.* v. *Hall*, Cowp. 60.

In my opinion the prisoner is entitled to his discharge.

Order accordingly.

HOPE v. MUIR ET AL.; (BANK OF BRITISH NORTH AMERICA, *Garnishees.*)

Married Woman's Act—Con. Stat. U. C. cap. 73—Marriage, 28th May, 1859—Attachment of interest arising from her legacy to answer her husband's debts.

Where, on a debt contracted in the year 1855, plaintiff, on the 26th November, 1864, recovered judgment against M. and others, he was held entitled to attach the interest of moneys arising out of the amount of a legacy deposited by the wife of M. in her own name in the Bank of the garnishees, she having been married on the 28th May, 1859. [Chambers, June 3, 1865.]

On a debt contracted in the year 1855, the plaintiff recovered a judgment in this court against the defendant Muir and others, on the 26th November, 1864, for $1,492 47.

On the 28th May, 1859, the defendant Muir married Eliza his present wife, who, by the will of her late uncle, Robert W. Harris, took to her own use a legacy to a large amount. Part of the interest arising therefrom, namely, $462 22, she lately deposited, to her own credit, in her own name, in the Bank of British North America, at its agency in Hamilton.

This money, by an order dated the 16th May, 1865, was ordered to be attached, and the garnishees were called upon to show cause why they should not pay it over to the judgment creditor. After the service of this order, Muir and his wife sued the garnishees; and while the garnishee proceedings were pending, were proceeding to enforce the payment of the money. Whereupon the defendants in that action and the garnishees in this matter applied for leave to pay the money into court, which was granted, and they paid it into court. The sole question raised was, whether this money was liable for the debt of Muir.

——— for judgment creditors.

Rusk Harris for judgment debtors and Mrs. Muir.

T. H. Spencer for garnishees.

J. WILSON, J.—It is enacted by chapter 73 of the Consolidated Statutes of Upper Canada, section 2, among other things, that every married woman, who, on or before the 4th day of May, 1859, married without any marriage contract or settlement, shall and may, from and after that day, notwithstanding her coverture, have, hold and enjoy all her personal property not then reduced into the possession of her husband, whether belonging to her before marriage or in any way acquired by her after her marriage, free from his debts and obligations contracted after the 4th day of May, 1859, and from his control

or disposition without her consent, in as full and ample a manner as if she were sole and unmarried.

It has not been shown what the provisions of the will of the late Mr. Harris were; but the attorney for Mrs. Muir stated on oath that the moneys were the sole and only property of Mrs. Muir, and were a portion of certain moneys settled on her and her issue by Mr. Harris, and are by the terms of the settlement entirely beyond the control of her husband or his creditors. He is here speaking of the principal moneys, for on the argument the money in question is spoken of as the interest which Mrs. Muir had received and deposited in her own name and to her own credit. It is now in court, having been paid in at her suit, her husband joining in the action.

I take it for granted that in making so great and so sudden a change in the law of property as this statute (Con. Stat. U. C. cap. 73) did, the Legislature intended to save the rights of those who had made contracts on the faith of the law as it stood before the passing of this act. The money in dispute would then have been Muir's. But under the circumstances disclosed on oath and admitted on the argument, the statute leaves the rights of the parties as if no change had been made in the law. This money ought therefore, I think, to be paid to the judgment creditor.

Order accordingly.

CORRESPONDENCE.

School Trustees—Contract—Penalty.

To the Editors of the Local Courts' Gazette.

Gentlemen,—Will you please answer the following in your next issue.

The trustees of a school section let a contract for an addition to be built to the school house within a certain time under a penalty. The time is out and the work not nearly finished, nor will it be for some time. Have the trustees the power to remit the penalty?

Yours, Ratepayer.

[The penalty is only good to the amount of injury actually sustained. The trustees have perhaps no right to release the penalty; but it is a question of expedience in view of all the facts of every individual case, whether the trustees should risk an action to enforce a penalty. A sound discretion should be exercised.—Eds. L. C. G.]

Registry laws — Chain of title — Heirs.

To the Editors of the Law Journal.

Gentlemen,—The proposed changes in the Registry Law, while calculated to increase its efficiency, hardly, I think, embrace all the alterations to be desired. Would it not be well further to amend the law by providing some method by which the title of *heirs* should appear on the registry books? It seems to me an obvious defect in our system of registration that no such provision at present exists. Where title is claimed through an intestate a *hiatus* appears upon the face of the abstract, a link is wanting to complete the chain of the title which has to be supplied by outside proof. Would it not be advisable to adopt some plan by which all the evidence which would be necessary to enable the claimant to prove his claim in court should be placed on record and so preserved? Some such arrangement, besides affording the heir additional facilities for making a good title, would in many cases be a saving of trouble and expense to parties searching the books.

Yours respectfully,

T. Phillips Thompson.

St. Catharines, C. W., Sept. 7, 1865.

[Some such arrangement as our correspondent proposes would, if practicable, tend much to the completeness of records of title. We recommend the suggestion to the attention of our law makers.—Eds. L. J.]

Chattel mortgages — Charge for copying — When not done by clerk—Legality of charge for search when mortgage more than two years old.

To the Editors of the Law Journal.

Gentlemen,—Will you give the public the benefit of your views on a matter about which there is a difference of opinion?

1st. When a party makes a search of a chattel mortgage, and takes certain extracts (*e. g.*, date, parties, and articles mortgaged), have I any right to charge him more than 10 cents? The party does not want a copy of the mortgage at all, but simply for his information takes a short memorandum of those particulars.

