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DIARY FOR MAY.

1. Friday ..... Last day for notice to Co. of appor. of Grammar School monies
2. Saturday ..... Articles, &c., to be left with Secretary of Law Society.
3. SUNDAY.... *4th Sunday after Easter.*
6. Tuesday ..... Chancery Sittings Belleville. Last day notice for Brockville.
9. Saturday..... Chancery Hearing Term ends.
10. SUNDAY..... *Rogation.*
12. Tuesday ..... Chancery Sittings Kingston. Last day notice for Ottawa.
13. Wednesday .. Last day for service for County Court.
17. SUNDAY..... *1st Sunday after Ascension.*
18. Monday ..... Easter Term begins.
19. Tuesday ..... Chancery Sittings Brockville. Last day notice for Cornwall.
22. Friday..... Paper Day, Q.B.
23. Saturday..... Paper Day, C.P. Declare for County Court.
24. SUNDAY..... *Whit Sunday.* Queen's Birthday.
25. Monday..... Paper Day, Q.B
26. Tuesday ..... Paper Day, C.P. Chancery Sittings Ottawa.
27. Wednesday .. Paper Day, Q.B.
28. Thursday .... Paper Day, C.P. [Assess. Roll, and for Co. Ct. to rev. Tp. roll.
30. Saturday..... Easter Term ends. Last day for Court of Revis. finally to rev.
31. SUNDAY..... *Trinity Sunday.*

BUSINESS NOTICE.

Persons indebted to the Proprietors of this Journal are requested to remember that all our past due accounts have been placed in the hands of Messrs. Ardagh & Ardagh, Attorneys, Barrie, for collection; and that only a prompt remittance to them will save costs.

It is with great reluctance that the Proprietors have adopted this course; but they have been compelled to do so in order to enable them to meet their current expenses which are very heavy.

Now that the usefulness of the Journal is so generally admitted, it would not be unreasonable to expect that the Profession and Officers of the Courts would accord it a liberal support, instead of allowing themselves to be sued for their subscriptions.

The Upper Canada Law Journal.

MAY, 1863.

QUEEN'S COUNSEL.

In every profession there are rewards of merit more or less substantial. These, spur men to action; and so long as the rewards are honestly distributed, the effect upon the whole profession is good.

By nature men are different; some have greater mental activity than others; some have more judgment than others; some have a keener sense of honor than others; some have a greater ability to please than others; some are better speakers than others—in a word, some by nature are gifted, while others are neglected.

In no profession can a dullard attain real success; and yet some men, though not bright, may, in certain professions, attain marked distinction, who, in other professions, would live and die in obscurity.

Some men are adapted for divinity—others for medicine—others for law—others for no learned profession whatever. The choice of profession, therefore, is one of serious moment. A wrong step taken at the start often proves such a mistake that a whole lifetime is not long enough to rectify it.

In no profession is true merit better appreciated by the public than that of the law. A deserving man, in spite of adverse circumstances, by dint of energy may raise himself as high as he pleases. If he has the true ring he is sure to be appreciated. The converse is also true. A man unfit for the profession of the law can not, in general, be forced into greatness; or if so forced, soon falls to the level which nature designed for him; all the titles in the world will not make him a great lawyer, if nature has set upon him the stamp of mediocrity.

The profession of the law may be divided into two branches—the attorney or solicitor, and the barrister or advocate. In this paper we are more particularly concerned with the latter.

The qualifications of a successful barrister are many. He must be quick—courageous—decided—intelligent—well-informed. He must have good common-sense, versatility and ability to please. He must be able to express his ideas with clearness and appropriateness. He must be ready for any and every emergency—equal to any and every occasion.

Many enter the profession thinking themselves fitted for the bar, but soon learn either that they have overrated themselves, or underrated what is required of them. Many are called, but few chosen for real success. Examine those who have succeeded, compare them with those who have failed, and the "reasons why" will be made apparent to the humblest capacity.

Connection in England is something: in Canada it is nothing. A man with us must succeed upon his own merits, and not on those of his friends or relatives. He must either sink or swim. If, buoyed up with the aid of sanguine and powerful friends, he venture into deep water, so long as sustained by them he will appear to do as well as others who swim without such aids, but the moment the aids are withdrawn he sinks to swim no more.

In England there are many prizes for able advocates. In Canada the prizes, though not so many, are not to be despised. The learned professions in this colony represent the aristocracy of intellect. Lawyers are to be found year by year conspicuous in parliament, either as leaders of the government or of the opposition. In all secular assemblies of a deliberative character lawyers are preëminent. Their ability to express their ideas in a manner to be understood by their fellow-men is the great secret of their success.

The substantial prizes in this colony are—judgeships of the superior and inferior courts—crown prosecutorships—crown attorneyships. These are the gift of the government for the time being. The *un*substantial prize is that of a Queen's counselship. This is also in the gift of the government for the time being. The real prize—more substantial than all others—is that of public confidence and public support.

Experience has proved that government appointments are rarely for merit. Sometimes by accident rather than design government may appoint the right man to the right place; but the reverse of this is too often the case. Political subserviency is too often the qualification for place and power. The leprosy of politics appears to insinuate itself into every branch of the human economy, where appointments are vested in what are called free governments.

So far as legal appointments in Upper Canada are concerned, great responsibility is thrown upon the attorney-general for the time being. Upon his advice such appointments are made. In his hands is the power of elevating or depressing the standard of his profession. He is, in a measure, its guardian. If the power vested in him be used with a single eye to the public good, he will receive the approbation of all well-meaning men, no matter what their political creed or political affinities. But if used to reward political partizans, or to honor private friends—other things not being equal—the disapprobation, if not the execration, of all thinking men will be the consequence. Fortunately for Upper Canada our attorneys general hitherto, though in some things blameable, have not been recreants to their trust. The present attorney-general also has, so far as we can judge, to the best of his ability discharged his responsible trust, but has, we fear, in some things yielded too much to the claims of party and other outside pressure.

On this occasion we shall make no reference to his judicial appointments. We are not prepared at present either to sanction or to condemn them. We have too much respect for the Bench in all its gradations to speak lightly of those who hold judicial appointments. We prefer rather, hoping for the best, to give a fair trial to every man who receives such an appointment.

But with another class of appointments we hesitate less to deal. The appointment of Queen's Counsel, though of no real value, has hitherto been looked upon as something worthy of acceptance. So long as conferred upon worthy men, and worthy men only, it has been esteemed an honorable appointment. Of late years, however, even its fictitious value has fallen. With multiplication comes deterioration. The appointments have been too freely bestowed, and the result has been that the standard of value is much lowered.

A Queen's Counsel *ought* to mean an advocate who, by real ability, has attained such a position in the foremost ranks of his profession as to entitle him to special distinction. No lawyer springs to a fame in a day, so that some standing at the bar is usually the incident of a foremost advocate, but not his qualification for the appointment. There should be no confusion between the incident and the actual qualification. To make a man a Queen's Counsel merely because of old standing at the bar if otherwise unfit would be absurd. So, respectability is an incident. No man should be appointed a Queen's Counsel unless a man of honor and of respectability. But it does not follow that every man of honor and respectability should receive the appointment. Respectability is only one of the incidents, and not any more than age *the* qualification. The sole qualification should be merit. This and this alone should be the motive for the appointment.

In England the appointments are usually conferred upon the leaders of the bar in the different courts, and on the different circuits. In fact long before the executive makes the appointment the profession know that it will be made. The consequence is that the appointment, when made, takes no one by surprise. All are prepared for it; and, when made, all endorse it. But when appointments are made which take the profession wholly by surprise, there is something wrong.

Recently no less than ten gentlemen were appointed Queen's Counsel in Upper Canada. Rumor had it that the appointmenss were on the *tapis* some time before they were made; and rumor foretold correctly the appointment of one or two, but was sadly at fault as to the remainder. All the men appointed are respectable men—some of them are old men; but all are *not* qualified. The Attorney-General has evidently yielded too much to pressure. The consequence has been in the appointment of some men, whose appointment has been a surprise to every body, if not to themselves.

It is not for us to particularize. It would be invidious for us to do so. No good would come of it. The appointments are made and the mischief is done. Judging from what the Attorney-General has done, the only thing at which we wonder is, that while he was about it, he did not appoint every man at the bar—whether he ever held a brief or not—a Queen's Counsel, and so practically destroy the title which, we are sorry to say, he has, unwittingly no doubt, done so much to degrade. The standard before he took office was too low. He has made it still lower; and a few steps farther in a downward direction, and the title, instead of being a mark of ability, will be that of mediocrity, if not of nothingness.

In matters where a fair exercise of judgment is required there should be no bias. We venture to assert that if the Attorney-General had exercised his judgment in the contemplated appointments, free from the influence of political support, private friendship, and other such considerations, the result would have been very different. We cannot say that he has been controlled solely by political influence, for he has appointed men of all politics. We cannot say that he has been controlled solely by private friendships,

for he has appointed men of whom he knew little except by reputation. We cannot say that he has been controlled solely by a respect for old age, for he has appointed young as well as old men. But we do say that these bastard elements more or less enter into the list of his appointments, and that some men appointed have no claim to the appointment, beyond one or other of these bastard titles.

We know how difficult it is under our present form of government for men in power to be governed solely by a sense of right and merit. Expediency too often usurps the place of right. Both in England and in Canada expediency is doing much to lower the standard of the bar, if not of the bench. The fault is, perhaps, not so much that of the Chancellor, in England, or Attorney-General, in Canada, for the time being, as of the system of government which renders it necessary for these officers to make sacrifices. The result, however, is none the less pernicious—none the less deplorable—none the less to be deplored.

THE LATE MR. JUSTICE CONNER.

The *Canada Gazette*, under date 31st January last, announced that His Excellency the Governor-General had been pleased to appoint Skeffington Connor, LL.D., to be a Puisne Judge of Her Majesty's Court of Queen's Bench for Upper Canada, in the room and stead of the Hon. Robert Easton Burns, then lately deceased.

The announcement was well received by the many well-wishers of the learned gentleman who had thus been honored. Bright hopes were entertained for his future.

He took his seat on the bench during Hilary Term last. He presided at the assizes for the County of the City of Toronto, which opened on the 16th March last. He then opened the assizes for the United Counties of York and Peel, on the 13th April last; and on the 29th April last, during the sitting of the assizes, after a few days' indisposition, breathed his last.

Those who were intimately acquainted with him were aware that ever since his elevation to the bench, his health was precarious; but none suspected that the day of his death was so near at hand. Owing to his recent elevation to the bench, he did not appear to advantage as a Judge. It requires time to make a Judge of a barrister, however able; and Dr. Connor, ere he had made himself at home in his new position, was hurried off to eternity—a warning to all of the uncertainty of life, and of the folly of setting hopes or affections on things terrestrial.

He was not an old man at the time of his death. He was born in Dublin, in 1810; entered Trinity College in 1824, and graduated at the same institution in 1830. In 1830, he married Eliza Hume, the sister of Mrs. Chancellor Blake, and in 1832 came to Canada. For two years he lived in Orillia. Tired of country life, he returned to Ireland, resided a short time on the continent, and in 1838 was called to the Irish bar. In 1842, having returned to Canada, he was called to the Upper Canadian bar, and entered into partnership, in the practice of the law, with his brother-in-law, Mr. Blake, and the present Mr. Justice Morrison. In 1849, he revisited Ireland, and had conferred upon him by his alma mater the degree of LL.D. In 1850, upon his return to Canada, he was elected a bencher of the Law Society, and was appointed a Queen's Counsel. In 1856, he was elected a representative in the Legislative Assembly for South Oxford, and thenceforward devoted so much of his time to politics, that he to a great extent lost his practice. In 1858, he was appointed Solicitor-General for Upper Canada, which office he held only for a few days, owing to the defeat of the government of which he was a member.

Dr. Conner in manner was courteous, though at times bitter. He was an able advocate, and, had he attended to his profession, to the exclusion of politics, might in the course of time have earned for himself a comfortable competence. Of late years his temper was not improved, owing to the progress of disease of some kind, to which he ultimately succumbed.

We feel a delicacy in pronouncing an opinion upon his career as a judge, owing to the fact that it was so short, and owing to the fact that he is no longer living; but if the truth must be told, we have no hesitation in saying his friends were disappointed. Had it pleased Providence longer to spare his life, he would probably have improved, and become an able Judge.

In private life he was much esteemed. He was generous to a fault, and hospitable to all with whom he was acquainted. His death, so soon after his elevation to the bench, has cast a gloom over a large circle of friends, whose fond hopes have thus been destroyed.

MR. HALLOWELL'S DIGEST OF ACTS.

We published in the last number of the *Law Journal* a Digest of acts passed during the years 1860, 1861, and 1862, which repeal, amend, vary or affect the Consolidated Statutes of *Upper Canada*. We publish in this number a continuation of the Digest, which embraces acts passed during the same years affecting the Consolidated Statutes of *Canada*. The compiler is Mr. J. S. Hallowell, student-at-law, who has already made himself favourably known to our readers through the columns of the *Law Journal*. So far as we have been able to judge, we can say the compilation is an accurate one, and all must admit it is a useful one. It is difficult to keep up with the work of legislation in Canada. The amending, altering, repealing,

re-enacting, and chopping of every kind is well calculated, in the absence of some such aid as that of Mr. Hallowell's compilation, to confuse if not to mislead. Few men in practice have either the time or the inclination year by year to note the effect of each session's legislation. To all such, Mr. Hallowell's Digest will be of much value. And we are glad to learn that he has been induced to have it published in pamphlet form. It is for sale by Messrs. W. C. Chewett & Co., and other law booksellers in Toronto. Price 25 cents.

DIVISION COURTS.

A bill is now before Parliament to enable judgment creditors in Division Courts, to attach debts due their judgment debtors, provided the amount of such debts be within the jurisdiction of such Division Courts. It is introduced by Mr. Hooper, and is as follows:

BILL.

An Act respecting the Attachment of Debts in Division Courts:

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

I. Any party who has had an execution in any Division Court returned *nulla bona*, either as to the whole amount or as to part, may obtain from the Clerk an order that all debts owing by or accruing from any person or persons to the judgment debtor, of amounts within the jurisdiction of a Division Court shall be attached to answer the judgment.

II. In case the Judge be satisfied upon application on oath made to him by the party in whose favor a judgment has been given, or be satisfied by other testimony that such party will be in danger of losing the amount of the judgment if compelled to wait until the return of the execution before such order is obtained, he may direct the order to issue at such time as he thinks fit.

PROCEEDINGS AGAINST GARNISHEES.

III. The person to or from whom such debts are owing or accruing is hereinafter called the garnishee, and service on him of the order or notice thereof to him in such manner as the Judge directs, shall bind such debts in his hands.

IV. The order shall be for the garnishee to appear before the Clerk of the Division Court, within whose division the garnishee resides, at his office, on some day to be appointed in the said order; and the said order shall be served on such garnishee, and if the garnishee do not forthwith pay the amount due by him, or an amount equal to the judgment debt, and do not dispute the debt due or claimed to be due from him to the judgment debtor, or if he do not appear before the Division Court Clerk named in the order at his office, on the day appointed, then such Clerk, on proof of the service of the order having been made four days previous, may issue execution out of the Division Court of the division in which such garnishee resides, to levy the amount due from such garnishee, and the bailiff to whom such writ or execution is directed shall be thereby authorized to levy, and shall levy the amount mentioned in the said execution towards satisfaction of the judgment debt, together with the costs of the proceeding to be taxed, and his own lawful fees; but if the garnishee disputes his liability, the judgment creditor shall be at liberty to proceed against the garnishee, according to the practice of the said Division Courts, for the alleged debt or for the amount due to the judgment debtor, if less than the judgment debt, and for costs of suit.

V. Payment made by, or execution levied upon the garnishee under any such proceeding as aforesaid, shall be a valid discharge to him as against the judgment debtor to the amount paid or levied, although the proceeding should be afterwards set aside or the judgment reversed.

VI. There shall be kept at the several offices of the Clerks of the Division Courts a Debt Attachment Book, and in such book, entries shall be made of the attachment and proceedings thereon, with names, dates and statements of the amount recovered and otherwise; and the mode of keeping such books shall be the same in all the offices, and the copies of any entries made therein may be taken by any person upon application to the proper officer.

VII. The costs of any application for an attachment of debt under this Act, and of any proceedings arising from, or incidental to such application, shall be, in the discretion of the Judge, subject to any general rules that may be made in reference thereto.

VIII. This Act shall be read as if it formed part of the Division Courts Act.

DIGEST OF ACTS PASSED DURING SESSIONS OF 1860-1-2.

WHICH REPEAL, AMEND, VARY OR AFFECT, CONSOLIDATED STATUTES, FOR CANADA.

(*By* J. S. Hallowell, *Student-at-Law.*)

Imperial Act 3 & 4 Vic. c. 35, p. xix, Re-Union of Upper Canada and Lower Canada, vide 23 Vic. c. 21.

Con. Stat. C.

c. 1, s. 20, p. 4, acceptance by a member of Legislative Council of office of Speaker not to vacate his seat, repealed by 23 Vic. c. 3, s. 1.

c. 1, s. 24, p. 5, Governor to appoint Speaker, repealed by 23 Vic. c. 3, s. 1, s. 2 in lieu thereof.

c. 1, sch. A, p. 9, Electoral Division of Trent, vide 23 Vic. c. 39, s. 5.

c. 1, sch. A, p. 9, Electoral Division of Cataraqui, vide 23 Vic. c. 39, s. 5.

c. 2, s. 3, p. 12, Electoral Division City of Quebec, amended by 23 Vic. c. 1, s. 1, and vide s. 4, 7.

c 2, s. 4, p. 13, Electoral Division City of Montreal, amended by 23 Vic. c. 1, s. 2, and vide s. 4.

c. 2, s. 8, sub-s. 13, p. 16, North Riding of Waterloo, amended by 23 Vic. c. 46, s. 1.

c. 2, s. 9, sub-s. 3, p. 17, Electoral Division City of Toronto, amended by 23 Vic. c. 1, s. 3, and vide s. 4, 5.

c. 3, s. 4, sub-s. 4, p. 20, acceptance by a member of Legislative Council of office of Speaker not to vacate his seat, repealed by 23 Vic. c. 3, s. 1.

c. 3, s. 9, p. 21, so much of this section as relates to such office repealed by 23 Vic. c. 3, s. 1.

c. 3, s. 17, p. 23, so much of this section as relates to such office repealed by 23 Vic. c. 3, s. 1; vide 23 Vic. c. 3, s. 2, 3, 4, 5.

c. 3, s. 19, p. 24, deductions for non-attendance of member, amended by 23 Vic. c. 16, s. 1, sch. A, p. 25, amended by 23 Vic. c. 16, s. 4.

The Imperial Act 3 & 4 Vic. c. 35, s. 9, p. xxii, so much as relates to office of Speaker, repealed by 23 Vic. c. 3, s. 1.

Less than 31 days' attendance not to entitle member to sessional allowance, but to $6 00 a day, 23 Vic. c. 16, s. 2.

Case of a member attending only for part of the session, 23 Vic. c. 16, s. 3.

c. 6, p. 34, election of members of Legislature, vide 23 Vic. c. 1, s. 4, as to Quebec, Montreal and Toronto.

c. 6, s. 11, p. 41, voters' list L. C. as to Quebec, amended by 23 Vic. c. 1, s. 8.

c. 6, s. 14, p. 44, appeal from Revising Board to the Superior or Circuit Court, 24 Vic. c. 25, added.

Con. Stat. C

c. 6, s. 21, p. 48, Returning Officers in L. C., vide 23 Vic. c. 1, s. 6, as to Electoral Division of Cities of Quebec and Montreal.

c. 6, s. 22, p. 49, Returning Officers in U. C., vide 23 Vic. c. 1, s 6, as to Electoral Division of City of Toronto.

c. 6, s. 25, p. 50, qualification of Returning Officer, vide 23 Vic. c. 1, s. 6, sub-s. 2.

c. 6, s. 40, p. 59, as to polling places in Wards of Quebec and Montreal, vide 23 Vic. c. 6, s. 5.

c. 6, s. 82, 83, p. 76, provisions against bribery and corruption, and penalty, &c., repealed by 23 Vic. c. 17, s. 1, sub-s. 2, 3, 4, 5, 6, substituted therefor.

c. 9, s. 3, p. 159, spirituous liquors not to be furnished to Indians in U. C., rep. 23 Vic. c. 38, s. 1, s. 2 in lieu thereof.

c. 14, s. 6, p. 187, certain provisions as to sinking fund, rep. 23 Vic. c. 4, s. 1.

c. 17, p. 211, Customs Act, 23 Vic. c. 18 and c. 19, 24 Vic. c. 2, 3, and 25 Vic. c. 4, construed as one act, vide 23 Vic. c. 18, s. 1, 23 Vic. c. 19, s. 2, and 24 Vic. c. 2, s. 3, 24 Vic. c. 3, 25 Vic. c. 4, s. 7.

c. 17, sch. A, p. 255, Periodicals and pamphlets, &c., paying 10 per cent. duty, repealed by 23 Vic. c. 18, s. 1.

c. 17, sch. A, p. 255, goods paying 10 per cent., kerosene and coal oil, &c., added by 25 Vic. c. 4, s. 4.

c. 17, sch. A, p. 256, table of free goods, vide 23 Vic. c. 18, s. 2.

c. 17, sch. A, p. 256, coffee, green, additional duty of 3 cents per lb. imposed by 25 Vic. c. 4, s. 1.

c. 17, sch. A, p. 253, brandy, by 23 Vic. c. 19, s. 1, Governor may reduce duty to 30 per cent.

c. 17, sch. A, p. 254, wines, dried fruits, currants, figs almonds, walnuts and filberts, by 23 Vic. c. 19, s. 1, Governor may reduce duty to 20 per cent.

c. 17, sch. A, p. 254, coffee, ground or roasted, additional duty of 3 cents. per lb. imposed by 25 Vic. c. 4, s. 1.

c. 17, sch. A, p. 259, packages exempt from duty, repealed by 24 Vic. c. 2, s. 1, vide s. 2.

c. 17, sch. A, p. 254, molasses, additional duty of 5 cents. per wine gallon, imposed by 25 Vic. c. 4, s. 1.

c. 17, sch. A, p. 254, sugar, raw, additional duty of 2 cents. per lb. imposed by 25 Vic. c. 4, s. 1.

c. 17, sch. A, p. 254, sugar, refined, additional duty of 3 cents. per lb. imposed by 25 Vic. c. 4, s. 1.

c. 17, sch. A, p. 256, goods paying specific duty, confectionery, 3 cents. per lb. added by 25 Vic. c. 4.

c. 17, sch. A, p. 256, tea, new duty imposed by 25 Vic. c. 4, s. 2.

c. 17, sch A, p. 256, whiskey, new duty imposed by 25 Vic. c. 4, s. 3.

c. 17, sch. A, p. 256, free goods, scrap brass, &c., added by 25 Vic. c. 4, s. 5.

c. 17, sch. A, p. 261, all importations for the use of H. M. army and navy serving in Canada, or for the public uses of the province, free in certain cases, vide 25 Vic. c. 4, s. 6.

c. 19, p. 267, Duties of Excise Act and 25 Vic. c. 5, to be construed as one act, 25 Vic. c. 5, s. 18.

c. 19, s. 2, sub-s. 2, p. 268, what constitutes a distillery, amended 25 Vic. c. 5, s 2.

c. 19, s. 4, sub-s. 2, p. 268, duty for a distiller's license, rep. 25 Vic. c. 5, s. 3, sub-s. 2. which is substituted for the repealed section.

c. 19, s. 4, sub-s. 3, p. 269, duty for a brewer's license, rep 25 Vic. c. 5, s. 3, sub-s. 3, which is substituted for the repealed section.

c. 19, s. 8, p 270, duty per gallon on all spirits made in this province, amended 25 Vic. c. 5, s. 5, 6.

c. 19, s. 9, p 270, duty of one cent. per gallon on malt liquor, &c., altered to 3 cents. per gallon, 25 Vic. c. 5, s. 7.

c. 19, s. 17, p. 273, Revenue Inspectors to be called Collectors of Inland Revenue, 25 Vic. c. 5, s. 1.

Con. Stat C.

c. 19, s. 18, p. 273, powers of Inspectors as to premises, books and accounts of distillers, vide 25 Vic. c. 5, s. 17, 25 Vic. c. 5, s. 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, new.

c. 20, p. 277, provincial duty on tavern licenses, vide 23 Vic. c. 6, s. 4, and 25 Vic. c. 6, s 1.

c. 22, p. 281, Public Lands Act, rep. 23 Vic. c. 2, and vide c. 151, as to Indian Lands.

c. 24, p. 292, Ordnance and Admiralty Lands, vide 25 Vic. c. 2, as to telegraphs connected with military defences.

c. 24, 2nd sch. p. 297, as to land located by enrolled pensioner in Penetanguishene, rep. 23 Vic. c. 22, s. 1.

c. 28, s. 41, p. 314, official arbitraters of public works, vide 24 Vic. c. 7, s. 1.

c. 28, s. 42, p. 314, their oath, 24 Vic. c. 4, s. 5, repeals s. 42 and substitutes new form of oath.

c. 28, sch. A, p. 333, Port Burwell Harbour and Inner Basin, rep. 23 Vic. c. 103.

c. 28, s. 46, sub-s. 2, p. 316, claimants to give security for costs of arbitration, &c., rep. 24 Vic. c. 4, s. 2, and s. 3 substituted for repealed section.

c. 28, s. 59, p. 319, costs of arbitration, &c., rep. 24 Vic. c. 4, s. 2, and s. 4 substituted for repealed section.

c. 32, p. 379, Bureau of Agriculture, &c., amended 25 Vic. c. 7.

c. 32, s. 21, p. 383, corporate powers of Boards of Arts and Manufactures, by 23 Vic. c. 33, may borrow money.

c. 33, p. 406, Board of Registration and Statistics, vide 24 Vic. c. 21, as to trade marks, &c.

c. 34, p. 419, Patents for Inventions. Vide 24 Vic c. 139, as to exception in favor of John Ericsson, not a British subject.

c. 35, p. 433, Militia Act and 25 Vic. c. 1, construed as one Act, 25 Vic. c. 1, sec. 12.

c. 35, sec. 20, p. 437, rolls of companies to be made annually, amended 25 Vic. c. 1, s. 1.

c. 35, s. 22, p. 438, volunteer companies, of what to consist, rep. 25 Vic. c. 1, sec. 2, which is substituted for repealed section.

c. 35, s. 31, p 440, Volunteers' uniform, additional section added by 25 Vic. c. 1, s. 3.

c. 35, s. 32, p. 440, volunteer's arms, rep. 25 Vic. c. 1, s. 4, which is substituted for repealed section.

c. 35, s. 40, p. 442, payment of active militia, rep. 25 Vic. c. 1, s. 6, which is substituted for repealed section.

c. 35, s. 43, p. 444, payment of officers, &c., rep. 25 Vic. c. 1, s. 7, which is substituted for repealed section.

Appointment of brigade majors, &c., 25 Vic. c. 1, s. 5.

On proof of performance of drill, active militia to be paid, 25 Vic. c. 1, s. 8.

Pay of militia called out for active service, 25 Vic. c. 1, s. 9.

Raising regiments in time of war, 25 Vic. c. 1, s. 10.

Drill Association, 25 Vic. c. 1, s. 11.

The five last mentioned sections are new enactments.

c. 40, s. 20, sub-s. 1, p. 527, unlicensed persons not to act as runners for steamboats, &c., rep. 25 Vic. c. 8, which is substituted for repealed section.

c. 45, s 3, p. 558, Board of Steamboat Inspectors, to make certain regulations, &c., amended 23 Vic. c. 28, s. 1.

c. 45, s. 33, liability for damages sustained by the non-observance of this act, p. 566, vide 23 Vic. c. 28, s. 2.

c. 45, s. 34, penalty for contravention, p. 566, vide 23 Vic. c. 28, s 2.

c. 45, s. 35, recovery and application of penalties, p. 566, vide 23 Vic. c. 28, s. 2.

c. 47, s. 10, p. 590, Inspectors of flour and meat at Quebec and Montreal to have assistants, amended 23 Vic. c. 26, s. 1.

c. 47, s. 17, p. 594, branding qualities of flour, rep. 23 Vic. c. 26, s. 2, and see grades there substituted.

c. 47, s. 18, p. 595, renewing samples, amended 23 Vic. c. 26, s. 3.

23 Vic. c. 26, s. 4, interpretation clause.

c. 51, s. 2, p. 630, appointment of inspectors of sole leather, rep. 24 Vic. c. 22, which is substituted for repealed section.

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c. 54, s. 4, 5, 6, 7, 8, 9, 10, 12, 13, p. 644-5-6; 24 Vic. c. 23, s 3, enacts that these sections have applied and shall apply to all Banks chartered before, during or after the sessions of 1859.

c. 54, s. 8, p. 645, Banks may take by indorsement bills of lading, &c., as collateral security for bills, &c., discounted by them, amended 24 Vic. c. 23, s. 1.

c. 54, s. 11, p. 646, Act to apply to Banks chartered in 1859, repealed by 24 Vic. c. 23, s. 3.

Advances on bills of lading to give a first lien on goods, by 24 Vic. c. 23, s. 2.

c. 56, s. 70, p. 679; so much of this section as limits the duration of 4 & 5 Vic. c. 32, rep. 24 Vic. c. 6, s. 5, which continues 4 & 5 Vic. c. 32, as regards Savings Banks, for five years from 18th May, 1861, and from thence until the end of the next ensuing session of the Provincial Parliament.

c. 58, p. 682, Insurance Companies, by 23 Vic. c. 34, may take 8 per cent.

c. 63, s. 1, p. 719, formation of Joint Stock Companies, amended 23 Vic. c. 30, s. 1, and 24 Vic. c. 19, s. 1, vide 23 Vic. c. 31, and 24 Vic. c. 20.

c. 63, s. 2, p. 720, how statement to be acknowledged, amended 24 Vic. c. 19, s. 2.

c. 63, p. 730, new section added by 23 Vic. c. 30, s. 2, and vide 23 Vic. c. 31, and 24 Vic. c. 20.

c. 64, p. 730, Mining Companies, vide 23 Vic. c. 31, and 24 Vic. c. 20.

c. 65, p. 732, Joint Stock Companies, Gas and Water; 23 Vic. 32, extends c. 65 to parish and township municipalities, vide 23 Vic. c. 31, and 24 Vic. c. 20.

c. 66, p. 748, Railway Act amended 23 Vic. c. 29, vide 23 Vic. c. 31, and 24 Vic. c. 17, 20.

c. 66, s. 11, sub-s. 1, p. 756, explained by 24 Vic. c. 17, s. 1, 2.

c. 66, s. 131, p. 784, one railway company may agree with another respecting traffic, amended 24 Vic. c. 17, s. 4.

When County Court judge interested in lands required for railroad, 23 Vic. c. 23, s. 10, 24 Vic. c. 17, s. 3.

Penalty on railway employees refusing to forward traffic, 24 Vic. c. 17, s. 5.

Interpretation of certain words, 24 Vic. c. 17, s. 6.

24 Vic. c. 17, to form part of Railroad Act, 24 Vic. c. 17, s. 7.

Interest of purchase money to be deemed part of railroad's working expenses, 24 Vic. c. 17, s. 8.

c. 67, p. 797, Electric Telegraph Companies, vide 23 Vic. c. 31, and 24 Vic. c. 20.

c. 68, p. 801, Joint Stock Companies, to facilitate the transmission of timber down rivers and streams, vide 23 Vic. c. 31, 24 Vic. c. 20.

c. 76, p. 860, practice of physic and surgery, and the study of anatomy, vide 24 Vic. c. 24, as to vaccination.

c. 77, s. 91, p. 882 plans of towns, &c., to be registered. vide 24 Vic. c. 41.

c. 80, p. 892, foreign judgments and decrees, vide 23 Vic. c. 24,

c. 88, p. 940, fire inquests, by 23 Vic. c. 35, extended to country parts, and by 24 Vic. c. 33, amended as to Upper Canada.

c. 89, s. 1, 2, 3, p. 944-5, procedure in extradition matters, rep. 24 Vic. c. 6, s. 1.

c. 89, s. 1, p. 944, 24 Vic. c. 6, s. 2, substituted therefor.

c. 89, s. 2, p. 945, 24 Vic. c. 6, s. 3, substituted therefor.

c. 89, s. 3, p. 945, 24 Vic. c. 6, s. 4, substituted therefor.

c. 91, p. 952, offences against the person, vide 24 Vic. c. 8.

c. 91, s. 5, p. 953, poisoning with intent to murder, amended 24 Vic. c. 7.

c. 91, s. 13, p. 955, feloniously administering drugs, vide 24 Vic. c. 7.

c. 92, p. 961, offences against the person and property, vide 24 Vic. c. 8.

c. 92, s. 36, 37, p. 969-70, destroying trees, &c., vide 23 Vic. c. 37.

c. 93, s. 24, 25, p. 985, destroying trees, &c., vide 23 Vic. c 37.

c. 93, s. 28, p. 986, vide 25 Vic c. 22, s. 2.

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c. 95, p. 998, lotteries, by 23 Vic c. 36, c. 95, not to apply to bazaars for charitable purposes.

c. 99, s. 39, p. 1016, perjury, indictments in cases of, amended 24 Vic. c. 10.

c. 99, s. 40, p. 1016, subornation of perjury, indictments in cases of, amended 24 Vic c. 10.

c. 99, s 60, p. 1022, obtaining money, &c., under false pretences, vide 24 Vic. c. 10.

c. 99, s. 91, 92, p. 1029, recording sentence of death, effect of, rep. 24 Vic. c. 9.

As to indictments for the following offences—conspiracy, keeping a gambling house, keeping a disorderly house, and any indecent assault—vide 24 Vic. c. 10.

c. 102, s. 54, p. 1055, in U.C. County Court Judge may order person committed for trial to be bailed, rep. 24 Vic. c. 15, s 1, s. 2 substituted for s. 54.

c. 103, p. 1083, Justices of the Peace out of Sessions in re summary convictions, vide 23 Vic. c. 14, s. 3.

c. 107, p. 1155, prisons for young offenders, vide 23 Vic. c. 22, s. 2, as to Penetanguisheno.

c. 108, s. 6, p. 1159, provision as to Criminal Lunatic Asylums, rep. 24 Vic. c. 13, s. 1, and vide s. 3 substituted for s. 6.

c. 109, p. 1159, confinement of dangerous Lunatics, vide 24 Vic. c. 13, s. 2.

c. 110, s. 4, p. 1164, absence of Chairman of Jail and Prison Board, &c., rep. 24 Vic. c. 11, s. 1, s. 2 substituted for s. 4.

c. 110, s. 11, sub-s. 1, p. 1167, Inspectors to visit prison at least four times a year, rep. 24 Vic. c. 11, s. 1, s. 3 substituted for s. 11, sub-s. 1.

c. 110, s. 11, sub-s. 3, p. 1168, to keep minutes of their visits, rep. 24 Vic. c. 11, s. 1, s. 4 substituted for s. 11, sub-s. 3.

c. 110, s. 11, sub-s. 10, p. 1169, Inspectors to report annually, amended 24 Vic. c. 11, s. 6.

c. 110, s. 25, p. 1175, Inspectors to keep a record of proceedings and transmit to the Governor, rep. 24 Vic. c. 11, s. 1, s. 5 substituted for s. 25.

c. 110, s 32, p. 1176, Inspectors to report annually, amended 24 Vic. c. 11, s. 6.

Words "Board" "Inspectors" to mean a quorum of the same, 24 Vic. c. 11, s. 7.

c. 111, s. 46, sub-s. 1, p. 1191, salaries of Inspectors, rep. 24 Vic. c. 12.

c. 111, s. 73, p. 1199, treatment of military convicts, rep. 24 Vic. c. 12.

c. 111, s. 74, p. 1199, treatment of insane convicts, rep. 24 Vic. c. 12.

7 Vic. c. 10, 9 Vic. c. 30, 12 Vic. c. 18, 13 & 14 Vic. c. 20, continued by 25 Vic. c. 9, to 1st January, 1863, and thence until the end of the then next ensuing session of the Provincial Parliament, vide 23 Vic. c. 14, s. 2, 24 Vic. c. 5, s. 2, vide s. 3, saving clause.

Defects in the registration of titles in the county of Hastings, continued by 25 Vic. c. 9, s. 4, to 1st January, 1863, and thence until the end of the then next ensuing session of the Provincial Parliament, vide 23 Vic. c. 14, s. 5, 24 Vic. c. 9, s. 4, vide s. 3, saving clause.

SELECTIONS.

CRIME AND CRIMINALS.

BY ALEXANDER PULLING, ESQUIRE, OF THE INNER TEMPLE, BARRISTER-AT-LAW.

The daring atrocities recently perpetrated in the open streets of London, have had the effect of forcing on public attention the very serious social question of the best mode of dealing with our criminals. Able writers in the public journals, experienced officials, and intelligent reformers, have given us their various views on the subject of transportation, penal servitude, prison discipline, and tickets-of-leave. And we have

had described to us, in startling colours, the 'Guilt Gardens' where crime is suffered to grow, in spite of the weeding of the police, and the missionaries of religion and humanity.

There appears to be an almost unanimous feeling that our present provisions for checking the growth of crime, for dealing out justice to malefactors, and protecting the community from their outrages, are defective; we see crime systematically carried on, and the gardens of guilt flourish under the immediate surveillance of the police, and hardened offenders let loose on society, through defective provisions for keeping them under restraint. The Government, moved by the pressure from without, has instituted a formal enquiry, but in spite of all that has been said or written, we have as yet no practical suggestions for legislative interference.

Our known criminal population at this day living in unconstrained liberty, constitutes a large and formidable body, amounting, according to the last police return, to upwards of 123,000 individuals,* having for their known haunts upwards of 24,000 houses dens of infamy where crime is systematically encouraged, and the criminal sheltered and protected. The known criminals suffered to be at large out-number twelve times the convicts in actual custody, and six times the whole constabulary force of the kingdom. They swarm in our principal towns, with varying force in proportion to the ordinary population; and, as might be expected, are in the greatest numbers in London, where the criminals at large are upwards of 21,000 strong, living in or frequenting (as we are told) 2,755 houses of evil fame, disreputable beer and spirit ops, coffee-houses, brothels, tramps' lodging-houses, and other places of a similar character.

The 'Thieves' Quarter' is in most places a distinct district. It often includes whole streets, occcupied by criminals, or these who are in league with them, or directly derive their support from them; and the rents and profits of these sinks of iniquity, where do they go to? The depredations on the public have been variously estimated at from £700,000 to a million sterling per annum. We may conjecture how much of this goes to the receiver of stolen goods; and, looking at the high rents which are always charged for the abodes of infamy, how much finds its way in the shape of rent to the lodging-house keeper, and to his immediate landlord, and to the actual owners of property so polluted? Those who have made the haunts of vice their study, tell us that the actual perpetrator of crime is proverbially improvident. He squanders his ill-gotten spoil almost as soon as he acquires it. His existence is one of continual venture: riot and revelling to-day —sickness, want, and misery the next. The community of criminals, however, hold fast by one another. The thief, when business is slack, can obtain credit from those who thrive by his misdeeds. The trade of thieving, like other trades, to be successfully carried on, requires the aid of the CAPITALIST. Without the ready money, which the receiver of stolen goods instantly supplies, and those dens where the criminal is harboured, the felon's vocation would be impracticable. Is it not within our power to suppress both the one and the other? The principle is incontrovertible, that *whatever is gained by, or used for the purpose of, contravening the law, should by the law be forfeited.* Bring this home to the case of the receiver of stolen goods, and the owners of places used as the *cover* for criminals, and robbery as a trade would cease of itself.

It may be assumed that the certain prospect of a pecuniary loss—even of simply having to restore what has been dishonestly obtained—would be far more effectual to check the criminal than the risk of any superadded personal suffering. The imagination, indeed, soon accustoms itself to mere risks, however serious, if there is an adequate inducement to incur them. Few of us are deterred by the prospect of possible mischance, from pursuing our ordinary callings by sea or land, in peace or war; and the *inevitable risk* of instant death, or of personal injury, loses its terror when it has been often incurred. None but the insane, or the predetermined martyr, however, rush on *certain* injury or loss.

The criminal, whose whole life has been one of venture, is in like manner influenced little by the terror of possible punishment; but let the prospect of failing in his enterprise, or suffering from what he is about to do, be certain and immediate, and the mere brute instinct of self-preservation will restrain him. When we look back to the curious varieties of punishment which have from time to time been devised with the view of deterring from crime, and consider how ineffectual they all of them were, from the pecuniary mulct of our Saxon ancestors, to the remorseless sentence of death which our grandfathers indiscriminately adhered to, is it not beyond a doubt that crime cannot be suppressed by a mere revision of the law affecting personal punishments? We may go a step farther, and say that the felon's calling can only be put an end to by making each venture inevitably unprofitable and impracticable. The odious slave trade survived the penal laws which were designed to repress it, and only died away when, with the progress of civilisation, the property in slaves was abolished, and the hideous slave traffic became a profitless venture. The smuggler, too, in days gone by, was deterred by no mere penal laws; but when, by judicious legislation, the contraband trade is come to be, on the whole, an unprofitable one, the old class of smugglers, who dared every danger with the chance of gain, have abandoned their calling in despair. Is it impossible to beat the robber in like manner out of the field, by diminishing the temptation and increasing the difficulty of his calling, to obstruct and prevent the offender in the career of evil, and to destroy the market for his produce; to substitute greater certainty of punishment and loss, for the mere risk which is now incurred; to make the criminal's career, not only as distasteful as possible, but one of certain failure—leaving only for the perpetration of crime those marked with the brand of incorrigible felon, operating, like that of incurable lunatic, as a forfeiture of all the privileges of a rational being?

If we look to the existing state of the law with regard to confiscation as the result of crime, we are bound to see that the principle aimed at is most inadequately carried out;—that the bankruptcy laws and revenue laws are more severe and certain against defaulters and those who deal with them, than that part of our code which aims at the repression of felony. Felony, by the common law, operates *de facto* as a forfeiture of all the convict's rights and property; but as the legal operation of the forfeiture dates only from the conviction, and not from the time of the offence, the just consequences of the crime are almost always evaded. The habitual receiver of stolen goods, the man who has grown rich by crime, never omits on the very eve of an inevitable conviction to make an assignment of all his property, so as effectually to insure its full enjoyment on his own release from prison, or its continued employment in its wonted course—the trade of crime. The Court of Common Pleas, a few years ago, was forced to decide that such an assignment was valid, though made after the commencement of the assizes, and of the very date of the record of the conviction, but before the day on which sentence was passed. It is true, that if actual fraud in the making the assignment were proved, this would invalidate it; but the act of assigning in contemplation of a conviction is not deemed illegal, and such assignments are rarely, if ever, defeated. The bankruptcy messenger can seize all the bankrupt's estate and effects which he possessed when he made the first default; but the estate and effects of the felon escape the grasp of the law which he has outraged.

* Though the formal returns show in these figures an apparent decrease in the numbers, as compared with preceding years, this unfortunately is accounted for merely by an error in the returns—the larger number returned three years ago as known criminals, including all those who *had ever been convicted*, whether proved to be relapsing into crime or not; while the returns now made only include those known to be living by crime.

Can there be any doubt of the justice of a provision which should make a conviction for felony operate as an absolute confiscation of all the property belonging to, or in the order or disposition of, the felon at the time of his offence; except, of course, as against *bonâ fide* purchasers for value without notice? This would, no doubt, sometimes fall as an unexpected blow on innocent persons dependent upon the felon's support; but the same misfortune happens in unexpected bankruptcies; and the apprehension of forfeiture would operate very beneficially in deterring from crime or from having dealings with suspected criminals. Such a provision would certainly go farther to destroy the business of receivers of stolen goods, than any amount of personal punishment that might be devised.