2nd. Have I any right to charge 50 cents if the chattel mortgage is more than two years old, on the ground (*vide* C. C. Tariff of Fees) that it is a search "exceeding two years," or a "general search," which the tariff provides for?—"Every search exceeding two years, or a general search, 50 cents." Some lawyers say that this has reference only to searches in suits, and that I have no right to charge 50c., but must be guided by the charges given by the Chattel Mortgage Act.

I want only what is right, and as different clerks have different views, please answer.

A CLERK.

Sept. 21, 1865.

[Clerks of County Courts, with whom chattel mortgages, &c., are filed, can only charge the fees by law allowed for services performed in regard to such chattel mortgages, &c. They are as follows:

1. For filing each instrument and affidavit, and for entering the same in the book, twenty-five cents.

2. For searching for each paper, ten cents.

3. For copies of any document, with certificate prepared, ten cents for every hundred words.—(Con. Stat. U. C. cap. 45, sec. 14.)

It will be observed that the act does not in terms make it obligatory upon the clerk to allow a person making a search to take a copy or extract. Hence some clerks refuse this privilege, unless upon the terms of payment for the copy or extract, as if made by themselves.

We have always doubted the legality of this exaction, and would be glad to find it contested and decided. Any one, upon payment of ten cents, has a right to search for and to see the instrument filed. When he sees it he has a right to read it. He has a right to recollect the entire contents of it, and, if his memory is a good one, from memory write it out in the same room, or in the next room. Why should he not be allowed, without extra cost, to aid his memory by the use of a pen or pencil? The copy or extract may or may not be correct, but the clerk is in no way responsible for its correctness. Where he does no work, and assumes no responsibility for the work done, it is difficult to understand why he should be allowed to charge for it, as if done by himself and certified as correct.

The charge of fifty cents for a chattel mortgage more than two years old, is wholly indefensible. The tariff has no reference whatever to chattel mortgages.—EDS. L. J.]

WITNESS FEES.—The plaintiff, Mr. John Jones, was a photographer living in Dale street, and he sued Mr. W. K. Campbell, an attorney, for fifteen shillings, in respect of loss of time which he had incurred by being *subpœnaed* as a witness in a case at the last Court of Passage, and with which the defendant was connected as an attorney.

Mr. Campbell appeared in answer to the claim, to which he pleaded his non-liability.

The Judge said the claim was one of a novel character to bring against an attorney, and that if such a claim were allowed there would be no end to the demands made upon attorneys under similar circumstances.

Verdict for the defendant.—*Solicitor's Journal.*

Lord Cranworth has got through the remainder of the business left him by his predecessor on the wool-sack with that ease, precision, and urbanity, for which he was so well known when he formerly held the great seal. One of our contemporaries, in contrasting the demeanour of Lord Cranworth with that of Lord Westbury (and the contrast is very great), adds a story of the latter, which we reproduce as a specimen of the sort of stories which have so long been current about his Lordship, but which we certainly do not believe. It says that his Lordship's reply to the interrogation why he had not induced his judicial colleagues to make new regulations, much needed with regard to the procedure of certain courts, was—"Because I have to deal with three of them; and because the first is ignorant, the second is impracticable, and the third is imbecile."—*Solicitors' Journal.*

APPOINTMENTS TO OFFICE.

COUNTY JUDGE.

GEORGE SHERWOOD, Esquire, commonly called the Hon. George Sherwood, to be Judge of the County Court of the County of Hastings. (Gazetted Sept. 2, 1865.)

NOTARIES PUBLIC.

HIRAM MCCREA, of Frankville, Esquire, to be a Notary Public in Upper Canada. (Gazetted Sept. 16, 1865.)

THOMAS PHILLIPS THOMSON, of St. Catharines, Esq., Attorney-at-Law, to be a Notary Public in Upper Canada. (Gazetted Sept. 23, 1865.)

ANDREW THOMAS DRUMMOND, of Kingston. Esquire, Barrister-at-law, to be a Notary Public in Upper Canada (Gazetted Sept. 23, 1865.)

FRANCIS EDWIN KILVERT, of the City of Hamilton, Esquire, Attorney-at-Law, to be a Notary Public in Upper Canada. (Gazetted Sept. 23, 1865.)

THOMAS FERRIS NELLIS, of the City of Ottawa, Esq. Barrister-at-Law, to be a Notary Public in Upper Canada. (Gazetted, Sept. 23, 1865.)

CORONERS.

JESSE SHIBLEY, Esquire, Associate Coroner, County of Lennox and Addington. (Gazetted Sept. 2, 1865.)

DUGALD L. MCALPINE, Esquire, M.D., Associate Coroner County of Middlesex. (Gazetted Sept. 2, 1865.)

JOHN HARRIS COMFORT, Esquire, M.D., Associate Coroner, County of Lincoln. (Gazetted Sept. 16, 1865.)

JOHN FERGUSSON, of Appin, Esquire, M.D, Associate Coroner, County of Middlesex. (Gazetted Sept. 23, 1865.)

JOHN R. ASH, of Centreville, Esquire, M.D., Asociate Coroner for the United Counties of Lennox and Addington. Gazetted Sept. 23, 1865.)

TO CORRESPONDENTS.

"RATE-PAYER"—"T. PHILLIPS THOMPSON"—"A CLERK"—Under "Correspondence."