Again, when a vessel has been found to be engaged in a smuggling adventure, our revenue laws absolutely confiscate both ship, cargo, and stores, though the owners may have been really innocent of the illegal use to which their property had been applied—but the property in the felon's den, with the insignia of crime all round, is protected by the law. Every person interested in such property may be fixed with a guilty knowledge of the nefarious purpose for which it is used—every shilling received in the shape of rent may carry with it proof of the polluted source from which it came, and yet the law allows the property to continue, and bids the nuisance go on and prosper. Would the doctrines of our Constitution, or the principles of right and wrong, be violated if such property were *de facto* confiscated; if all houses where crime was habitually carried on, and known criminals harboured, were by law to become forfeited to the State, subject only to the *bonâ fide* rights and interests of those who had no notice?

The receiving houses for known criminals, indeed all houses of ill repute, it is notorious, bring in the most rent, and the least amount of losses from bad debts, or expenses of repairs, &c. They are owned, for the most part, if not by actual criminals, at all events by those who, having full power to suppress the evil, gain a shameful profit by its continuance. In some cases, no doubt, there are to be found among the many who have freehold, leasehold, legal or equitable interests in such property, persons who though, in the present state of the law, hesitating to take the initiative in attempting to prevent their property being applied to such nefarious uses, would hail with satisfaction any legal provision which would necessitate their getting rid of their infamous tenants; but these innocent possessors of income derived from such polluted sources form the exception, which any contemplated change in the law could easily provide for.

The remedy which seems most reasonable for getting rid of such decided social nuisances as the dens of iniquity already referred to, is, that every place proved to be the resort of known criminals of any class, or where any unlawful vocation is carried on, should *de facto* be forfeited; the proceedings for enforcing such forfeiture to be taken by the person next entitled to enter as landlord, if not conniving at such illegal use of the property, and on his default, by the Attorney-General; but in the latter case, all persons having any leasehold or freehold interests in the ill-omened property, and not proved to have had notice of the purpose for which it was applied, should be entitled to have such property restored, according to their several interests therein, on paying the expenses of the proceedings which had been rendered necessary by the illegal use of the same. In any provisions for carrying these suggestions into effect, ample power should be conferred for compelling those immediately entitled to take advantage of the forfeiture, to do so at once; and in default of proceedings by the various mesne landlords, and the owner of the freehold, the forfeiture should *prima facie* be to the Crown; so that every person in succession having any interest in property so applied to illegal purposes might have the power and inducement, as well as the obligation, to suppress the nuisance. The robber's nest cannot be now made in the clefts of rocks or subterranean caverns. Destroy the Thieves' Quarter, and the known criminal would be deprived of what is really essential to the carrying on the trade of robbery.

It remains to say a few words on the subject of personal control over the known criminal, and of his arrest, conviction, and personal punishment. In the case of persons who have been once convicted of felony, it can hardly be held an infringement of our general principles affecting the liberty of the subject, if the law imposed on the discharged convict, some liability to guarantee society against his relapse into crime, as a necessary protection for the rest of the community.

If an irascible person threatens violence to his neighbour, the law requires him to find sureties to keep the peace towards all Her Majesty's subjects, and he is liable to be imprisoned if he cannot find security, or afterwards offend. The known associate of thieves, however; the offender who has been a dozen times convicted, and who disclaims all attempts to gain an honest livelihood; bent on corrupting all who join him, and ever on the look out for the opportunity to plunder and rob; is, according to our present system, never called on to find security for his good behaviour. The danger to society is surely greater from an incorrigible criminal than from a man actuated by momentary passion, or a convict so far reformed as to obtain a ticket of leave.

Now to afford greater protection to the community against the criminal at large, would it not be better to provide that every conviction for felony should *de facto* operate as a recognizance on the part of the convict to be of good behaviour for a time to be named in the sentence? the recognizance to be forfeited on proof, to the satisfaction of a police magistrate, either of the convict leading a dishonest life, or not honestly endeavouring to maintain himself. All defaulters in this respect to be remitted to prison, unless some responsible sureties be found for their good behaviour.

As a further protection from the atrocities we have recently heard so much of, would it not be as well to increase the power of the police against persons reasonably suspected of felonious intentions? The Act 15 & 14 Vict. c. 10, makes it an offence to *go by night time* armed with offensive weapons or instruments with intent to commit a burglary, or having possession of housebreaking implements in the night time without reasonable excuse.

Would it not be wise to carry out this principle, and make it an offence for any suspected criminal to be found *at any time* in possession of dangerous or offensive instruments without lawful excuse; the liability to be treated as a suspected person to attach to all persons who have ever been convicted of felony or are the known associates of criminals?

At the present time there is too often a failure of justice in adjudicating on the convict, in consequence of defects in the evidence of a previous conviction, or of deficient information as to the circumstances under which the conviction took place, or of the real character of the offender.

As a remedy for this, why should there not be a Register kept of all persons who have been previously convicted? In this Register might be entered the name, age, and description of the convict, his adopted *alias* or *soubriquet*, a note of his conduct while in custody, his previous character and education, trade or vocation, his ordinary places of abode or resort, and such other particulars as might be necessary to establish the identity of the convict, and guide the judge or magistrate in discharging his duty.

To facilitate the formation of such a Register, all necessary information, as far as it can be obtained, should, in the case of persons accused of felony, be duly noted by the police officer having charge of the case; and all particulars should be furnished to the judge or magistrate presiding at the trial; and on the trial for any offence committed after a previous conviction, a note of these particulars should be annexed to the record of such conviction.

With regard to the much vexed question of tickets-of-leave, *it is hardly to be denied that the indulgence shown* after a judicial sentence deliberately passed, is, to a certain extent, a cancellation of that sentence in a manner not adequately provided for by the law; the indulgence being given for good conduct whilst under restraint, and not always justified by the offender's conduct when at large. The gaol chaplain, or the *dilletante* felon-tamer, may be deceived. The lunatic under the immediate eye of his keeper may be harmless, but very unfit to be discharged from all restraint. The tigers that tamely let Van Amburgh play his experiments upon them, would be very awkward animals to meet at night on the high road. To encourage good conduct in the prisoner, without diminishing the efficacy of his sentence—to hold out to the convict an immediate inducement to reform, and at the same time to prevent errors or abuses in the system of interfering with the authority of our judges—would it not be well to provide, that no ticket-of-leave, except in the case of urgent necessity from illness, &c., be granted *without the express sanction of the judge or magistrate who passed the sentence*, or in case of his death, by some other judge? All persons released on tickets-of-leave to be required to present themselves at stated times before a police-magistrate and to have their ticket-of-leave indorsed, so as to show what their conduct has been since it was granted.

With such additional restrictions on the criminal pursuing his infamous career, we might give more positive aid to the reformed or penitent offender.

Could it not with advantage be provided, that a convict, whether on ticket-of-leave or discharge, striving to gain an honest livelihood, should have more effectual protection from the police against maltreatment from his former associates or others; and on giving proof to the satisfaction of a police-magistrate of one year's good character, be entitled to have a formal certificate thereof, and an entry of the fact made against his name, on the Register of Convicts?

If any regulations made to carry out these suggestions were followed by more judicious rules for the profitable employment of prisoners, and enabling them on their discharge to support themselves by honest labour, or to emigrate, and by more care on the part of our local authorities for the healthiness and comfort of the dwellings of the poor, our criminal population would be very materially diminished, and the amendment of the offender, instead of being a mere *make-believe* to delude the unwary, would be permanent and real; the growth of crime would be effectually checked, and the criminal offender more often converted into the useful citizen.

DIVISION COURTS.

TO CORRESPONDENTS.

All Communications on the subject of Division Courts, or having any relation to Division Courts, are in future to be addressed to "The Editors of the Law Journal Barrie Post Office."

All other Communications are as hitherto to be addressed to "The Editors of the Law Journal, Toronto."

THE LAW AND PRACTICE OF THE UPPER CANADA DIVISION COURTS.

(*Continued from page 98*)

UNIFORMITY OF PROCEDURE IN THE DIVISION COURTS.

We continue this subject from last number.

We believe that much misapprehension exists as to the true objects of the Judgment Summons Clauses; and yet they seem plain enough; and if the provision was rightly and discreetly administered, would not be faulted by the fair creditor or upright debtor.

The subject of the enactment was briefly, and, we *think*, well put some years ago by Judge Gowan, in a published address. The learned judge—after expressing an opinion that the (then) new provision would be a great blow to fraudulent practices by debtors, and, in some measure, check the disposition common with imprudent persons to incur debts recklessly, and without any reasonable prospect of being able to discharge them afterwards—goes on to say:—"The powers given are for the discovery of the property withheld or concealed, and for the enforcement of such satisfaction as the debtor may be able to give, and for the punishment of fraud. This last is by no means to be understood as imprisonment for the debt due. Under the statute a debtor cannot be imprisoned at the pleasure of the creditor merely, without public examination by the court, to ascertain if grounds for it exist in the deceitfulness, extravagance or fraud of a debtor. The man willing to give up his property to his creditors, ready to submit his affairs to inspection, and who has acted honestly in a transaction, although he may be unable to meet his engagements, has nothing to fear from the operation of the law. It is the party who has been guilty of fraud in contracting the debt, or by not afterwards applying the means in his power towards liquidating it, or in secreting or covering his effects from his creditors, upon whom the law looks as a criminal, and surrounds with danger."

Perhaps one of the most important powers is that which relates to the discovery of property withheld or concealed. The creditor's object is to get his money—to secure the fruit of his judgment; and the power is rarely brought into motion with a view of merely punishing a debtor. The examination of the debtor is sometimes the easiest, and it is often the only method by which a creditor can tear away the veil of fraud from dishonest contrivances to cover property; and any one at all acquainted with the business of the division courts will know that a man against whom executions upon executions have been returned "no goods" is often proved out of his own lips to have ample means, or to have property in the name of another person, or to have debts or promissory notes due to him amply sufficient to meet all his engagements; and many a time within the writer's own knowledge, have men paid claims, sometimes at the last moment, from a well-supplied purse, rather than submit to an examination. It is easy to understand that a dishonest person may be able to deal with his property so that a bailiff would have no alternative but to return "no goods" to an execution against him; and a man with $1,000 in good notes in his pocket may laugh at a *fi. fa.*; but put this man under examination, and the truth, or a portion of it, will come out, and payment, or punishment for refusing, will be the appropriate result. From these

considerations it is obvious that a dishonest man who has means, but no inclination to pay his debts, will most anxiously desire to escape an examination. And, therefore, the law properly provides that should he neglect or refuse to appear he is to be punished, not, strictly speaking, as for a contempt, but non-appearance goes to show the high probability that some fact exists the telling of which would speak against him or benefit his creditors. Section 165 provides clearly enough for the cases under which a judgment debtor after summons may be committed, and that under five distinct heads. The first three relate to the personal conduct of the debtor after summons served on him.

1. If the debtor does not attend the summons as required, or allege a sufficient reason for not attending.

2. If he refuses to be sworn, or to give a full statement of his transactions and affairs; or,

3. If he does not make answer to the same to the satisfaction of the judge.

The judge may order him to be committed.

The last two grounds are—

4. If it appear to the judge either by examination *of the party* or *by the evidence*,

(*a*) That the party obtained credit from the plaintiff, or incurred the debt or liability under false pretences; or,

(*b*) By means of fraud or breach of trust; or,

(*c*) That he wilfully contracted the debt or liability without having at the time a reasonable expectation of being able to pay or satisfy the same; or,

(*d*) Has made, or caused to be made, any gift, delivery or transfer of any property, or has removed or concealed the same with intent to defraud his creditors, or any of them; or

5. If it appears to the satisfaction of the judge that the party had, when summoned, or, since the judgment was obtained against him, has had sufficient means and ability to pay the debt, &c., and refused to pay, &c.

Then, and in any such case, the judge may, if he thinks fit—*i. e.*, in the exercise of a sound discretion—under the circumstances make an order to commit the party to the common gaol for a period which must not exceed forty days; but by section 169 he may obtain his discharge at any time upon satisfying the demands against him.

Now it is quite impossible to do justice to the parties or to carry out the law without a special examination into each particular case, and the judge who, as our correspondent states, "summarily disposed of a great number of judgment summonses by one order applicable to the whole batch, without hearing one word of evidence," displayed great ignorance or gross indifference as to his duties.

Our correspondent remarks further that "the benefit of the judgment summons clauses are practically denied in another county, because the judge has ordered the clerks of all his courts not to issue judgment summonses, unless conduct money is deposited for the judgment debtor, the same as if he were a witness, a thing never thought of in the superior courts."

We do not think the judge was acting with authority in giving the order stated, but we are by no means prepared to say that he might not under certain circumstances decline to make an order to commit for default of appearance, unless it was shewn to him that an indigent debtor residing at a distance from a court was furnished with conduct money. Our correspondent is wrong in saying it is "a thing never thought of in the superior courts," for several of the judges will not grant an order to commit unless there is some proof that the defendant has had conduct money paid him.

We must reserve further comment on this subject till next number.

CORRESPONDENCE.

New Trial on Interpleader.

To the Editor of the Law Journal.

Gentlemen,—The Common Pleas have recently decided, in *Mulligan* v. *Cook et al*, that a new trial in interpleader matters cannot be granted in a Division Court. I have always been of opinion that such power did exist, under the 107th section of the Consolidated Division Courts Acts. A similar decision, in *Regina* v. *Doty*, took place before the passing of the Consolidated Act. The impression gains ground that the recent decision virtually says, No new trial can be granted in the Division Courts. No mention is made of new trials, except in 107th section. I have failed to discover that any distinction is there made. The words are general, and confined to no particular class of cases.

Yours, &c., R. Williams,
Div. No. 1, *Co. Perth.*

Stratford, April 7, 1863.

[We agree on all points with our correspondent. The right of new trial in interpleader matters is more important than in ordinary cases; but the decisions referred to seem to run the other way, and of course they must govern in the Division Court. Should Mr. M. C. Cameron's bill pass, the latter clauses of his bill will do much to prevent the evils that would arise from want of the new-trial power, and we hope those clauses may pass. The first clauses, as to altering Divisions, are most objectionable, and would be sure to produce constant changes in Divisions, and unseemly efforts to serve selfish ends. No arrangement would be stable with such a provision, —Eds. L. J.]

MALAHIDE, April 11, 1863.

Ly-law— School Rate—Preliminaries.

To the Editors of the Law Journal.

GENTLEMEN,—A question involving the right of the judge of a Division Court, in the face of a municipal by-law imposing a school section rate, to try the validity of the preliminary proceedings of the school trustees, upon which the by-law was founded, having occurred in this neighbourhood, and conflicting opinions by legal gentlemen having been given on the subject, I take the liberty of submitting the matter to you.

The trustees of a union school section made a written application, under their corporate seal, to the Municipal Council, to levy and collect on the rate-payers in that part of said section lying within said municipality a certain amount, to assist in defraying the necessary expenses of the school, under the 10th and 12th sub-sections of the 27th section of the Common School Act (Con. Stat. U. C., p. 734), but did not show the decision or proceedings of the school meeting, under the 4th sub-section of the 16th section of the Common School Act (Con. Stat. U. C., p. 730).

The Municipal Council, as required by the 34th section of the Common School Act (see Con. Stat. U. C., p. 738), impose the tax. One of the rate-payers is sued in the Division Court for the amount, who resists the tax and defends the suit, on the following grounds, viz.: that the trustees had no authority to impose the rate themselves, nor get the Council to do so for them, inasmuch as at the annual school meeting it was decided "that the school was to be maintained by rate bill on scholars," which, with the Government, municipal and other grants, would have been sufficient to have maintained the school without taxation.

But the school trustees give another version of this, and assert that the annual meeting was declared illegal by the local superintendent, and that at a subsequent meeting, called under his authority, the rate-payers decided to have a free school, and authorized trustees to levy the amount necessary to maintain said school on ratable property in the said section.

The collector's roll was produced to prove amount of tax, by-law to show that it was regularly imposed, and the written application of trustees, upon which they claim they were compelled to act.

It was contended that the court had no right to go behind these documents, and enquire into the action of the rate-payers at their school meetings, but, that the request of the trustees, the by-law, and collector's roll, are conclusive.

It was contended, on the other part, that the Municipal Corporation, before they passed their by-law, were bound to enquire into the action and decision of the school meeting. The case of *Haacke* v. *Marr*, 8 U. C. C. P., 441, is relied upon by both parties in support of their opinions.

Draper, C. J., says that "the condition precedent to the exercise of the power to pass a by-law to levy a rate for school purposes within the section, should have been set forth in *Haacke* v. *Marr*" (see p. 445); and on page 443 he says, "If that authority can only be exercised either upon request or with the concurrence or consent of other parties, then I apprehend that the party must show, not merely that the by-law was passed, but that it was passed upon such request, or with such concurrence or consent."

Now, the question in debate is: One party insists that the assent and proceedings of the school meeting, *besides the request of the trustees*, is necessary to be shown. The other party insist that the request of the trustees evidenced by their corporate seal was all that the Municipal Council required as the condition precedent to their passing the by-law, and levying the special school section rate.

Your views in your next publication on the subject, will oblige,

Yours truly,

A SUBSCRIBER.

[We insert the letter of our correspondent, but as the questions to which he adverts are now before a court of competent jurisdiction for ajudication, we must decline to interfere.]—EDS. L. J.

UPPER CANADA REPORTS.

COMMON PLEAS.

(Reported by E. C. JONES, Esq., *Barrister-at-Law, Reporter to the Court.)*

SAMUEL MCLENNAN QUI TAM. v. PETER B. BROWN.

Magistrate—Conviction by two—Return of—Immediate—Signatures.

In an action against a magistrate for neglecting to make an immediate return of a conviction had before him and another justice on the 25th of September, 1861, it was sworn that a return accompanied by the conviction itself was made by the witness for himself, and on behalf of the defendant on the 6th December, 1861, and signed in the defendant's name by the witness, as well as for himself, the defendant having authorised and requested him so to sign it. The judge at the trial left it to the jury as to whether the return was "immediate" as required by the statute, telling them that the word immediate should be construed to mean within a reasonable time. Upon a verdict for defendant, and a motion for new trial.

Held, that the fact was properly left to the jury to decide whether the return as made came within the definition of the word "immediate," and the decision of a jury upon a matter of fact in a penal action is final.

That although the statute requires the return to be made by the convicting justices under their hands, yet when one justice of two who convicted made the return, signing his own name and that of the other justice by his express authority, it was sufficient.

Quære, per *Draper*, C. J.—Whether the return in this case came within the term immediate under the statute.

Debt against defendant as a justice of the peace for not making an immediate return of a conviction of John McLennan, James Gilmour, Samuel McLennan, and Thomas Fallon, had before the defendant and Alexander McIntyre, Esq., two of the justices of the Peace for the United Counties of Huron and Bruce, on the 25th day of Sept, 1861. Plea, never indebted.

The case was tried in November, 1862, at Goderich, before the Chief Justice of Upper Canada.

The clerk of the peace proved he had no return of the conviction stated in the declaration such as the statute specifies, but he produced a conviction, corresponding with the declaration, which he received on the 6th December, 1861. He was applied to by the plaintiffs' attorney about the 9th of October, to search for this conviction. The quarter sessions next ensuing, the 25th September, 1861, began on Tuesday, the 10th of December, and a notice of appeal against the conviction was lodged on that day. When the appeal was called the clerk of the peace stated the conviction had not been returned. This mistake arose from the prosecutor's name not appearing on the paper returned. It was also proved that the complaint was made against the four parties named for stopping up a road in the 12th concession of Culross, which road was between two lots, one of which belonged to the father of the McLennans, and the other to one of the sons.

On the defence Alexander McIntyre was called. He was one of the convicting justices. He stated that he drew up in his own

handwriting a return of this conviction in the month of November. That this return together with the conviction that were mailed in one envelope about the middle of November, addressed to the clerk of the peace, and that he put the packet into the Teeswater post-office. The return was in compliance with the statute. It was not returned sooner in consequence of a notice served by the prosecutor, as follows:

"Culross, November 20, 1861.

"To John McLennan.—Take notice that I have abandoned and do hereby abandon the case instituted by me against you for stopping up the road allowance between lots Nos. 32 & 33, 12th concession, and for which you were convicted before Alexander McIntyre and P. B. Brown, Esquires, on the 25th September, 1861, and further take notice that I do not intend to prosecute said case or take any further action therein. Yours, &c.,

(Signed,) "RICHARD HALDENBY."

Mr. McIntyre further swore that no fine or costs were ever exacted from or paid by the parties convicted. That the return was made in his name and that of the defendant, who had authorised him to put his defendant's name to it, and to make the return. The signature to the notice was proved, and service of it on each of the parties was admitted.

The jury found for the defendant.

In Michaelmas Term Eccles Q. C., obtained a rule *nisi* to enter a verdict for the plaintiff pursuant to leave reserved, or for a new trial, the verdict being contrary to law and evidence and the charge of the learned judge, the evidence for the defence being insufficient to sustain the verdict, and for misdirection in not ruling as a matter of law that the return proved was not immediate.

C. Robinson shewed cause. No point was taken at the trial that the judge should not have left it to the jury to say whether the return was immediate. And in *qui tam.* actions the courts will not grant a new trial on a question like this, where the charge to the jury is not clearly against law. He referred to *Tenant* v. *Bell*, 9 Q. B. 684; Ball *qui tam.* Fraser, 18 U. C. Q. B. 100; *Hall* v. *Green*, 9 Exch. 247; *Gough* v. *Hardman*, 6 Jun. N. S. 402; *Murphy qui tam* v. *Harvey*, 9 U. C. C. P. 528; *Henderson* v. *Sherborne*, 2 M. & W. 236; *Rex* v. *Mackintosh*, 2 Old Series, 497.

Eccles, Q. C., supported the rule.

DRAPER, C. J.—I do not find that any leave was reserved to move to enter a verdict for the plaintiff. The rule appears to have inadvertently issued in that respect.

And the objection now urged as a misdirection, namely, that the learned Chief Justice left it to the jury to say whether the return was immediate, which word he told them meant, "within a reasonable period," instead of ruling it as a matter of law, was not taken at the trial, and we should not therefore permit it to be urged now. The case of *Tennant* v. *Bell*, 9 Q.B. 684, supports as far as it goes, the course adopted in leaving the question to the jury.

Then, upon the evidence, it was contended at the trial that the evidence by McIntyre did not prove a return made by this defendant as he had not signed it, and that objection is renewed now. The statute, though it requires that the return should be made by the convicting justices, does not in the enacting clause require it to be under their proper hands. The schedule of forms ends thus: "A. B. & C. D., convicting justices" (as the case may be). I am of opinion that so far as this objection extends, the evidence fully warrants the verdict. That if one justice of several who convict makes the return, and signs the name of the other convicting justices to it, by their direction or express authority, it is sufficient.

The last question is as to the finding that this return was "Immediate." I am not by any means prepared to say that the evidence proves an immediate return. To be safe from the penalty justices of the peace who join in a conviction should be far more prompt in sending the same, with a return as required, and in the form given by the schedule to the act. A reasonable time, a time to enable them to do it conveniently, and in proper order, they may safely take. They incur the risk of a jury finding against them if they take more. I concur in the manner in which this question was left, nor is it objected to for on this point the verdict is complained of as against the learned Chief Justice's charge. But the jury have found that the return was made, and that it was immediate. And in a penal action such as this is, their verdict on a question of fact properly left to them is final and conclusive if in favour of the defendant. The cases of *Hall* v. *Green* and *Gough* v. *Hardman*, cited by Mr. Robinson settle this point.

I think, therefore, this rule should be discharged.

Per cur.—Rule discharged.

SAMUEL MCLENNAN QUI TAM. v. ALEXANDER MC INTYRE.

Justice of the Peace—Conviction—Return—Penalty when more than two magistrates—Not joint—Evidence.

This action was similar to the preceding case by same plaintiff against the second of the two convicting magistrates who was the principal witness for the defence on the former trial. On the trial of this case the defendant offered to put in as evidence the record of the last action with the verdict endorsed thereon, the object of which appeared to be to shew the return of the conviction by himself, and so indirectly to make him a witness on his own behalf.

Held, that the penalty not being a joint one, as against the two magistrates, but several, each being individually liable for not making the proper return, the record and verdict in favour of defendant in the former case could not be evidence of a return made by the defendant in this case

Held, also that the transmission of the conviction itself is not sufficient without a return thereof by the convicting justice.

The pleadings in this case are the same as in *McLennun qui tam* v. *Brown*, and the issue was tried on the same day, and very shortly after the jury had rendered their verdict for the defendant in that case. The present defendant was the principal witness for the defence in the action against Brown, and with the exception of his testimony the facts proved in the two cases were precisely similar. The defendants counsel however offered to put in evidence the record in that case on which was endorsed the verdict rendered in favour of Brown. The learned Chief Justice refused to receive it. The defendants counsel objected to the charge, contending that the word "immediate" must be construed with reference to all the circumstances, and that if the return was made as soon as necessary, under the circumstances of the case, the jury should have been directed, that it was sufficient to satisfy the statute, and that the notice of appeal, and the notice of abandonment of the prosecution were circumstances to be considered, in determining whether the return was "immediate," and the return of the conviction itself, is a compliance with the statute.

The learned Chief justice was against the defendant on both points, stating as to the first, that, taking all the circumstances into account, he could not tell the jury that, in his opinion, the return was immediate, he left it to them on the evidence. They found for the plaintiff.

C. Robinson, in Michaelmas Term, obtained a *rule nisi* for a new trial, for the rejection of the evidence, of the record and endorsement of verdict thereon, and to stay proceedings on an affidavit which, however, only shewed the identity of the pleadings in the two actions, and that the jury had found in favour of the defendant.

Eccles, Q. C., shewed cause, contending that the whole object of the rule was to make the defendant a witness in his own case, which our statutes did not permit.

C. Robinson, in support of the rule, cited Taylor on Evidence, 1284-5, 1294 to 1299, and 1304 to 1308; *Pritchard* v. *Hitchcook*, 6 M. & Gr. 151

DRAPER, C. J.—The right to use the verdict in the case against Brown was not rested on the ground that the plaintiff could only recover one penalty for the not returning the conviction in question, for it was not denied that the statute (Consol. Stat. U. C., ch. 124, sec. 2) subjects each justice of the peace, whose duty it is to make a return, to a penalty if he neglects so to do. Nor was it offered simply to prove that a trial had occurred before the court then sitting, in a *qui tam* action against Brown, or that a verdict had been rendered in his favor. If that had been all, I apprehend the record tendered would have been admissible. The object plainly was to offer it as some proof of a fact in dispute on the trial of this cause, namely, that this defendant had returned the conviction. But, in truth, it could not have been evidence of that fact, because it was wholly indifferent to Brown's liability or non-liability. If he (Brown) had made a return, he would not be liable, because the defendant had neglected, and *vice versa*. There was no question of joint liability for a joint omission. Each action was for a several liability for the individual neglect of each defendant.

I think, therefore, the learned Chief Justice rightly rejected it as affording no evidence, whatever, material to the issue which he was trying.

Then, as to the direction to the jury, I think that the question, whether the return was immediate, *i. e.*, within a reasonable time, cannot be effected by the notice of appeal, or subsequent notice of abandonment of the prosecution. The duty of the justice is wholly unconnected with such proceedings. If it were not, he might justify delay, on the ground that he was waiting to see if there would be an appeal, &c.

Lastly, I am unable to concur in the argument, that transmitting the conviction itself, is the same thing as making a return of it. First, the statute not only does not say so, but it says, to my apprehension, something different; and, second, the conviction will not convey any information as to the time when the penalty was paid, if paid, nor to whom it was paid over by the convicting justice or justices, nor if it had been paid, any explanation why. The preamble of the original act, if referred to affords reasons for holding the conviction, and the return of it, as separate instruments and for enforcing the information which the schedule, if properly drawn up, would give. I should be very glad if I could hold that this defendant had substantially complied with the statute, either in point of time, or by returning the conviction only; but I think the plain construction of the act is against him.

I think, therefore, the rule must be discharged.

Per cur.—Rule discharged.

Armstrong v. Bowes et al.

Justice of the peace—Notice of action—Form of—attorney's place of abode—objection not taken at nisi prius cannot be moved upon in term—Judgment by default against one defendant—Nonsuit—Consol. Stat. U. C., ch. 126.

Held, that a notice of action given to a justice of the peace, under Consol Stat. U C., ch. 126. in the following words: "To John G. Bowes, of the City of Toronto, Esquire—I, Annie Armstrong, of the City of Toronto, in the Province of Canada, spinster, residing with my father, James Armstrong at No 148 Duchess Street, in the said city of Toronto, &c." Signed by the plaintiff, and endorsed, C. P. Armstrong v. Bowes.—Notice of Annie Armstrong to John G. Bowes.—The within named Annie Armstrong resides at No. 148 Duchess Street, in the City of Toronto—Cameron & McMichael, for plaintiff, did not conform to the provisions of the 10th section, not having the place of abode, or business of the attorney endorsed, nor the court in which the action was to be brought, stated. The objection that no notice of action was necessary, not having been taken at the trial, *held*, that it could not afterwards be raised in term

Held, also, that judgment by default being signed against one defendant did not prevent a nonsuit being entered, on objections raised by another defendant.

(C. P., M. T., 26 Vic.)

Trespass, and false imprisonment. Plea, by statute, not guilty, referring in the margin to the Consolidated Statutes of Upper Canada, chapter 126, sections 1 to 20, Public Acts.

The trial took place at the fall assizes for York and Peel, before Morrison, J. A witness was called, who swore that, as one of the clerks of Messrs. Cameron & McMichael, he served a copy (or duplicate) of the notice of action, of which notice the original was put in. He also stated that he examined the copy served with the original, and also examined the endorsements and they were correct. He did this on behalf of the plaintiff's attorneys.

The notice commenced thus: "To John G. Bowes, of the City of Toronto, Esquire. I, Annie Armstrong, of the City of Toronto, of the Province of Canada, spinster, residing with my father, James Armstrong, at No. 148, Duchess Street, in the said City of Toronto, hereby," &c., and was signed by the plaintiff. It was thus endorsed: "C. P. Armstrong v. Bowes. Notice of Annie Armstrong to John G. Bowes. The within-named Annie Armstrong resides at No. 148, Duchess Street, in the City of Toronto. Cameron & McMichael for the plaintiff.

Evidence was given of the trespass, and at the close of the plaintiff's case, a nonsuit was moved for, on the ground that the notice of action was served by the attorney, and that the place of abode, &c., of the attorney was not endorsed. It was also noted, at the request of the defendant's counsel, that, according to the evidence, the plaintiff was only eighteen years' old. Leave was reserved to move for a nonsuit, on the objection to the notice, and the plaintiff had a verdict.

In Michaelmas Term, *J. H. Cameron, Q. C.*, obtained a *rule nisi* accordingly, on behalf of the defendant Bowes, or for a new trial, on the ground that the notice of action which was served on the defendant Bowes, by the attorney of the plaintiff, had not the name and place of abode of such attorney endorsed thereon before service thereof.

M. C. Cameron shewed cause, contending the notice was sufficient, but if not, the defendant, Bowes, was not, under the circumstances, entitled to a notice. He referred to *Morgan* v. *Leach*, 10 M. & W. 558; *DeGondouin* v. *Lewis*, 10 A & E. 117; *James* v. *Saunders*, 10 Bing. 429; *Burns' Justice of the Peace*, title, Justices of the Peace; *Bross* v. *Huber* 15 U. C. Q. B. 625; *Helliwell* v. *Taylor*, 16 U. C. Q. B. 279.

J. H. Cameron, Q. C, in reply, urged that it was not disputed at the trial that the defendant, Bowes, was entitled to notice, and that it was clear the statute was not complied with. He cited *Roberts* v. *Williams*, 2 C. M. & R. 561, 5 Tyr. 583; and *Collins* v. *Hungerford*, 7 Irish C. L. N. S. 581.

Draper, C. J.—The 10th section of our statutes (ch. 126, Consol. Stat. U. C.) enacts that "no such action shall be commenced against any justice of the peace until one month, at least, after a notice, in writing, of the intended action has been delivered to him, or left for him at his usual place of abode, by the party intending to commence the action, or by his attorney or agent, in which notice the cause of action, and the court in which the same is intended to be brought, shall be clearly and explicitly stated, and *upon the back thereof* shall be endorsed the name and place of abode of the party intending to sue, *and also*, the name and place of abode or of business of his attorney or agent, if the notice be served by such attorney or agent."

It appears to me impossible to hold that this notice complies with the statute, for though the name and place of abode of the plaintiff is endorsed, and also, the name of her attorneys, yet their place of abode or business is not endorsed, which is necessary, if their clerk, who proved the service, served it for them, and if he served it as an agent for the plaintiff, his name and place of abode or business should have been endorsed, but are not.

I agree that the objection, that the defendant was not entitled to notice, should have been raised at the trial, and not being taken there cannot be afterwards taken here. In *Bross* v. *Huber*, 15 U. C. Q. B 625, the learned Chief Justice expressed a similar opinion on this point. I should doubt, however, whether it could be properly held that a statement of the name and place of abode of the attorney, at the foot of the notice, and therefore, as I understand it, on the face of it, could be held a compliance with the act. It is true that in *Crooke* v. *Curry*, cited in 1 Tidd 28n., 8th edition, it is said to have been ruled to be sufficient; but in *Taylor* v. *Fenwick*, 3 B. & P. 553, note *a*, *Lord Mansfield* says, "in favour of Justices of the peace, the legislature has thought fit to prescribe a precise form; whether right or not it does not matter;" and in *Lovelace* v. *Curry*, 7 T. R. 635, Lawrence, J., states, as the judgment of the court, in *Taylor* v. *Fenwick*, "The statute has prescribed a form which must be implicitly followed, and *it admits of no equivalent*. The statute was made to introduce a strictness of form in favour of Justices, and it must be observed literally."

Where one of two defendants allows judgment to go by default, as in this case, the plaintiff may be nonsuited. *Murphy* v. *Donlan*, 5 B, & C. 178; *Jones* v. *Gibson*, 5 B. & C. 768. In *Stuart* v. *Rogers*, 4 M. & W. 649, the court approved of *Murphy* v. *Donlan*, though Parke, B., appears to have thought that it might be different in an action of trespass. It would be better plaintiff should enter a *stet processus*, as was done in that case, or we may feel driven to grant a new trial.

Per cur.—Rule absolute.

CHANCERY.

(*Reported by* Alexander Grant, Esq., *Barrister-at-Law.*)

Hodgins v. McNeil.

Marriage with deceased wife's sister—Conflict of laws—Canon law.

Held, 1st. That the English Act 5 and 6 Wm IV., c. 54, declaring marriage with deceased wife's sister absolutely null and void, is not in force in Upper Canada, such marriages being governed by the law of England as introduced by the Upper Canada Constitutional Act, 31 Geo III c. 1

2. That the words "canonical disqualification," used in several marriage acts of this Province, do not introduce the canon law to a greater extent than it had been previously introduced as part of the law of England.

3. That the law as laid down in *Brook* v. *Brook*, H. of Lds 1, and *Fenton* v. *Livingstone*, 3 Macq. H. of Lds. 52, does not apply to Upper Canada.

This was an administration suit, in which the question of the right of the widow of the intestate to dower was contested, on the ground that her marriage with the intestate was void—she being his deceased wife's sister. It appeared that Hugh McNeil, the intestate, had in 1825 married one Eliza Hutchinson, that she died in 1849, and that in March 1860 he married Anne her sister, who now claimed to be entitled to dower.

The question raised was whether the English Act 5 & 6 Wm. IV. ch. 54, declaring "all marriages within the prohibited degrees of consanguinity or affinity absolutely null and void to all intents and purposes whatsoever," was in force in Upper Canada.

The Canadian Marriage Acts, 33 Geo. III., c. 5, containing the words "canonical disqualification;" 38 Geo. III c. 4, "legal disqualification;" 11 Geo. IV. c. 36, "canonical disqualification" and "legal disqualification;" 18 Vic., c. 129, "canonical disqualification," and other Acts: and the following authorities, in addition to those mentioned in the judgment, were referred to by counsel: *Brook* v. *Brook*, 4 L. T. N.S. 93, and 7 Jur. N. S. 422; *Regina* v. *Roblin*, 21 U. C Q B., 352; *Goodhue* v. *Whitmore*, 7 U. C L. J., 124; *McQuan* v. *Chadwick*, 11 Q. B., 173; *Middleton* v. *Crofts*, 2 Atk., 650.

Hodgins, plaintiff, in person.

Hector, for Mrs. McNeil.

Strong and *Fitzgerald*, for the infant defendants.

ESTEN, V. C.—Before 26 George 2nd, ch. 33, (the Marriage Act) clandestine marriages were illegal, although not void, and subjected the parties to ecclesiastical censure, *i.e.*, all marriages were required to be solemnized in *facie ecclesiæ* and by bonds or license, and, if a minor, by consent of parents; such marriages were rendered void by 26 Geo. III., ch. 33, which is generally in force here under the Constitutional Act, but probably not the eleventh clause, which makes such marriages void. They are, however, illegal, and in breach of the usual bond condition that no impediment exists.

The 33 Geo. III., ch. 5, was said by Mr. Hodgins to have introduced the canon law; but in fact the canon law, so far as it was part of the law of England, had been already introduced by the Constitutional Act. The 33 Geo. III., ch. 4, authorises Presbyterian, Lutheran, and Calvinist ministers to celebrate marriage between certain persons, provided they were not under any legal disqualification. It presupposes the ecclesiastical law in force and probably did not authorise those persons to marry a man to his wife's sister because an unlawful marriage. 11 Geo. IV., ch. 36, confirms marriages previously celebrated of persons "not under any canonical disqualification," authorizes ministers of certain denominations to solemnise marriage between persons "not under legal disqualification," Dwarris 526. "Acts amending acts in force in colonies are themselves in force."

This seems to apply to acts extended to the colonies by the parliament when passed, not when the colonies voluntarily adopt an act not originally in force there. *Livingstone* v. *Fenton*, 5 Jur. N. S., 1183.

The *lex loci rei sitæ* must govern in all questions of succession to real estate; therefore it was held in this case that the ancestor of the respondent, having married his wife's sister in England, the marriage not having been annulled in the lifetime of the parties, such a marriage being by the law of Scotland void, and the parties to is criminal, the respondent was to be deemed illegitimate in Scotland; and even if he should have been deemed legitimate, supposing the marriage valid in England, it was not so, but unlawful and voidable, although it could not be avoided after the death of either of the parties.

Such a marriage is void in England, but after the death of either of the parties, the temporal courts, which had no jurisdiction themselves, and which must regard every marriage *de facto*, as good until it is declared void by the ecclesiastical courts, and will not permit them to declare the marriage void after the death of one of the parties, where their sentence can have no effect on the marriage itself; it being already dissolved by death, and its only effect will be to bastardize the issue. The result is, that after the death of the parties, the marriage is valid and the issue legitimate *de facto* but not *de jure*.

I think the statute 5 & 6 Wm. IV., ch. 54, does not extend to this province, and therefore, that the marriage in question, which I assume to have been celebrated according to the law of England, as introduced into the province by the Provincial Act, 32 Geo III. ch. 1, has become by the death of one of the parties to it, indissoluble, and the children of such marriage have also become legitimate. My reasons are that the colonies are not mentioned in the act nor included by any necessary or even strong intendment; that the act is one of convenience and policy; that the law of England was not introduced into this province by the imperial legislature, but adopted by our own; that we have a local legislature competent to deal adequately with such matters; that the inconvenience intended to be remedied by the act 5 & 6 Wm. IV., ch. 54, is practically unfelt here; that such marriages are recognised as valid by many foreign systems, and that their being in violation of God's law, is, to say the least, extremely doubtful, although so declared by the statute law of England. No doubt the act of the 32nd of the late king introduced all the law of marriage as it existed in England at that date, excepting, perhaps, some clauses of the 26 Geo. II., ch. 33. It introduced the acts 25 Hy. VIII., ch. 22, 28 Hy. VIII., ch. 7, 28 Hy. VIII, ch. 16, and 32 Hy. VIII., ch. 38, so far as they remained in force, and so much of the canon law as had been adopted by the law of England.

The Provincial Statutes, cited by Mr. Hodgins, do not, I think, affect the question. They were passed to confirm certain void marriages, and to authorise the ministers of certain denominations of christians to solemnise matrimony. Both enactments contained the qualification that the marriages in question should have been or should be between persons under no legal or canonical disqualification, thereby meaning, no doubt, that they should not be disqualified to enter into the contract of marriage by the law as it stood: that is, by the law of England as introduced into this province, both statute law and canon, so far as adopted by the law of England. These statutes did not mean to introduce any new law, not already introduced into the province, nor is it necessary for Mr. Hodgins' argument that such an effect should be attributed to them. Its only effect would be to show that this marriage was unlawful and void, but, nevertheless, it must be recognised as a marriage *de facto* by the temporal courts until annulled by sentence of the ecclesiastical, which could only be done during the lifetime of both parties to it. But this is clearly the law of the province. It cannot be doubted that the marriage in question in this case was unlawful and void at the time of the celebration, and could have been annulled by the sentence of the ecclesiastical court at any time during the lifetime of both parties. But it is equally clear that, it never having been so annulled, has become indissoluble, and the children springing from it are for all practical purposes absolutely legitimate.

I therefore think this lady is entitled to her dower and thirds, and that her childhen are entitled to share the estate of the intestate with the children of the first marriage.

BLAIN v. TERRYBERRY.

Donatio mortis causa.

A testator having agreed to sell a portion of his real estate, had taken the note of his vendee for a sum of $900, being the amount of interest accrued due on the purchase money. This note, and the papers relating to the sale, the testator had been frequently heard to say he intended to give to his son, who was named as an executor of his will. Shortly before his death, and in anticipation of it, he directed the case containing the papers to be brought to him, and from amongst them directed certain notes to be selected, and delivered them to his wife for her own use; the rest of the papers, amongst which were the note for $900, and the papers relating to the sale, together with several notes and documents, including his will, the testator handed to his son, with a direction that if he recovered they were to be brought back; but in the event of his death then that he (the son) should keep them. *Held*, that this did not constitute a good *donatio mortis causa* of any of the securities.

The bill in this cause was filed by a legatee, under the will of her father, one William Terryberry, under which she was entitled to a legacy of £250, and also a share of his residuary estate which remained undisposed of, against Jacob Terryberry who was the acting executor under the will, and who claimed to be entitled to certain securities by virtue of a *donatio mortis causa*, alleged to have been made to him by the testator under the following circumstances, which appeared in the evidence taken in the cause. It appeared that the testator had sold an estate to one Cramer for £1250, and in the year 1847 an arrear of interest had accrued due

under the contract; and no part of the purchase money had ever been paid. On this occasion Cramer gave the testator his promissory note for the arrears of interest. In that year the testator, while labouring under a mortal disease, and about six weeks before his death, and in expectation of his decease, desired his wife to produce his papers, and from among these he directed Jacob Terryberry to select five notes, which he delivered to his wife for her own use; and the rest he directed Jacob to take home with him, and in the event of his recovering from the disease under which he was then labouring, to bring them back to him, but in the event of his death he directed Jacob to keep them, and as stated by Jacob in his evidence, as his own property. Under these circumstances Jacob claimed the security for the whole purchase money arising from the sale which had been effected to Cramer. On the other hand, the plaintiff alleged that the whole of this fund was to be accounted for by Jacob as part of the personal estate of the testator; the contract for sale remaining in force at the time of the death of the testator, the fruits of it became and formed part of the personal estate. It was shewn that Jacob had since re-sold the estate, in consequence of Cramer having abandoned the purchase, and had received the proceeds of the sale. Amongst the papers delivered to Jacob by the testator were his will and several other documents not connected in any way with the Cramer property.

The evidence shewing the donation to have been made was somewhat indefinite, none of the witnesses agreeing with the statements of Jacob Terryberry himself, that the testator directed him, in the event of the testator's illness terminating fatally, that he (Jacob) should keep the papers as his own property.

The effect of the evidence is fully stated in the judgment.

The cause came on originally to be heard before his Honor V. C. ESTEN, who disallowed the claim of Jacob Terryberry to any thing more than the note given by Cramer to cover the interest due on his purchase, and declared him entitled to the note for $900, as a *donatio mortis causa*. The claim of the widow to the notes delivered to her was not questioned by either party.

Jacob Terryberry being dissatisfied with the decree then pronounced, set the cause down to be re-heard before the full court.

On the cause coming on to be re-heard,

Blake and *Spohn* for the plaintiff.

Freeman for Jacob Terryberry.

For the plaintiff it was contended that the decree already pronounced should be varied in this, that it ought to declare the defendant not entitled to any portion of the Cramer purchase, whether principal or interest. As put by defendant, all the papers in the box were delivered to him for his own benefit, but he says only the Cramer notes were intended to pass. Now the box contained several other notes and securities, also the will of the testator, and no distinction is alleged even by defendant as to any one more than another being intended for him: being named in will as executor, he was the proper hand to deliver it to, and yet it cannot be contended for a moment that it was intended to be kept by Jacob as his own property.

For the defendant it was insisted that sufficient was shewn in the evidence to indicate an intention on the part of the testator to, give the Cramer papers, and all the benefits derivable under them to Jacob; the witnesses agree in this respect; and if after a lapse of so many years one witness has forgotten what another remembers, it is not a matter of surprise that it should be so. It is shewn that Jacob immediately after the death of the testator claimed this as a gift, and acted as the owner of it: in this the plaintiff has always acquiesced until after a lapse of fourteen years, when the present suit is instituted.

Ward v. *Turner*, 2 Ves. Sen., 431; *Walter* v. *Hodge*, 2 Swan. 92. The editorial article in 6 Jur. N. S. Pt. 2, 55; *Gardner* v. *Parker*, 3 Mad. 184; *Miller* v. *Miller*, 3 P. W. 356; *Lawson* v. *Lawson*, 1 P. W. 440; *Edwards* v. *Jones*, 1 M. & C. 226.

VANKOUGHNET, C.—I think the only thing wrong in this decree, and I regret to have to come to this conclusion, is the allowance to Jacob Terryberry as a *donatio mortis causa* of the note for $900 made by Cramer. I have a very strong belief that the testator intended that Jacob should have the moneys payable by Cramer as the purchase money of the land in question. As a layman he would not be likely to have any knowledge of the doctrine by which land sold is converted into personalty; and dying intestate as to this land, the legal title in which would descend to Jacob, as his heir, he would naturally think that Jacob having that title would not and could not be compelled to part with it till he had received the purchase money secured by the papers, which, with others, he some time before his death delivered to him under the circumstances detailed in the evidence. But it requires something more than conjecture or moral certainty of conviction to sustain a *donatio mortis causa*. Not that any peculiar rule of evidence distinguishes the case of such a gift from any other, but that when it is sought to be established, the evidence must be such as to satisfy the court of the fact; and the evidence in the present case does not. The testator had made his will, of which he had appointed Jacob one of the executors. He calls for the papers deposited in a particular place—the side board—in a room where he, his wife, and Jacob were. He speaks of the Cramer papers, being, as I understand the bond, for the purchase money, and the note for $900, for arrears of interest. He hands these with the other papers of which there were several, including his will, to Jacob, and says to him: "If I get well bring them back; if I die, keep them;" or, "they are yours," as Jacob says. Now it is not pretended by Jacob that the testator intended to give him anything more than the Cramer papers, and yet the words used by the testator, as quoted, would be, and were, as applicable to all the other papers as to the Cramer papers; and if the words be so applicable, then they are more properly treated as applicable to the position Jacob would hold as executor, than to any claim in his own right. We cannot apply the words for one purpose to the Cramer papers, and for another purpose to the others. Evidence there is of previous declarations by the testator of his intention that Jacob should have the moneys payable by Cramer, but there is no evidence that he so expressed himself subsequently to the delivery to him of the papers, and there was none such, as I have explained, at the time of that delivery. I do not think that the remark made by the testator that if Cramer paid in the spring $500 of the $900 note, Jacob, would be able to proceed with the building of his mill, sufficient to separate that note from the rest of the papers, at the time of their delivery, and so to allocate it to Jacob's use. No distinction was made by the testator as to any of the papers on delivering them to Jacob, and they were all to be brought back to him if he survived, and so far as evidence of his previously expressed intention could prevail, it was equally strong as to the principal money secured by the bond.

The decree so far as relates to the note for $900 will be varied in accordance with this expression of opinion.

ESTEN, V. C.—I think the evidence of Bennet, Mrs. Terryberry, Mrs. Reid, and Jacob Terryberry insufficient to prove the *donatio mortis causa*, unless the general expressions indicating an intention that Jacob should have the Cramer moneys, are sufficient to discriminate between the Cramer papers and the other papers, and to give the transaction a different character with regard to them respectively, but I think they are not. I think, therefore, that the decree should be varied to the extent of disallowing the claim of Jacob Terryberry to the note for $900.

SPRAGGE, V. C.—I think the interview spoken of by Bennett must have been made before the interview or interviews spoken of by the other witnesses. Mrs. Terryberry and Jacob evidently speak of the same interview, and I think Mrs. Ried also. At that interview certain notes were taken out from a number of papers, and handed to and kept by Mrs. Terryberry, and other papers were handed to Jacob, and none of those handed to either were returned to the testator.

I think from the evidence that all the papers spoken of by Mrs. Terryberry as placed in the sideboard were handed to Jacob, and that among them was Cramer's bond; it is certain that the will was among those handed to him; and Mrs. Terryberry says, that besides the notes handed to her, there were a good many deeds and papers in the sideboard. I think, further, that all the papers handed to Jacob were handed to him with the same direction as to their custody; expecting, of course, the notes selected out of them for Mrs. Terryberry.

Jacob was named as an executor in the will, and it is obvious that the papers handed to him *might* have been handed to him in that character, and the inference would be that they were so. To

rebut that inference there is what took place at the interviews with Bennet, and what took place at the subsequent interview at which Mrs. Terryberry and Jacob, and I think Susan Reid, were present. What passed at the interviews with Bennet can go no further than evidence of an intention on the part of the testator to give some notes to his wife, and some papers, probably some evidence of Cramer's debt and the Cramer purchase money to Jacob. The papers spoken of by Bennet must in some way have got back into the cupboard, otherwise this dilemma must arise; either the papers then laid aside for Jacob were not the Cramer papers, or else the Cramer papers were not among those delivered to Jacob at the subsequent interview; for all those so delivered were brought from the cupboard. They were then, after the interview with Bennet, replaced in the cupboard either for future disposition, or it might be urged in revocation of the testator's intention to give them to Jacob. At the most, what then took place is evidence of an intention to give, not then carried out.

Then at the second interview, what is there to rebut the presumption that the papers were delivered to Jacob as intended executor, and what in favour of that presumption? The direction given to Jacob by the testator in relation to the papers delivered to him, was, as stated by the wife, to take them home; and in case of his recovery, to bring them back; and in case of his death to keep them. The testator's direction, as stated by Jacob himself, differs from his mother's only in this, that in the event of his father's death they were his.

In relation to the Cramer debt is this, as stated by Mrs. Terryberry, "My husband told Jacob if Cramer paid the $500 he had better go on with the mill; and if not, he had better stop. $500 was mentioned because Cramer had said he was not prepared to pay any more: a great deal more was due." Jacob, himself, says nothing as to what his father said in relation to the Cremer debt; probably because the plaintiff did not think fit to ask him any question upon it.

I cannot reconcile the evidence of Mrs. Reid with that of Mrs. Terryberry and Jacob. According to her evidence the Cramer papers were selected from the other papers, and laid on the window seat, and the direction to Jacob was to take those papers home, and if he got well to bring them back. If this had been the case, Jacob could hardly have put the direction in a way so far less favourable to himself, as he did—he, as well as his mother, in narrating what passed, say nothing about separating the Cramer papers from the rest, though they do speak of separating the notes for Mrs. Terryberry, a circumstance which would naturally lead them to speak of the separation of the Cramer papers, if it occurred. Mrs. Ried must, I think, refer to the same interview as Mrs. Terryberry and Jacob, not to any interview spoken of by Bennet, though the placing of the papers in the window seat is a point of resemblance: but it is obvious from Bennet's evidence that Jacob was not present, and probably not Mrs. Terryberry either; and Mrs. Ried does not speak even of the presence of Bennet, whereas at the interview spoken of by himself he took a prominent part in what was done. If she speaks of any other interview before the one spoken of by Mrs. Terryberry and Jacob, it is immaterial for any other purpose than that spoken of by Bennet, and for the same reason; and there is no pretence of any subsequent interview: indeed it is impossible, for Mrs. Terryberry and Jacob both say that they kept the papers taken away by them respectively.

For these reasons I think the plaintiff's case must rest upon the evidence of Jacob Terryberry and Mrs. Terryberry. Jacob states the direction of the testator as to what he was to do with the papers more strongly for himself than does his mother; his mother saying that the direction was in the event of his father's death that Jacob should keep them; Jacob's version being, that in that event they were his.

I think we should take the mother's account as more reliable, even though there were nothing but the position of the parties to turn the scale. But what Jacob attributes to the testator, it is perfectly certain the testator could not mean, and cannot be supposed to have said; for it would involve the gift to him as his own property not only of the Cramer papers, but of the money, deeds, and papers, and of the will which were handed to him.

I think, then, we must take Mrs. Terryberry's account of what passed as the true one: that Jacob, in the event of the testator's death, was to keep the papers handed to him: the word "keep" being used in antithesis to what he was to do in another event, his father's recovery, to bring them back. Then in what sense was he to keep them? There are two reasons against its being understood that he was to keep them as his own, one, that the same direction was given to all; and it is certain he was not to keep all as his own; the other, that he was an executor named in the will, which was handed to him. In the other sense, that he was to receive and keep them as executor, the direction was sensible and proper, that in the event of the testator's death he was to keep all the papers handed to him, and this is in accordance with the inference, Jacob being named as executor, that the papers were handed to him in that character.

There is indeed very little to rebut that inference. One may speculate upon the probability that the testator may have been under the idea that inasmuch the land sold to Cramer, would, if unsold, have gone to Jacob as his heir-at-law, so as the legal estate still remained in him, his heir could take it as he himself held it, to convey upon receiving the purchase money; and this idea is countenanced by some of the expressions used by the testator.

But of evidence there is but little in favour of the *donatio* claimed by Jacob. There is the intention which we may gather from the interview with Bennet, and what Mrs. Terryberry speaks of in relation to the $500 to be paid by Cramer in the spring; and its enabling Jacob to proceed with the building of the mill. It would be assuming a good deal to infer from that, that Jacob was to have the whole of the Cramer purchase money, close upon $6000.

The decree pronounced proceeds upon this, that the money payable by Cramer was devisible, and that there was sufficient evidence to shew that the $900 note given for interest, and of which the $500 to be paid in the spring was a part, was so effectually given by the testator as to enable Jacob to claim it as a *donatio mortis causa*.

There is perhaps some room for this distinction. Jacob was certainly to be at liberty to apply the $500 to his own individual use at an early day. The testator may have meant certainly that Jacob should receive the $500 as executor, as well as receive other moneys as executor and apply the $500 to his own use, but that is not the ordinary import of the words, and besides he was not sole executor, and the money, if paid to a co-executor, might not reach the hands of Jacob at all, which it was certainly contemplated that it should do.

Then the note, of which the $500 was a part, was among the papers delivered. If given by itself, with the words used, I incline to think it would be a good donation as to the whole $900. Its being among others, ought not, perhaps, to make any difference, if the court could see with a reasonable degree of certainty that a distinction was to be made, for it would certainly be competent to the testator to say upon the delivery of these papers, "out of these papers you are in the event of my death to retain the $900 note to your own use." What was done and said was however materially different.

I am quite satisfied that Jacob can claim nothing, at all events, beyond the $900 note. To constitute a valid donation there must be sufficient words of gift, an act. I think that in this case there was neither. The words used do not necessarily imply a gift of any thing beyond the $900 note, if they go so far. Nor is there any act: for the delivery of papers not necessarily connected with the words used, and to an executor, is not necessarily or by inference a delivery by way of donation. My doubt is, not whether the whole of the Cramer purchase money passed, but whether any of it passed; for I cannot but feel the force of Lord Loughborough's language in *Tate* v. *Hibbert*, 2 Ves. Jur. 117; that however fair and honest a particular case may appear to be, "yet those cases are liable to the observations that have been made that to make a stretch to effect gifts made to persons surrounded by relations who give evidence for each other, would be attended with great inconvenience."

There is this observation applicable to the whole of this case, that the alleged gift accompanied the actual delivery of the will, in which, and by mere verbal gift, it ought properly to have found a place, so that the deceased is made to dispose of his property et

the same time partly by will, and partly by verbal disposition and delivery. This circumstance did not occur in any of the cases that I have seen, and is in my mind strongly against the claim set up by Jacob.

Upon the whole, my conclusion is, that Jacob's claim fails in *toto*. I should be glad to be able to support the decree sustaining his claim as to the $900 note; but I think the cases and the principles upon which they proceed do not warrant it.

The Bank of Montreal v. Baker.

Registered judgment—Notice—Absconding Debtor.

Held, [affirming the decree reported 9 Grant, 95,] that whether the deed there mentioned as having been executed in blank, operated as a deed or as a mere parol agreement, it created a charge upon the equitable estate of the debtor; and that a registered judgment creditor having notice thereof before the registration of his judgment would be bound thereby.

Held, also, [affirming the decree] that the *bona fides* of proceedings taken against a person as an absconding debtor with a view to obtaining a priority could be questioned in this court at the suit of a creditor or third party.

The facts of this case appear in 9 Grant, 95. After that decree had been pronounced, the defendants, the Commercial Bank, obtained a re-hearing of the cause. On the re-hearing

Strong, appeared for the plaintiffs.

Roaf, for the Commercial Bank.

A. Crooks and *Blake*, for the defendants Rigney and Brown.

Vankoughnet, C.—For the decision of this case I have not found it necessary to examine the ground upon which my brother Spragge rested his judgment in favour of the plaintiffs, as we are of opinion that irrespective of it the plaintiffs are entitled to priority and to a decree. Whether or not the instrument of the 25th of May, 185*7*, delivered by Lavis, as the agent of and under the instructions contained in the letter of Baker, from Halifax, operated as a deed or as a mere parol agreement, is in our judgment immaterial, because in either shape it constituted a charge upon the equitable estate of Baker in the premises; and if it required registration to give it priority over the legal proceedings adopted by the Commercial Bank to secure a preference to themselves over the plaintiffs, it was well registered before those proceedings were had; and if by reason of its being to be treated merely as a parol instrument it could not be registered, then we are of opinion that the registered judgment could not prevail against it, as in such case the registry acts as to it could have no application. *McMaster* v. *Phipps*, 5 Grant, 253, *Sumpter* v. *Cooper*, 2 B. & Ad. 223. It is, however, argued that by the deed poll executed by Baker on the 11th of October, 1857, this instrument of the 25th of May, which purported to be a mortgage, was converted into a deed, and so, as a parol contract, ceased to exist, and that thus being changed in its character, it required registration to give it effect against the judgment of the Commercial Bank registered a few days afterwards. The bill alleges that this deed-poll bill, which is called a deed of confirmation, was registered, but there is no evidence of this furnished. It is not in fact, and could not be, a deed of confirmation. Either the instrument of the 25th of May was a deed, or it was not. If it was, it required not, and could not receive as such, confirmation. If it was not, it was as a deed void, or rather no deed, and the deed-poll of October would have no other effect than by its reference and relation to it, executing it, and for the first time making it a deed.

But admitting that this instrument of May assumed the condition of a deed in October, still the charge which was created by it did not by that higher character which it assumed cease. It only received greater efficacy, and has never been destroyed or abandoned. I was much struck with the argument that if the instrument of May was a parol instrument, it was merged and swallowed up in the deed of October, but, on reflection I think this is not so, because the charge which that instrument created was not destroyed, but continued, enforced and enhanced in character by the deed. The case of *Sumpter* v. *Cooper*, already referred to shews this; there one of two joint purchasers of an estate having borrowed from the other his share of the purchase money, to effect the purchase, deposited with him the title deeds as security for re-payment, thus creating, upon his share, in favour of his co-purchaser an equitable mortgage. Subsequently he conveyed his moiety to his co-purchaser by deed, in discharge of this loan, and this instrument was capable of registration. After this he became bankrupt, and the assignment of his estate from the commissioners in bankruptcy was duly registered. The co-purchaser Cooper *after* the conveyance to him by the bankrupt received the whole rents of the property, and the assignees then sued him to recover the moiety. The plaintiffs were nonsuited, and the late Lord Campbell, as counsel for the plaintiffs, moved to set aside the nonsuit, taking as a principal ground, that the equitable mortgage created by the deposit of the title deeds was merged in the subsequent conveyance executed by the bankrupt, and that as this had not been registered it was cut out by the assignment to the assignees, which had been registered. After taking time to consider Lord Tenterden, delivering the judgment of the Court of Queen's Bench, refused a rule *nisi*.

I cannot admit that a judgment creditor has by virtue of the registration laws any higher position or rights than a purchaser for valuable consideration. What I think the legislature intended to do was to bind such interest as the defendant had at the time of, or acquired after, its registration, that he might not afterwards part with it; and but for the 3rd section of the act 13 & 14 Victoria, this would be sufficiently plain. That section, in its language, at all events, carries the effect of a registered judgment further, but while it associates registered judgments with registered conveyances, I can see nothing in it which indicates that the former are to have any better position or greater effect than the latter, and in the absence of express words declaring it, we should not give it. It is sufficiently hard to say that a creditor may sweep away that which the debtor does not own, but which honestly belongs to another, without extending the right so as to relieve a judgment creditor from the consequence of a notice which would affect the registered title of a purchaser for value.

While the act declares that registration shall be notice, it does not provide that notice of an unregistered conveyance shall not affect a registered conveyance or judgment; and we must take it that the legislature had knowledge of the doctrine of a court of equity on this head; and indeed they appear to have had it expressly under consideration, when they declared that registration should be notice. I am of opinion that a registered judgment is at least equally affected by notice with a registered conveyance, and that here the Commercial Bank, having had notice of the charge created by Baker in favour of the plaintiffs prior to the issuing of their writ against Baker as an absconding debtor, and certainly prior to its being placed in the hands of the sheriff, hold their registered judgment subject to it, *Leneve* v. *Lenève*, 2 White and Tudor Lead. cases, 23.

Then as to the proceedings against Baker as an absconding debtor, with a view to determining the respective positions and priority of the Commercial Bank, and of the defendants Rigney & Brown: unless the Commercial Bank can sustain these proceedings, so that the judgment recovered by them against Baker can relate back to them, and thus gain priority over Rigney & Brown, it is admitted that the claim of the latter must prevail against that of the Bank. I am of opinion that the proceedings against Baker as an absconding debtor are wholly void or a nullity, because in the first place he never was an absconding debtor; and in the second place it is evident that the Commercial Bank abused the process of the court in treating him as such with the sole object of thereby gaining a priority, particularly over the plaintiffs. To say that a man can be made and dealt with and treated as an absconding debtor, contrary to the fact, and for the express purpose, fraudulent as it must be under such circumstances, of obtaining an undue advantage, without the process and proceedings thus had against him, being questionable by a third party, a creditor, because the plaintiffs to the process have procured its issue upon affidavits which have been made honestly or dishonestly in the belief of the party making them, would be monstrous, and contrary to all principles of justice. Such process might issue with or without the connivance of the debtor, and might be maintained by his subsequent assent or inaction; and are other parties having claims against him, or interested in his estate, because of this, to be without a remedy, and to be compelled to stand by and see his estate swept into the power of a particular creditor, under a state of facts which by law did not entitle him to it? Such proceedings could be undoubtedly questioned at law

in an independent action; the only remedy which a third party might have, as he would most probably not be heard on a motion to set aside the proceedings against the debtor; (and indeed it was admitted on the argument that he could not make such a motion;) and, if at law, so of course here.

The right to issue a commission in bankruptcy, and the title of assignees under it, may be always questioned, and is an analagous case. So the right of a prior execution creditor may be questioned in an action by a subsequent execution creditor, on the ground of fraud or otherwise; and in this court we must necessarily enquire into the circumstances under which impeached judgments are recovered when they are brought before us as incumbrances. Chapter 25 of the Consolidated Statutes of Upper Canada, in section 1, provides: "If any person resident in Upper Canada, indebted to any other person, departs from Upper Canada, with intent to defraud his creditors, and at the time of his so departing is possessed of, &c., he shall be deemed an absconding debtor;" and the marginal note to that section is in these words: "who to be regarded as an absconding debtor." Section 2 provides that process may issue upon affidavit: "that any such person so departing, &c." Baker never was an absconding debtor, and as his whole conduct before and on leaving, and on returning to the Province proved, never intended to abscond. He went to England to endeavour to raise money to pay his creditors here, as he apprised the Commercial Bank before-hand, and failing to get it, he honestly returned and faced his creditors.

The Commercial Bank, though they issued process against him as an absconding debtor, never in reality treated him as such—never acted against his personalty—never interfered with his business—(that I believe of miller and merchant)—which went on during his absence and on his return, as usual, and in fact they openly avowed and said that all they wanted was to obtain priority of charge upon his real estate. To uphold these proceedings under such circumstances would be making the court a party to a mockery, if not a fraud.

ESTEN, V. C.—I think there was a good equitable charge, and that the deed of confirmation did not supersede or impair the instrument of the 25th of May, 1857, which retains all the force it ever had; but I think that Baker was not an absconding debtor, and not therefore the object of a writ of attachment, and that the writ of attachment in this case was void, and conferred no priority on the Commercial Bank, who issued it, and that the validity of the writ may properly be questioned by third persons in collateral matters. I think, therefore, the plaintiffs are entitled to succeed on two grounds: first, that they had a good equitable charge not superseded or affected by the deed of confirmation to which the registry laws do not apply, and that on the ground of the invalidity of the attachment the defendants Rigney & Brown are also entitled to priority over the Commercial Bank. Even, however, if it should be held that the deed of confirmation superseded the instrument of the 25th of May, 1857, I think that this latter instrument should prevail over the judgment of the Commercial Bank, on the ground of notice had by them of the original instrument of the 25th of May, 1857.

I think it is very just and proper to apply the doctrine of notice to judgment creditors; the question must be in every case whether the registration of the judgment was with fraudulent intent. Here are two general creditors, one obtains an instrument which creates a specific lien in equity, and the other has express notice of it. Under these circumstances it would be a fraud, I think, for the latter to commence an action and register a judgment for the purpose of obtaining priority over the equitable lien; and although the instrument creating the equitable lien may have subsequently become merged with the deed of confirmation, which conferred a legal title, I think the fraud continued, and should postpone the judgment to the latter instrument. The action was commenced with a fraudulent intent, and prosecuted with that same intent, until the Commercial Bank had notice of the deed of confirmation, and did not thus, I think, become a fair proceeding, but retained its fraudulent character.

The action was commenced with a fraudulent intent; that is, the attachment was issued with such an intent, and although that particular intent was defeated, and although the instrument of the 25th of May, 1857, would not be affected by the registration of the judgment, yet fraudulent intent must be deemed to continue, should an opportunity occur of carrying it into effect, and such an opportunity did occur, when the deed of confirmation was made, absorbing the previous instrument, and duly capable of being registered; and that the suit must be deemed to have been prosecuted, and the judgment registered, with intent to gain priority over this deed, which intent must be deemed to be fraudulent. I think judgment should be postponed to the deed of confirmation, on the ground of fraud.

SPRAGGE, V. C., concurring—decree affirmed with costs.

BOULTON v. CAMERON.

Injunction—Equitable plea.

Where, upon a motion for an injunction to restrain proceedings upon an execution at law, it was shown that the facts upon which the right to the injunction was founded had been raised as a defence to the action by way of equitable plea the court refused the application.

Fitzgerald, for the application.

The defendant in person, *contra.*

VANKOUGHNET, C.—I refuse the injunction in this case upon the ground that the same matters upon which it is sought to obtain it formed the subject of an equitable plea by way of defence to the action at law, in which the then plaintiff, the present defendant, has recovered judgment, execution upon which it is the object of the present motion to restrain. It is true, as the plaintiff contends that the judgment of the Court of Common Pleas which had this equitable defence under consideration finds two material variances between the allegations in the plea and the proof; and these it is urged are of no importance in the eye of a court of equity. This may or may not be so, but then either a court of law exercising equitable jurisdiction ought so to have treated them, or if it be required there that the proof should exactly correspond with the statement even in an equitable plea, then the defendant should either take care that he made his statement correctly; or if he made a slip, should have applied to amend: the discretion as to which is as wide at law as in this court. Were any different doctrine to be maintained the result would be, that a party without any regard to accuracy in his statement, would raise an equitable defence at law, and failing there by reason of his mistake or omission, would then fly to this court, thus availing himself of the double opportunity of litigating the same matters. This was not the intention of the legislature when they gave him the option, without imposing upon the necessity of invoking the equitable jurisdiction of a court of law. He has chosen his tribunal, of co-ordinate power, in respect of the case made here, with this court. Though the cases in England are not very decided on the question, I decline to interfere, or sit in judgment upon the decision of another court in respect of the same matters; the injunction must therefore be refused.

STARRATT v. CHINGUACOUSY.

Principal and surety—Forbearance.

The members of a municipal corporation, prior to 1858, borrowed moneys belonging to such corporation, and gave notes with sureties, as joint makers, for repayment. Before taking the oaths of office, in 1859, they procured the sureties and others to make new notes to the corporation, and then, as members of the council, did not press for payment of the notes when they fell due. On a bill filed by the sureties of one borrower, who had continued a member of the council throughout, to restrain an action at law, and alleging that time had been given to the principal debtor, it was

Held, that as no binding agreement between the corporation and the principal debtor had been proved, they were not entitled to the relief prayed for, and the bill was dismissed with costs.

One Andrew Starratt, being reeve of Chinguacousy, applied to the Council in 1857, in the name of Robert Starratt, his brother, for a loan of £400, and gave security by the joint note of himself, Robert Starratt, and one Adam Scott. About the beginning of 1859, just before taking the oath of office, he induced the Council to accept a new note from one William Starratt, Adam Nixon and said John Scott, and thereupon the old note was given up to the last named parties. Andrew Starratt paid the interest each year until 1862, but the money was credited in the books of the Corporation to the parties above named, namely, William Starratt, Adam Nixon and John Scott. Andrew Starratt had in the meantime become insolvent, but continued to act as member of the

Council. In 1862 the Corporation called in the money, and on William Starratt, Adam Nixon and John Scott refusing to pay, sued for the amount of the note, and recovered judgment. They thereupon filed their bill to restrain the action, and to relieve them from the liability, on the ground that time had been given to Andrew Starratt.

Cameron, Q. C., and *Boulton*, for plaintiffs.

R. A. Harrison for the Corporation.

Hodgins for defendant R. C. McCollum, the treasurer.

VANKOUGHNET, C.—I have carefully read over the evidence in this case, and I can find no binding agreement with the Corporation for time. Mr. Cameron seemed to assume that this was plainly made out, but Mr. Harrison, for the Corporation, denied it; and as Mr. Cameron was not present to reply, I should be glad to hear him again on the subject. The most that I can see is the by-law of January, 1860, directing the moneys to be called in by instalments; but this is not an agreement—was not binding even on the Council itself. The individual members intended and endeavoured to give as long a time, and make the payments as easy as possible; but then this after all was mere forbearance to sue, or refusal to sue, which does not seem binding on any one, and which could not, it seems to me, be set up as a defence by Andrew Starratt, had his securities proceeded to compel him to pay, either in their own names or that of the Corporation. I should like to have the matter mentioned again at an early day, in my chambers or in court, in presence of both parties.

The cause was afterwards re-argued by *Cameron*, Q. C., for plaintiffs, and *Hodgins* for defendants, when the bill was ordered to be dismissed with costs.

SCOBLE v. HENSON.

Appeal from Chambers—Discretion of Judge—Change of venue—Laches.

Where a judge in Chambers grants or refuses an application in a matter purely within his discretion, the court will not entertain an appeal from his judgment.

In this case the bill had been taken *pro confesso* against the defendant; but on application of his solicitor to allow the defendant to answer, on condition that he would take short notice, and that the costs of the order should be costs in the cause, the plaintiff's solicitor consented. The answer was not filed for some time after, and until the time was over for setting down the cause at the place where the venue had been laid. The plaintiff, on the answer coming in, amended his bill and changed the venue to Woodstock, not a regular circuit of the court. The defendant's solicitor was then served with the amended bill; and after the time allowed by the general orders had expired, the plaintiff filed his replication, and in a few days afterwards set the cause down for examination, and served the usual notice. Thereupon the defendant moved in Chambers, before Esten, V. C., to strike the cause out of the list at Woodstock, on the ground that there was no venue in the bill, and that Chatham was the proper venue, and on other grounds. The Vice-Chancellor refused the motion with costs, on the ground that the defendant had not come promptly, and that by his laches he had prevented the plaintiff from setting his cause down at Goderich or Sarnia, or some other of the regular circuits of the court. Thereupon the defendant appealed to the full court.

Blain for the appellant. *John Paterson* for the respondent.

The judgment of the court was given by

SPRAGGE, V. C.—We agree that Vice-Chancellor Esten was right in treating the laying of the venue at Woodstock as no more than an irregularity, which was waived by the defendant omitting to move against it, and especially as by the delay of the defendant the plaintiff was precluded from getting an examination of witnesses in another county. The absence of one of the defendant's witnesses in Hayti, we think, was not necessarily a ground for postponing the hearing of the cause, and opening publication for that purpose. The pendency of an arbitration might be a strong reason for staying proceedings during its pendency, if shown that by the terms of the reference authority is given to the arbitrator to deal fully and finally with the matters in question in the suit; but this is not shown. The reference, whether by submission or order, is not produced, and the Vice-Chancellor, with the materials before him, in the exercise of his discretion, decided against staying proceedings; and we think that we cannot properly interfere with that exercise of discretion. His refusal to postpone the examination of witnesses, on account of the alleged absence of a witness at Hayti, who, for all that appears, might have been examined by commission, and his refusal to change the venue back to Chatham, were also instances of exercise of discretion, and which, we think, we ought not to interfere with.

Appeal dismissed with costs.

MILLER v. MILLER.

Sequestration—Delivery of possession—Rent set off against alimony.

The plaintiff having obtained a writ of sequestration against the defendant's lands, applied to the court for the delivery up of the possession to herself, instead of renting said land by the sequestrator; and the court, on her petition, made the order.

This was a petition by the plaintiff to be allowed to go into possession of a farm sequestered by the sheriff under a writ of sequestration, and to set off an annual rental against the alimony she had been declared entitled to.

Hodgins for plaintiff.

The defendant did not appear.

SPRAGGE, V. C.—The property sequestered by the sheriff, and of which he has dispossessed the defendant, is lot 13 in the 8th concession of East Gwillimbury. It is not the whole real estate of the defendant, but a farm which was devised to plaintiff by her father. The alimony allowed is £100 a-year, and more than a year and a half is in arrear, besides costs. The plaintiff asks that possession may be delivered to her by the sheriff, the sequestrator, at a rental to be allowed on account of the alimony, or that he may let it to some other person. The annual value is stated, in a petition presented by the plaintiff some time since, at from $135 to $150 per annum. The defendant has represented its annual value at much less, and has stated in his answer that it would not bring $100 a-year besides the taxes. The plaintiff's brother has stated the value by affidavit at $135. If it is let at its full value to the plaintiff or any one else, the defendant cannot complain. I see no necessity for a letting by the sequestrator. A more direct course will be to give possession to the plaintiff until the further order of the court. I think she should be charged with the full value, as stated by herself, and she should be entitled to possession until all arrears of alimony and costs are paid, and then possession should be restored only on proper and just terms as to growing crops and the like. Each party should be at liberty to apply. The rental or quasi rental I should fix at $150 a-year—that sum to be taken during her occupation as in lieu of so much alimony. (2 Daniel, 1265.)

COMMON LAW CHAMBERS.

(*Reported by* ROBERT A. HARRISON, Esq., *Barrister-at-Law.*)

COWAN v. WHITE.

Debt on bond conditioned to abide by award—Pleading—Con. Stat. U. C., ch 22, sect. 108, 119.

In an action on a bond, where the plea is that the bond was conditioned to perform an award, and no award made, the plaintiff must either deny that the bond was subject to a condition as alleged, or reply specially setting out an award and assigning a breach. He will not be permitted to reply by "taking issue" on the plea under the 108th section Con. Stat. U. C., ch. 22, and such a replication will be struck out under sec. 119, as being calculated to embarrass, prejudice and delay, the fair trial of the action.

(16th April, 1863.)

Debt on bond in the penal sum of $2,000.

Plea—that the bond in the declaration mentioned was and is in the words following (setting out a common money bond made by defendant to plaintiff, dated 19th August, 1862, in the sum of $2,000); that the said bond was and is subject to a condition (setting it out verbatim) that defendant should submit to the decision and perform the award of, &c.; and that no award was made.

Replication—joinder of issue.

Osler obtained a summons, calling on plaintiff to shew cause why this replication should not be struck out or amended, on the

ground that the same was calculated to embarrass and prejudice defendant, as it tendered no certain or definite issue on the plea.

J. B. Read showed cause.

Cases referred to—*Sim* v. *Edwards*, 15 C.B. 214; *Glover* v. *Dixon*, 9 Ex 108; *Gwynne* v. *Burrell*, 6 Bing. N. C. 453; Russell on Awards, 573-4, 814-5; *Bullen & Leake*, 466; *Stewart* v. *Webster*, 20 U. C., Q. B., 469; *Folwell* v. *Hyde*, 20 U. C., Q. B., 567; *Webb* v. *James*, 8 M. & W. 645.

DRAPER, C. J.—At first, I thought the plea was fully as open to the objection of being calculated to embarrass and prejudice, as the replication, but on reflection I have come to a different conclusion.

The plea contains two propositions. 1st, That the bond is subject to a condition. 2nd, That defendant has not broken the condition. These two put together constitute the defence relied on.

By this general form of replication the plaintiff endeavours to put the whole in issue; and conceding to the plaintiff that he may thus traverse the allegation that the bond declared on was subject to the condition stated, on which it is unnecessary to say any thing, the taking issue on the allegation that there was no award is clearly bad pleading, for the plaintiff should on replying to such a plea set out an award and assign a breach.

I am strongly inclined to think the replication might have been demurred to; but as some doubt is expressed on this point, and as I have no doubt of the insufficiency of the replication as an answer to the second proposition in the plea, I will not drive the defendant to try that point against the impression of the pleader.

I think the replication comes within the 119th section of Con. Stat. U.C., ch. 22, as being framed so as to embarrass, prejudice and delay, the fair trial of the action, and that it should therefore be set aside.

To save the plaintiff the necessity of another application, he may, if so advised, reply *de novo* to the plea, treating it, as I think it should be treated, as a plea of no award simply. Or he may reply by denying the allegation that the bond declared on is subject to a condition as alleged in the plea. If he desire to reply double, that is separately, to each proposition, he must apply on affidavit. If he act on the suggestion above, by replying, the costs should be costs in the cause.

IN THE MATTER OF WILSON AND HECTOR, TWO, &C.

Con. Stat. U. C. cap. 35, sec. 28—Chancery—Bill—Reference by Common Law Judge—Waiver—Jurisdiction.

It is in the power of a common law judge sitting in chambers to refer for taxation to the proper officer of the Court of Chancery, a bill rendered by solicitors for services performed in that court.

If such an order be waived or abandoned by the party who obtained it, it is necessary to move to set it aside.

Whether it has or no can be properly decided in the Court of Chancery, especially in a case where one party treating the order as in force obtained from the Master of that Court a warrant for the taxation of the bill under and pursuant to the order, and the other party treating the order as waived or abandoned, obtained an independent order of that court for the taxation of the bill.

A common law judge will, under such circumstances, decline to interfere.

(Chambers, 18th April, 1863.)

Messrs. Wilson & Hector were, at one time, the solicitors of Connel James Baldwin, deceased.

After his death they caused a bill of costs for services rendered in the Court of Chancery to be rendered to Messrs. Lynch & McVean, who were administrators, with the will annexed, of Connel James Baldwin.

Within one month after the delivery of the bill the administrators obtained an order from Morrison, J., under and pursuant to Con. Stat. U. C. cap 35 sec. 28, for the reference of the bill to be taxed by the proper officer in the Court of Chancery, with liberty reserved to the administrators to dispute the retainer.

The order was made upon summons in the usual manner. It was issued on 6th October, 1862.

Not having been served Messrs. Wilson & Hector, on 1st April, 1863, notified the attorneys of Messrs. Lynch & McVean that, if not served with a copy of the order within two days they should treat it as abandoned.

Before the expiration of the two days the attorneys were informed that the reason the order had not been served was that it was mislaid.

On 4th April, 1863, a duplicate order was obtained from Morrison, J.

On 7th April, 1863, the Master-in-Chancery, by warrant, appointed Monday, 21st of same month, for the taxation of the costs under and pursuant to the order of Morrison, J.

On 11th April, 1863, the attorneys, upon an application to the Court of Chancery, treating the order of Morrison, J., as of no effect, obtained an *ex parte* order of that court for the taxation of the same bill.

On 13th April, 1863, the order of Morrison, J., with appointment for 21st of same month was served.

James Beaty thereupon obtained a summons calling upon Messrs. Lynch & McVean to shew cause why the order of Morrison, J., of 6th October, 1862, should not be rescinded, and all proceedings had thereunder be set aside, on the ground that the administrators had waived the order by neglecting and refusing to proceed thereunder, and on the ground that before the service of the said order Messrs. Wilson & Hector had obtained the order in the Court of Chancery for the taxation of the bill of costs referred to in the order of Morrison, J.

Robert A. Harrison shewed cause, filing an affidavit of the administrators wherein the cause of the delay in serving the order of Morrison, J., was fully explained; and the administrators distinctly swore they had not and never had any intention of abandoning the order of Morrison, J. Mr. Harrison admitted that delay unexplained was evidence of an intention to abandon, but submitted that the delay was so explained as to rebut all presumption of an intention to abandon. He also argued that it was in the power of the attorneys themselves to have obtained a duplicate of the order of Morrison, J., and upon it have proceeded to the taxation of the bill, instead of obtaining the order for that purpose from the Court of Chancery. He referred to Con. Stat. U. C cap. 35 secs. 27, 28, 32, 43. *In re Sheriff*, 4 A. & E., 338.

James Beaty, contra, contended that the time which had elapsed without service of the order was positive evidence of abandonment and such as could not be explained. He referred to *Sedgwick* v. *Allerton*, 7 East. 542; *In re Hare*, 10 Beav. 187.

DRAPER, C. J.—The order of Morrison, J., is perfectly regular. If it has been waived or abandoned, it is unnecessary to set it aside. Whether it has or no can be properly decided in the court of Chancery, in which both parties are taking proceedings. I decline to interfere. The Court of Chancery is the proper tribunal to deal with the question. The whole matter, except the summons and order of 6th October last, arises in that court, the bill to be taxed arising wholly out of a suit instituted there. I discharge the summons.

Summons discharged.

CHANCERY CHAMBERS.

Reported by THOMAS HODGINS, ESQ., M.A., *Barrister-at-Law.*

MILLER v. MILLER.

Irregularity—Time to move against—Waiver.

A party complaining of an irregularity must come promptly and move against it, either within a reasonable time, or the time limited in the order or notice complained of. Thus, where a party was directed to pay a certain sum of money within eight days, but did not move against an irregularity in the order for several weeks after.

Held, that he came too late to complain of the irregularity.

An order had been made in this case directing the defendant to pay to the plaintiff certain monies by way of alimony, and also her costs within eight days after service of the order. He was served with the order but did not obey it, and after the lapse of several weeks moved to set it aside for irregularity.

Connor, Q.C., for the defendant.

Hodgins, for plaintiff.

SPRAGGE, V. C.—Held that the defendant came too late to move against the order; that he should have applied within the eight days limited by the order, and thereupon refused the motion with costs

Lewis v. Jones.

Irregularity—Notice—Waiver—Dismissal of bill for want of prosecution.

Held. 1*st*—That where a party files a pleading without serving notice thereof to the opposite party, such pleading may be taken off the files for irregularity with costs

2*nd*—That though a party may search the papers filed in a suit, yet unless it is shown that he had actually seen the pleading complained of as irregular, he may move after the next step in the cause to have it taken off the files.

3*rd*—That under the circumstances the bill may be dismissed for want of prosecution.

The plaintiff after filing a replication, moved, on notice, for leave to amend, and obtained an order from Esten, V. C., for that purpose. Subsequently on motion of the defendant to dismiss for want of prosecution, an order was made by Spragge, V. C., directing the plaintiff to file a replication within two months, and go down to examination of witnesses the following term. The plaintiff annexed his replication within the two months, on the 12th December, but did not serve notice of such amendment. It appeared however that the defendant searched the papers of the suit on the 15th or 17th December. The plaintiff on the 28th January set the cause down for examination and hearing for the 10th February, and served the usual notices. On the 5th February the defendant moved to take the replication off the files on the ground that no notice of filing had been given, and that it was not in accordance with the last order to strike the cause out of the list for examination, also to dismiss the bill for want of prosecution.

S. H. Blake, for defendant.

Hodgins for the plaintiff contended that the application was too late, that the defendant had notice on the 15th or 17th December, several weeks before the cause was set down; that the cause was being prosecuted in being set down for examination, and cited *McDougall* v. *Bell* and *Miller* v. *Miller* (in Chambers, *ante*) Chitty's Archibold, 1204, &c.

Esten, V. C.—After looking into the cases, said he could not follow the case of *McDougall* v. *Bell*, and that where a party files a pleading without notice of it to the opposite party it may be taken off the file for irregularity with costs. That though the defendant had searched the papers filed in the suit, yet as it was not shown that he had actually seen the replication, he was in time and had not waived his right to move, that the replication was irregular, and must be taken off the files, and that the bill must be dismissed with costs for want of prosecution.

McDougall v. Bell.

Notice of filing Pleadings—Irregularity.

Notwithstanding the order (of 1853) xix requiring notice to be served of filing any pleading, a party cannot move to take such pleading off the files where no notice of filing has been served

In this case one of the defendant's filed his answer to the plaintiff's bill, but served no notice of filing. The plaintiff on applying for an order *pro confesso* against him found the answer on the files, thereupon he moved to take the answer off the files for irregularity.

Scott for plaintiff cited *Watkins* v. *Fenton* (8 U.C. C.P. 289) and Orders (1853) xix.

Crickmore contra.

Spragge, V. C.—After taking time to look into the practice refused the motion with costs.

DIVISION COURTS.

In the First Division Court of the County of Carleton, before His Honor Judge Armstrong.

Cocker v. Lee.

Action of replevin for unjustly detaining a mastiff dog—Stolen property—Sale at Auction.

This was an action of replevin for the unjustly detaining by the defendant of a mastiff dog, alleged to be the property of the plaintiff. Case came on for trial before his honor Judge Armstrong, at Ottawa, in January last.

From the evidence given on the part of the plaintiff it appeared that he had bought the dog, in the month of May last, at a public auction sale of the stock-in-trade of the firm of Sinclair & Levy, dealers in Sheffield goods; that they had been in possession of the dog for some months, and he had been kept on their premises as a watch-dog; that for three days prior to the sale the dog had been on view on the public street in front of their premises, and had been duly advertised for sale in printed hand-bills; that the dog was sold publicly, and the plaintiff, being the highest bidder, became the purchaser; that Sinclair & Levy had purchased the dog from one Duchesney, who purchased from a boy by the name of Joyce, who informed Duchesney that he had raised the dog; that from the time the plaintiff purchased he had kept the dog on the premises of his employers as a watch-dog until December last, when he got out of the yard, and was next found in the possession of the defendant, where he remained until replevied in this action.

Plaintiff proved demand of possession and refusal on the part of defendant to deliver up the dog.

It was admitted by the defendant that he had personally no claim to the dog, but had kept possession for one White, whose property the dog was alleged to be, and from whom he was said to have been stolen.

Evidence submitted on part of defence proved conclusively that the dog belonged to one White in the month of February, 1862, and had been in his possession from a pup up to that time; that during the latter part of that month he had been taken from off his premises, believed to have been stolen, from the fact of the strap having been cut by which he was fastened. It did not appear from the evidence that White had ever taken any trouble whatever in trying to recover the dog, or had ever made any enquiry concerning him.

Plaintiff objected to admission of evidence of the right of property being in White, the action being to try the question as to the right of property between plaintiff and defendant; and contended that supposing it was granted that the property had been originally in White, as he had bought the dog in open market, that White must first prosecute the thief to conviction before he would have the right to recover, or must at least have taken some steps to bring or in trying to bring the offender to justice, which he had not done; and that, therefore, under the circumstances detailed in evidence he was entitled to a verdict.

On the part of the defence it was urged that the evidence was admissible, and that White's right to recover his property was unquestionable, wherever found, and under whatever circumstances acquired by the party in whose hands the same might be found.

His Honor reserved his decision for one week, and then he gave judgment for the defendant (viewing the action as directly between the plaintiff and White) on the ground that the dog was not purchased in the usual course of trade; that a sale at public auction is not a sale in market overt; that the plaintiff thereby acquired no better title than that which was in Sinclair & Levy; and that therefore White was entitled to his property wherever he might find it.

UNITED STATES REPORTS.

Peck v. The Delaware and Hudson Canal Co.

Master and Servant.

The defendants, a Coal Company, held not liable for damages to one of their car runners, by reason of an injury occurring through the breaking of a bridge upon their railroad, the breaking of the bridge happening in consequence of a defective iron bolt, put in by another workman of the Company—the defect being unknown to the Company or its agents, not discoverable by ordinary examination, and the workman having the reputation of a good and competent workman.

[C. P., Luzerne Co.]

The charge to the jury was delivered by

Conyngham, P. J. — (The Court, after explaining the case, observed:) The plaintiff while running a train of cars in the employ of the defendants, upon their railroad, was seriously injured by the cars breaking through a bridge which had been but recently constructed. The Company aided the plaintiff by the payment of a physician during his confinement of several months, employed a nurse, and paid him wages for some nine months, but the plaintiff having been permanently injured, seeks to recover for additional expenses and general damages. The evidence establishes the fact that the breaking of the bridge was caused by the defective welding of a bolt, which was done in the workshop

of the defendants; the defect in which, however, was not discoverable by the eye, or from the outside appearance.

This is not the case of a passenger, travelling on a passenger railroad, for the ticket money paid for his passage. If it were so, most unquestionably the Company would be responsible for damages sustained by a party such as now proved. Such companies towards such passengers by their contract imply, among other things, that their road is safe and in good and proper order; and, when through a defect in the road, such as is said to have occurred here, an accident happens, the law raises at once the presumption of negligence, which the Company must disprove to avoid liability, and which they certainly could not disprove by the kind of evidence, however true and reputable it may be, which they have offered in the present case. Railroad Companies in such cases are liable unless they can show that the accident occured through the Act of God, or that it was caused by something against which no ordinary human foresight and prudence could protect, where there had been no negligence on the part of the passenger.

But in the present case this is not a passenger railroad carrying passengers, but the plaintiff was a car runner on certain gravel cars engaged on the coal road of the defendants, running them in the employment of, and for the benefit of the Company; he was their servant, in their employ, into which he had voluntarily entered, and to abide by all the risks connected with his duties in their business, he is to be considered as having impliedly undertaken.

In the present case, the evidence, as well on the part of the plaintiff as the defendants, without any dispute establishes the fact that the accident occurred through the defective iron bolt, which gave way under the train and cast the cars through the broken bridge. It is also undisputed under the evidence that the bridge was constructed on a proper plan, fully able to answer the purpose of the road, which when put in, in itself appeared to be good and sound, free from any apparent defect so far as any outside examination by the eye, at any rate, could discover. Such is the testimony, with no contradiction, of the engineer and the workmen who have been examined here, and who were employed in the construction of the bridge. Again, the evidence is equally undisputed and free from contradiction, that the workmen employed by the Company to prepare the iron and put up the bridge were all men having the character and reputation of good, competent and experienced workmen in their different lines of work, and that the iron out of which the bolt was made was Ulster iron, the best kind for the desired purpose. No one has spoken unfavorably of either Wylie, the foreman of the blacksmith shop of the Company, or Lindsay, the workman who made the bolt, or of the competency of Marsh or Sleigh; but all who have spoken on that subject have testified in their favor. It is not pretended that the Company or any of its agents had any knowledge of this defective bolt until after the accident, though if the testimony of Mr. Bohe, and perhaps Mr. Wylie be correct, Lindsay, the workman, might, by proper care, have ascertained the fact without much trouble when the iron began to cast, and afterwards by blows upon it effectively applied. It is not improbable, then, that Lindsay was guilty of negligence, and in a suit against him the case might be different: but of such negligence no notice, or anything from which notice can be inferred, is brought home to the contrary to the defendants.

The evidence, then, establishes the fact that the Company did employ good iron for the bolts, and no fault is found with the other materials of the bridge, and workmen competent in every respect from their character to make good work of the bridge, and unless something else be shown in a case like the present, there is nothing to make them responsible for the injury to the plaintiff in the way of damages in this suit. He was the servant of the defendants, in their employ, and though he may have been injured through the undiscovered negligence of Lindsay, another servant of the Company, the common and general employer, the company is not in law considered liable to an action of damages in such case. It is part of the risk which every employee of a railroad impliedly undertakes to abide, and against which he cannot complain if he receive an injury from causes such as are shown in the present case.

This ruling is founded on no new principle applied to railroads alone, but it rests upon the principle of the relative situation of master and servant, employer and employed, in the varied business and duties of common life. (The Court then referred to the opinion of the Supreme Court in *Ryan* v. *The Cumberland Valley Railroad Co.* 11 Harris, 357, and read a portion of the same, and then said further:) If we should declare a different opinion, the rule would equally apply to all who are in business, and have others employed under them—the merchant, the farmer, the mechanic, and every one carrying on business by the aid of others in their employ. Suppose the case of a farmer who employs a competent workman to make him a wagon, and there is in the wagon, when finished, some defect unseen and unknown by the owner, arising, perhaps, from the carelessness of the workman, and the teamster or driver should be injured by the breaking of the wagon from this cause, the owner would not be liable in damages.

The plaintiff and Lindsay, through whose defective work the accident occurred, were servants of a common master, whom the defendants employed in different branches of business, one in running cars, and the other, among other things, preparing iron for the railroad. Some Courts have in such cases varied or modified the rule we have already laid down, but we cannot discover the force and effect of the distinction in a case like the present. Here the Company are the owners of the road, and run the cars upon it, and their different employees are employed in different branches of the same common business, their duties being all directed to bring about a common object, the carrying coal to market. Their particular employments may be distinct and differently exercised, but the object and end is the same. The master is not to be held liable unless there is blame or fault upon his part. If he has employed competent workmen and proper materials to be worked, and apparently good mechanical works and machinery, without any neglect or fault upon his part, we cannot discover any obligation which will make him liable at law for the consequences of an accident occurring from an unknown and undiscovered difficulty, as in the case before us.

We further say, that there is no conflict of testimony in the case; there are no disputed facts, no material inferences from facts about which the counsel differ; there is no evidence to submit to you from which in law negligence, which would make the Company liable, can be discovered or inferred, and we therefore charge, as matter of law, that under the whole case the plaintiff cannot recover, and that your verdict should be for the defendants.

The jury found a verdict for the defendants.

Keith v. The Inhabitants of Easton.

A daguerreotype saloon, a portion of which was within the limits of a highway (which was laid out four rods wide), and about fifteen feet from the travelled part of said highway, upon which the plaintiff was going with his horse and wagon, does not constitute a defect in such highway, so as to make the town liable for damages to a person for injuries done to himself and carriage, by his horse taking fright, either at the saloon, or some piece of canvass attached to it. The proper attributes of a highway discussed.

This was an action of tort against the defendants for damages caused by an alleged obstruction of a highway in Easton. The obstruction was a daguerreotype saloon, which was placed upon a grass plot in a triangular area on "Grist Mill Green," so called, in said town. The nearest part of the saloon to the travelled track of the road was about five feet and eight inches, and three-fourths of the saloon were in the limits of the highway, (which highway was laid out four rods wide,) and about fifteen feet from the track upon which the plaintiff was going with his horse and wagon to mill, when his horse took fright, either at the saloon or some pieces of canvass attached to it, the plaintiff was thrown out of his wagon with great violence, and himself and carriage injured. It was not claimed by the plaintiff that there was any defect by reason of a want of railing, and the evidence showed that, except in regard to the saloon and the condition and position thereof the way was sufficiently smooth and level to enable the plaintiff to travel with safety by his using due care, and it was not pretended that the plaintiff's team came in collision with the vehicle or saloon.

At the trial, the defendants asked the court to instruct the jury, among other things, that the said saloon was not a defect, or want

of repair, for which the defendants were liable; that the facts proved did not disclose such a defect or want of repair of the highway as to make the town liable under the statute, even if it did cause the fright to the plaintiff's horse, and cause the horse, with the carriage, to run against some object or embankment, which, of itself, was no defect or want of repair, of a public highway. The presiding judge declined so to instruct the jury, who returned a verdict for the plaintiff, and assessed damages in the sum of twenty-one hundred dollars. The defendants excepted.

E. H. Bennett and *Carpenter* and *White*, for the plaintiff.

Ellis Ames and *H. J. Fuller*, for defendants.

CHAPMAN, J.—This case presents a new question of great importance. In the cases thus far reported the defects in highways for which towns have been held liable, are all included in four classes. These are, want of railings; obstructions to the travelled path, by stones or rocks, wood or timber, posts, snow or ice: holes or excavations in the path; and defective bridges or causeways, that would not support the traveller. In *Drake* v. *Lowell*, 13 Mete. 292, an awning of wood and timber, and supported by posts standing on the highway, which had been broken by a heavy body of snow and ice lying upon it, and which extended across the sidewalk a few feet above the heads of travellers, and fell upon the plaintiff and crushed him down upon the walk, was held to be a defect in the highway.—But in *Hixon* v. *Lowell*, 13 Gray, 59, this case is said to have reached the limit of the liability of towns for defective ways; and in the latter case, the town was held not to be liable for any injury caused to a traveller by the fall of an overhanging mass of ice from the roof of a building, although it overhung the highway for more than twenty-four hours, and for the space of eighteen inches or two feet. So rocks and stones within the limits of the highway, but not obstructing the travelled path, are not defects for which a town is liable. *Howard* v. *North Bridgewater*, 16 Pick. 189; *Smith* v. *Wendell*, 7 Cush. 498. So where a locomotive engine injured a traveller by crossing the highway on a railroad illegally existing there. *Vinal* v. *Dorchester*, 7 Gray, 421.

In no case has it been held that an object existing within the limits of a highway, but leaving the travelled path unobstructed, so that the traveller is safe from all collision with it, is a defect in the way, merely because it exposes the traveller's horse to become frightened by the sight of it, either at rest, or in motion, or by sounds or smells that may issue from it. In this case, the plaintiff contends that a daguerreotype saloon, standing partly within the limits of the highway, but without the limits of the travelled path, and several feet distant from it, is a defect, because it was so situated that the plaintiff's horse became frightened, either by seeing it at rest, or by seeing the fluttering motion caused by the wind, as it blew upon some pieces of loose canvass upon the covering. There was no collision with it, and no danger of collision.

In *Hixon* v. *Lowell*, *ubi supra*, it is stated, as a general proposition, that "a town, if it has done its duty in making the way safe and convenient, in all the proper attributes of a way, is not obliged to insure the safety of those who use it." It becomes necessary in this case to draw the line between what are and what are not the proper attributes of a way; so that it may be seen whether a cause of fright, such as existed in this case, is a defect in one of these attributes. The distinction is of very great practical importance; for it is to be considered that surveyors have power and are bound to remove, without delay, all defects in highways; and towns are liable, though the defects have not existed twenty-four hours, if the proper officers happen to be present, and have knowledge of their existence. The doctrine contended for by the plaintiff would make their powers and duties very extensive; much more so than is generally supposed.

In *Hixon* v. *Lowell*, instances are stated of things that might obstruct a traveller, but which would not be defects in any of the attributes of a way. They are quite pertinent to this case. The court decided that freedom from ice and snow on roofs overhead is not one of these attributes, and therefore that the town is not bound to remove the ice or snow from the roof. By way of illustration, the court state several other things, which, though they may obstruct a traveller, are outside the limit of the proper attributes of a way. "He might be annoyed by the action of the elements, by a hail storm, by a drenching rain, by piercing sleet, by a cutting and icy wind, against which, however long continued, the town would be under no obligation to furnish him protection. He might be obstructed by a concourse of people, by a crowd of carriages; his horses might be frightened by the discharge of guns, the explosion of fireworks, by military music, by the presence of wild animals; his health might be endangered by pestilential vapors, or by the contagion of disease; and these sources of discomfort and danger might be found within the limits of the highway, and continue for more than twenty-four hours; and yet that highway not be, in any legal sense, defective or out of repair. It is obvious that there may be nuisances upon travelled ways, for which there is no remedy against the town, which is bound by law to construct or maintain them.

"If the owner of a distillery, for example, or a manufactory, adjoining the street of a city, should discharge continually from a pipe or orifice opening toward the street, a quantity of steam or hot water, to the nuisance and injury of passers by, they must certainly seek redress in some other mode, than by an action for a defective way. If the walls of a house adjoining a street in a city were erected in so insecure a manner as to be liable to fall upon persons passing by, or if the eaves-trough or water conductor was so arranged as to throw a stream from the roof upon the sidewalk, there being in either case no structure erected within or above the travelled way, it would not constitute a defect in the way."

The discussion of the present case suggested many other illustrations. Cattle or horses running at large might frighten the traveller's horse; the sight of flags displayed, or a window curtain fluttering in the wind over a street, through a raised window, the goods displayed in front of shops, and the numberless operations of business and amusement constantly carried on in cities and villages, within the limits of the highway, the gathering at agricultural fairs, military trainings, and other public occasions, may any or all of them tend to frighten many passing horses; yet it would be a novel doctrine to hold that highway surveyors may interfere in such cases, under their authority to repair highways, or that the attributes of a way include them because they may frighten horses.

And we think that the daguerreotype saloon, described in the report, though it may have been a nuisance, for which the proprietor might be liable to an action or indictment, yet, since it did not obstruct the travelled path in any other way than by the fact that it was in sight of the plaintiff's horse, did not constitute a defect, as to any of the proper attributes of the way.

Exceptions sustained.—*Monthly Law Reporter.*

GENERAL CORRESPONDENCE.

TO THE EDITORS OF THE LAW JOURNAL.

Proposed Law Association.

GENTLEMEN,—I avail myself of your valuable journal to offer some suggestions to the legal profession in regard to the advisability of forming a Law Association for the protection of the interests and the furthering of the well-being of a large and influential portion of the community.

This society, which should be composed of delegates from every county, meeting as occasion might require at Toronto, the seat of the Upper Canadian Law Courts, might, and if properly conducted undoubtedly would, exercise a great and beneficial influence over law legislation and law matters in general. Subjects of importance would not be wanting to its deliberations, and if not trespassing on your space I would venture to suggest a few matters with which it might most advantageously deal.

A great and constantly increasing evil in the profession is the immense number of men and boys who are daily entering

its ranks without the education necessary to fit them for its duties. Law in Canada seems to be the refuge of incapacity, and men who have failed of success in any other course of life betake themselves to its bosom as criminals of old to a sanctuary in some heathen temple. There is certainly a standard of qualification fixed by the Law Society of Osgoode Hall for those desirous of becoming members of it, but the examinations as now conducted are utterly inefficient as tests of education and fitness, and any boy of ordinary intelligence can be *coached* up for the ordeal in a few months without any previous knowledge of the subjects set out, and without in fact any previous education at all, to use the latter word in its proper and more extended signification; and more than this young men can enter on the study of the law, if they design merely to become attorneys, without any preliminary examination whatever.

An association of the nature I have mentioned might devise some plan by which this evil would be abated and the recklessness of legal gentlemen, in taking articled clerks into their offices, checked. At present they in this matter go to the full extent allowed by law, namely, four to each attorney, utterly regardless of qualification or fitness to become worthy members of the profession, but merely for the purpose seemingly of getting their office work cheaply done.

Another point which might be advantageously dealt with would be the rates of charges to be made in cases such as conveyancing, where there is no tariff fixed by law. The question also of retainers and fees thereon might be reduced to some intelligible form.

I am afraid, however, that I am trespassing too much upon your space, and will therefore conclude by suggesting the most important matter that would come up before such an association, namely, the subject of law reform. By bringing to this important question a mature deliberation as well as knowledge and technical skill, a great deal of crude legislation would be avoided and *acts amending acts amending acts* and *acts interpreting acts interpreting acts* would be less frequent, and our Consolidated Statutes run less risk of becoming what by frequent alterations they promise to be, almost useless.

In these remarks hastily thrown together I have merely attempted to bring the subject under the notice of some of the many talented gentlemen of whom the legal profession in Canada can boast, and to induce them to give the matter their attention, and if practicable to inaugurate a Society which would I am convinced be of very great advantage.

All other professions are taking every means of self-protection, and why should that one only, whose organ you are, take no steps to preserve their privileges and improve their position. Encroachment appears to be the order of the day; mere passive resistance is of no avail, and communities as well as individuals must by self-assertion make good their claim to the enjoyment of their rights.

I remain, gentlemen, yours respectfully,

Ottawa, March 24. 1863. EVINS.

[We recommend the careful perusal of the above letter to those interested in the well-being of the profession of the Law in Upper Canada. There is much in the letter to recommend it. The association suggested would not be without precedent; there are several associations of the kind in England, and we think the time is fast approaching, if not now at hand, for the formation of some such association in Upper Canada.—EDS. L. J.]

Con. Stat. U. C., cap. 25 sec. 2—Absconding debtors—Affidavit.

TO THE EDITORS OF THE LAW JOURNAL.

GENTLEMEN, — Justice cannot be flattery. You deserve thanks for the able manner in which the *Law Journal* is conducted.

In reference to the oath required to be made by creditors, for proceeding against "Absconding Debtors" by attachment, the words of the Statute are, "*with intent to defraud.*"

Now, the question which I wish to submit, after offering my own views, is, what is the strict meaning of these words, or rather, what is not their meaning, which will be seen as I proceed to be more strictly the question.

I must admit, had it not been demonstrated to me, by the two facts which I shall state, that the prevailing opinion on the point is an erroneous one, and also a prejudicial one, that the thing would appear too plain and simple to demand the very serious attention of any lawyer, if even more than a second thought.

The facts were these: A., a client seeking advice and stating his case, said, "that B. was indebted to him, that he (B.) was about to leave the Province (taking with him all his effects), and that he (B.) intended to defraud him, as he believed, of said debt." He was answered by both the members of the firm, of whom he sought the advice, that unless he could swear that he believed, &c., B. was so leaving the Province *for the purpose of defrauding him*, he could not procure the attachment. Being a student in the office, and hearing the case and the reply, and looking at the words of the statute, "*with intent to defraud*," I concluded, in my own mind, that our client had a good case; for although he could not swear that B. was about to leave the Province *for the purpose of defrauding him*, he could and was ready to swear that he (B.) was about to leave the Province, and *that it was his intention to defraud him*, which latter would, I submit, answer exactly the requirement of the statute.

Every one will readily perceive, when thus presented, the very great difference between the two expressions, *for the purposes* and "*with the intent.*" That the latter by no means implies the former; that while the former means that the party is about to leave *for* the *purpose* of defrauding, &c., that is, the defrauding is his purpose, the latter only means that he *is going*, and that at the same time it is *an* intention of his to defraud, &c., but that such may not be the *only reason* of his going. The oath, that a party is about to leave, &c., "*with intent to defraud*," can be made where the other cannot be.

The other fact which I wish to ment on, to show the prevalency of this erroneous view, is, that after the above circumstances I asked several lawyers for their opinion, through curiosity, and in every instance, amounting in all to five, the

opinion expressed was the same, and was that "*with intent to defraud*," meant "*for the purpose of defrauding*."

JUNIUS.

[The intention of a person may in general be gathered from his acts. The property, and in some degree the person, of a debtor within the jurisdiction of the Court are liable for the payment of his debts. If a debtor much involved withdraw either his property or his person from the jurisdiction of the Court, the fact of his doing so, otherwise unexplained, is sufficient to raise the belief of his intention to defraud. This is all that a creditor is called upon to swear. He need not swear that the debtor has departed for the purpose of defrauding him. He need not positively swear that the debtor hath departed with intent to defraud. All the creditor is called upon to do is to make affidavit that he "hath good reason to believe and doth verily believe such person hath departed from Upper Canada, &c., with intent to defraud the plaintiff of his just dues, &c." The very words of the Act had better be used, and they are not in our opinion susceptible of the meaning that the debtor's sole purpose of departing was to defraud. That may or may not be the case, and yet the facts be such as to justify a plaintiff in making the necessary affidavit.—EDS. L. J.]

Penal action—Compounding—Effect thereof.

TO THE EDITORS OF THE LAW JOURNAL.

GENTLEMEN,—A., a J. P., is threatened by B. and C. with an action for not returning two convictions, and he (A.) gives them a note for $100, payable in three months' time, to stop all proceedings against him. A week after such note is given, B. and C. issue a writ, but it is not served. At the expiration of the three months, A. refuses to pay the note, on the ground that there is no consideration. Can B. and C. proceed with the action for not returning the conviction, or are they debarred, under the 18th Eliz. cap. 5, by accepting the note?

IGNIS FATUIS.

Campbellford, March 31, 1863.

[The statute to which our correspondent refers enacts, that no informer or plaintiff shall compound or agree with any person who shall offend, or be surmised to offend, against any penal statute, for such offence, committed or pretended to be committed, but after answer made in court; and that if any person or persons shall offend in making a composition or other misdemeanor, contrary to the true intent and meaning of the statute, he or they so offending, being thereof lawfully convicted, shall stand in the pillory, and shall "*from* and *after* such conviction forever be disabled to pursue or be plaintiff or informer in any suit or information, upon any statute, popular or penal." The inference is, that *until* conviction, the person offending is capable, like any other person, of being plaintiff in a penal action. In answer, therefore, to our correspondent, we think, as at present advised, that, under the circumstances stated by him, B. and C. are in a position to proceed with the penal action.—EDS. L. J.]

MONTHLY REPERTORY.

COMMON LAW.

Q B. HOLLINGSWORTH v. WHITE AND OTHERS.

Bill of sale—Property in grantor—17 & 18 Vic. cap. 36.

P. executed a bill of sale, assigning goods to the plaintiff. The bill of sale was afterwards cancelled, and a second one executed, comprising the same goods; and subsequently a third bill of sale, also comprising the same goods, was executed, but the second bill of sale was not cancelled. The defendants seized the goods under a *fi. fa.* before either of the bills of sale had been registered. The third bill was afterwards, and within twenty-one days from its execution, registered.

Held, that, though the property passed out of the grantor by the first bill of sale, the execution of each of the new bills amounted to a redemption of the goods, and a granting of fresh security; so that, the first two having been annulled, the third became operative, and, having been filed within the twenty-one days, was available against the execution creditor, on the authority of *Marples* v. *Hartley*, 30 L. J. Q B. 92; 9 W. R. 334 & 520.

The third bill was executed on the 31st December, 1860, and the jurat of the affidavit of execution purported to have been sworn on the 10th January, 1860.

Held, that this was a mere clerical error, and might be amended if material.

EX. C. WAKE v. HARRISS AND ANOTHER.

Principal and agent—Equitable plea—Parol evidence to explain written contract—Agent in terms contracting as principal—Mistake.

Where a defendant, on the face of a charter-party, contracts as principal, it is competent to him by way of equitable plea to an action against him on the charter party to show that, in fact, he signed as agent for a third party; that the plaintiff verbally agreed that he should not be responsible as principal, and is inequitably taking advantage of a mistake in drawing the charter-party, so as to make the defendant personally liable.

Judgment of the Exchequer affirmed.

Quære, whether the facts stated in the plea would be a good defence at law.

EX. HILTON v. GREEN.

Practice—Change of venue.

It is a good ground for an application to change the venue, that the attorney for the defendant is under-sheriff of the county where the venue is laid, and has made it a special jury case.

EX. WALTON v. THE SWANAGE PIER COMPANY.

Arbitration—Award—Setting aside or sending back to arbitrator—Mistake of arbitrator.

The court will not send an award back to the arbitrator, to correct an alleged mistake, which, when applied to, he does not admit, even although it be in a matter not within the original submission, but included in the award by virtue of some new agreement between the parties, pending the reference.

EX. MARGRETTS v. GREGORY.

Contract—Principal and surety—Dealings between creditor and co-sureties as to securities—Effect of, in discharge of co-sureties.

Whether certain moneys received by the creditor on a dealing or transaction between him and a co-surety, as to a security given by another co-surety, has amounted to payment, will be a question of fact depending on the intention of the parties. There is an equity to which a surety is entitled—that the creditor shall not waste the securities given by the principal debtor; but if this extends to a security given by a surety, it does not extend further than to exclude such wasteful dealing with the security. And a fair dealing with the surety's security under which the creditor

sets off the surety's share of the debt due to him against the proceeds of the security does not preclude a resort to the other sureties for their respective shares of the debt.

EX. DOWLE v. NEALE.

Practice—Mortgage, ejectment—Staying of proceedings.

In ejectment by mortgagee, the court, or a judge, under the Common Law Procedure Act, 1852, can include in the condition of an order for stay of proceedings, the payment of the costs of an abortive attempt at sale under a power.

EX. CURLING v. BINGHAM.

Practice—Setting aside judgment.

It is irregular and improper for a plaintiff's attorney, whose judgment has been set aside as irregular, with costs, to go and strike it out and sign judgment again, so as to avoid payment of costs.

EX. LOCKWOOD v. SMITH.
SMITH v. LOCKWOOD.

Arbitration—Setting aside award—Alleged mistake of arbitrator—Remitting award to him.

An award will not be set aside, nor even sent back to arbitrator, for an alleged mistake, not manifest nor apparent on the face of it, nor admitted by any affidavit or statement of the arbitrator.

C.P. ALLEN v. SMITH.

Innkeeper—Lien.

A trainer of race-horses went to an inn with a horse, and remained the night. On the following day his helper came with another horse. From that period they remained at the inn with the horses, and put both horses in training, occasionally going away with the horses to races, and returning. The innkeeper, previous to each departure, ascertained where they were going. In an action of trover and detinue for the horses against the innkeeper,

Held, that the defendant had a lien on the horses for his charges, he having received them as the horses of a guest, and not at livery.

EX. HORSFALL AND OTHERS v. THOMAS.

Bill of exchange—Defence—Failure of consideration—Contract—Fraud.

In an action on a bill of exchange, it is no defence that it was given in consideration of a contract for a specific article which is made, delivered, renewed, tested, tried and retained, but which turns out to be useless, through a latent fault or defect in the making of it, though known to the maker, and not being at all looked at by the buyer, and there being no express representation of its soundness prior to the giving of the bill.

EX. OXENHAM v. SMITH.

Practice—Trial—Demurrer—Verdict subject to leave—Entry of issues—Postea—Amendment of entry of issues—Costs.

When a cause is taken down to trial, while demurrers to some counts of the declaration are pending, and at the trial there is a general verdict for the plaintiff, subject to leave to enter it for the defendants on those counts, and the courts hold the counts bad, and also direct the verdict to be entered for the defendant on those counts, the plaintiff is not entitled to the general costs of the trial on those counts, save as to particular issues, on which he has really succeeded in point of proof. And the application to settle the postea in accordance with the judgment ought strictly to be made to the judge who tried the cause, though he will act under the direction of the court. *Quære*, whether, if a bad count is not proved in omnibus, the verdict ought not to be entered on all the issues for the defendant.

And, *quære*, whether an issue on a bad count can be material, and whether rule 62 H. T. 1853, that the costs of the issues or law or fact shall follow the findings, applies where the plaintiff has taken a cause down to trial, pending demurrers, and has obtained a verdict on a count afterwards held bad?

Q. B.

REG. v. THE UNITED KINGDOM ELECTRIC TELEGRAPH COMPANY (LIMITED).

Highway—Nuisance.

On an indictment for a nuisance in obstructing a highway by erecting telegraph posts upon it, the judge directed the jury, 1st, That in the case of an ordinary highway, although it may be of a varying and unequal width, running between fences, one each side, the right of passage or way, *primâ facie*, and unless there be evidence to the contrary, extends to the whole space between the fences and the public are entitled to the use of the entire of it, as the highway, and are not confined to the part which may be metalled or kept in order for the more convenient use of carriages: 2ndly, That a permanent obstruction erected on a highway, placed there without lawful excuse, which renders the way less commodious to the public, is an unlawful act and a public nuisance at common law; and that if the jury believed that the defendants placed, for the purposes of profit to themselves, posts, with the object and intention of keeping them permanently there, in order to make a telegraphic communication between distant places, and did permanently keep them there, and the posts were of such size, dimensions, and solidity as to obstruct and prevent the passage of carriages and horses or foot-passengers upon the parts of the highway where they stood, the jury ought to find the defendants guilty upon this indictment; and that the circumstances that the posts were not placed upon the hard or metalled part of the highway, or upon a footpath artificially formed upon it, or, that the jury might think that sufficient space for the public traffic remained, are immaterial circumstances as regards the legal right, and do not affect the right of the Crown to the verdict.

Held, that these directions were right.

EX. PENNINGTON v. CARDALE.

Practice—Special case—Amendment after judgment.

Although the court may have power, even after judgment on a special case, to order an amendment by the statement of a fact omitted, and intended to be introduced, it will not do so when the fact is disputed or the intention denied.

WEBBER v. SHAW.

Practice—Drawing up rules—Amendment—Signing judgment—Costs.

When a rule, usually moved and drawn up with costs, is moved without costs, it is for the opposite party to see that it is directed to be so drawn, or, if it be erroneously drawn up with costs, to apply at once to the court to have it amended.

C. C. R. REG. v. FRANCIS FRETWELL.

Murder—Death resulting from taking poison to procure abortion—Accessory—Self-murder.

A married woman having become pregnant by the prisoner and having herself unsuccessfully endeavoured to procure a poison in order to produce abortion, the prisoner, under the influence of threats by the woman of self-destruction if the means of producing abortion were not supplied to her, procured for her a poison from the effects of which, having taken it for the purpose aforesaid, she died. The prisoner neither administered the poison, nor caused it to be administered, nor was he present when it was taken, but he procured and delivered it to the deceased with a knowledge of the purpose to which the woman intended to apply it, and he was accessory before the fact to her taking it for that purpose.

Held, that prisoner was not guilty of murder; that the case was distinguishable from *Reg.* v. *Russell*, 1 Mood., c c, 356.

Quære, whether the woman was guilty of self-murder.

EX. TIMMINGS v. THE BIRMINGHAM GAS COMPANY.

Practice—New trial—Surprise.

A new trial on the ground of surprise will not be granted in regard to a matter which was raised by the party at the trial, and merely to enable to support it by further evidence not in its nature more conclusive.

C. C. R. REG. v. WILLIAM STEPHENSON.

Evidence—Depositions, admissibility of, where a prosecutrix is expecting confinement—Discretion of presiding judge.

Upon the trial of the prisoner for obtaining money by false pretences, it was proved, by a female servant and the brother of the prosecutrix, that she was daily expecting her confinement, and the latter stated that she was "poorly otherwise," and was, therefore, too ill to travel.

Held, that upon this evidence, the statute 11 and 12 Vic. c. 42, s. 17, authorised the presiding judge to receive the depositions of the prosecutrix taken before the committing magistrate, that there may be incidents with regard to parturition to bring the case within the statute; that it is in the discretion of the presiding judge to determine whether the evidence of illness is sufficient; that it is not necessay in such case to produce medical evidence.

EX. EVERTON v. MATTHEW.

Sale of meat—Warranty of soundness and fitness for human food.

On a sale of meat by a meat salesman in a market (he not being himself the butcher) there is no implied warranty that it is sound and fit for human food.

CHANCERY.

M. R. PLEASE v. HEWITT.

Partnership—Dissolution before expiration of term—Return of proportion of premium—Ground of dissolution—Mutual incompatibility of temper—Alleged misconduct of the partner paying the premium.

Where a partnership was dissolved before the expiration of the term fixed by the articles, upon the ground of mutual incompatibility of temper on the part of the partners (the court considering both partners to have been in the wrong) and one of the partners had paid a premium on entering the partnership.

Held, that he was entitled to a return of a part of the premium, the proportion to be calculated with reference to the number of years of the term which were unexpired.

Partnership for ten years. Premium paid, £1,000. At dissolution two years were unexpired. Return of £200 of the premium allowed.

M. R. WILLIAMSON v. MOORE.

Will—Construction—"Nephews and nieces"—"Descendants of brothers and sisters.

A trust fund was directed to be divided between all the testator's nephews and nieces "being descendants of my brothers and sisters" alive at a certain period.

Held, that the gift did not extend to grand-nephews and grand-nieces.

L. C. BLEET v. BROWN.

Bond by surety—Misrepresentation—Unfounded allegations of fraud in amended bill—Costs.

A surety is bound only to the letter of his engagement and if that engagement is in any way altered, his obligation is at an end.

Accordingly when M. had contracted to supply bread made of flour of a certain quality to the Government, and B. and X. had agreed to supply him with flour of the required quality for that purpose, and the plaintiff joined in a bond with M. as surety to secure B. and X. payment of the price of such flour, in order, as stated in the bond, to enable him to carry out the contract. On a bill filed by the plaintiff against B. and X., who had never supplied M. with flour for the purpose of the contract—

Held, that the plaintiff was entitled to have the bond, as far as he was concerned, cancelled.

The plaintiff having introduced into his amended bill allegations of fraud against the defendant, which the evidence failed to support—

Held, that, though entitled to the relief prayed for, he must pay the defendants all the costs of that part of the bill containing such allegations, and the evidence taken thereunder.

V. C. K. WALTER v. STANTON.

Practice—Administration claim by a mortgagee—Solicitor—Costs.

Where a mortgagee, who is also solicitor of the testator and executrix, institutes a suit—in which a common administration decree is made—he is entitled to be paid his principal and interest out of a fund in court, but not his costs, those being costs of an administration and not a mortgagee's suit.

Where a mortgagee, who is also solicitor to the executrix, files a bill, in which a common administration decree is made, and the next of kin subsequently get the conduct of the cause by reason of the plaintiff's peculiar position, they must stand *pari passu* with him as to costs, both before and after the conduct of the cause is taken away from him, and he is not liable to pay the costs of an administration summons taken out by them, though without notice of his suit.

V. C. W. RE CHAPELL'S TRUST.

Will—Construction—Condition, precedent or subsequent—Substantial fulfulment of condition.

A testator gave stock upon trust for his wife for life, and after her decease to be divided equally between her four sons, J., E., H., G., provided that E. should be of sound mind at such time, and capable of managing his own affairs; but in case E. should be insane at the time of his wife's decease, then he directed the stock to be equally divided between his other three sons, J., H., and G. E. died insane in the lifetime of the wife. There was a gift of the residue to J. H. and G.

Held, that it appearing from the whole of the will that E.'s sanity at the time of receipt was what the testator intended to provide for, this was a contingent limitation to take effect after the wife's decease, and that, either on the principle of *Jones* v. *Westcomb*, or as being undisposed of, E.'s share went to J., H., and G.

V. C. W. DOWLING v. BETJEMAN.

Jurisdiction—Specific chattel—Remedy at law.

Although the court will order the delivery of a specific chattel, such as a picture, to the person seeking to enforce his right to it, on the ground that he ought not to be left to recover that value merely which a jury might put upon it; yet where the person has himself placed definite price upon the chattel the court will not interfere in aid of what is a mere money demand, and as such, capable of being enforced by action at law.

M. R. JONES v. RICKETTS.

Vendor and purchaser—Reversion—Purchase at undervalue—Unfounded allegations of fraud—Costs—Evidence—Tenancy by the courtesy—Live birth.

Where in a suit to set aside the sale of a reversion, a case of fraud was alleged by the plaintiff (the bill praying that the conveyance might be set aside as fraudulent and void) which failed, but the court was satisfied that the purchase of the reversion was

made at an undervalue. The court, in making a decree in favour of the plaintiff, ordered him to pay all the costs of the suit, except such as related to the question of inadequacy of consideration as to which no costs were given on either side.

Under the circumstances of the case, the midwife and mother being dead, the court accepted the evidence of the father upon the question of whether an only child of the marriage was born alive, so as to entitle the father to a tenancy by the courtesy of the freehold lands of his wife.

V. C. S. LUCAS v. WILLIAMS.

Administration—Executor carrying on business—Judgment against executor—Liability de bonis proprus.

An executor, while carrying on his testator's business, signed a promissory note, *per proc*, in the name of the firm, for goods supplied during testator's lifetime. The court made an administration decree, and several orders thereunder, by which the assets were withdrawn from his control. Subsequently, a creditor sued him on the note, and recovered judgment by default. The court restrained the creditor from enforcing the judgment.

REVIEWS.

THE WESTMINSTER REVIEW, January, 1863. New York: Leonard, Scott & Co.

The contents of this number are as usual varied and interesting. The first article is on the all-absorbing topic in London—"Convicts, and what shall be done with them;" the second is not so attractive—"The Literature of Bohemia;" the third is an able critique on Bishop Colenso and the Pentateuch; the fourth is an equally able critique on the scarcely less celebrated work of Victor Hugo, "Les Miserables." The remaining articles, though not of such striking interest are worthy of perusal. The number abounds with food for the intellectual.

THE NORTH BRITISH, February, 1863. New York: Leonard, Scott & Co.

The contents of this number in some respects resemble the contents of the *Westminster*, so far as the heads of the articles are concerned, but in other respects are essentially different. In it we find the convict question discussed with much earnestness; also a most satisfactory answer to the recent attacks of Colenso and others on the Pentateuch. A paper is devoted to a sketch of the history of that splendid but erratic man Professor Wilson. The remaining articles, such as Novels and Novelists of the Day — The Prospect of Parties — &c., are well worthy of perusal by the scholar, the statesman, and the gentleman.

THE LONDON QUARTERLY, January, 1863. New York: Leonard, Scott & Co.

This being cotemporary to the two preceding Reviews discusses many of the topics discussed in them. Thus we find a sensible article on the ticket-of-leave system, and an interesting article on the Life of John Wilson. The remaining articles are: Peru—Institutes for Working Men—Constitutional Government in Russia—New Testament—South Kensington Museum — The Stanhope Miscellanies — Four years of a Reformed Administration.

THE EDINBURGH REVIEW, January, 1863. New York: Leonard, Scott & Co.

In this we find an article on Victor Hugo's "Les Miserables," and the Convict System. The remaining articles are: India under Lord Dalhousie—Diaries of Frederic von Gentz—Gold Fields and Gold Miners—Contributions to the Life of Rubens —The Campaign of 1815—Modern Judaism—Public Affairs.

BLACKWOOD, Feb., 1863. New York: Leonard, Scott & Co.

In this number is the continuation of Caxtonia, Part XIII., No. 19—Progress in China, Part II.,—Lady Morgan's Memoirs—Henri Lacordaire—the conclusion of the Sketch from Babylon—Our New Doctor—and Politics at home and abroad. The reading is not so heavy as that in the Quarterlies.

THE SYSTEM OF LANDED CREDIT. By Geo. Henry Macaulay.

This brochure is the best we have seen on the far-famed and with us much maligned "Credit Foncier" system, and we must say that a better acquaintance with the monster much lessens our dread of him. It is explained by Mr. Macaulay that the system is by no means the bantling of M. De Bouchervilie. An institution of the kind was first organized in Silesia, a province forming the south-east portion of Prussia, after the seven years' war, when the inhabitants were so deeply in debt that they could not meet their pecuniary engagements. Other Societies were formed in different parts of Europe between 1777 and the present time. It is explained that the system works well in Russia, Prussia and France. It does not follow that it will work well in Lower Canada; but this is a point which we have neither the inclination nor the space to discuss at present. We agree with those who say that the best mode of relieving Lower Canada farmers from depression is to instil into them habits of industry and energy. They make indifferent farmers, and unless they alter their ways a Credit Foncier in every village would be of little avail to them. Mr. Macaulay has done much to place the system before his readers in its best light. His familiarity with the writings of others on the same subject gives additional weight to his remarks. His pamphlet is very creditable to him.

GODEY'S LADY'S BOOK for May is received. The May fashion plate contains five beautiful colored figures. The steel plate, which is an excellent one, is called "Playing May party." Besides the colored fashion plate there are five other full-length figures, wood-cuts, music, &c. The first article in the letter-press is "A morning at Stewart's." A full and faithful description of the emporium of this New York merchant Prince is given. We observe that Godey will publish fashions in each future number, furnished by A. T. Stewart & Co., in addition to the ordinary colored fashions. This arrangement without doubt will add to the value of Godey.

APPOINTMENTS TO OFFICE, &c.

QUEEN'S COUNSEL.

JOHN BELL, JOHN HECTOR, GEORGE W. BURTON, JAMES COCKBURN, ALBERT N. RICHARDS, SAMUEL H. STRONG, MATTHEW CROOKS CAMERON, ÆMILIUS IRVING, CHRISTOPHER ROBINSON and ADAM CROOKS, of Osgoode Hall, Barristers-at-Law, to be Queen's Counsel. (Gazetted March 28, 1863.)

CORONERS.

MARTIN PHILLIPS, Esquire, M D., to be an Associate Coroner for the County of Wellington. (Gazetted March 28, 1863.)

JONAS CANNIFF, Esquire, M D., to be an Associate Coroner for the County of Hastings. (Gazetted April 25, 1853.)

CLERKS OF COURT.

SAMSON HOWELL GHENT, Esquire, to be Clerk of the County Court of the County of Wentworth, in the room and stead of Andrew Stuart, Esquire, removed from that office. (Gazetted April 4, 1863.)

REGISTRARS.

ALEXANDER McDONELL, Esquire, to be Registrar of the County of Glengary, in the room and stead of Duncan McDonell, Esquire, resigned. (Gazetted April 25, 1863.)

TO CORRESPONDENTS.

R. WILLIAMS—A SUBSCRIBER—Under "Division Courts."

EVINS—JUNIUS—IGNIS FATUUS—Under "General Correspondence