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VOL. IV. TORONTO, APRIL, 1858. No. 4.

THE UPPER CANADA LAW JOURNAL

AND LOCAL COURTS' GAZETTE.

CONDUCTED BY

W. D. ARDAGH, Barrister-at-Law; ROBT. A. HARRISON, B.C.L., Barrister-at-Law.

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INDEX TO ENGLISH LAW REPORTS,

FROM 1813 TO 1856.

NOTICE.

WHEREAS Twenty-five Persons and more have formed themselves into a Horticultural Society, in the County of Hastings, in Upper Canada, by signing a declaration in the form of Schedule A annexed to the Act 20 Vic., cap. 32, and have subscribed a sum exceeding Ten Pounds to the funds thereof, in compliance with the 48th Section of the said Act, and have sent a Duplicate of said declaration written bnd signed as by law required, to the Minister of Agriculture.

Therefore, I, the Minister of Agriculture, hereby give notice of the formation of the said Society as "The Belleville Horticultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agr.

Bureau of Agriculture and Statistics.
Toronto, dated this 8th day of Feb., 1858.

LAW SOCIETY OF UPPER CANADA,

(Osgoode Hall.)

Hilary Term, 21st Victoria, 1857.

During this present Term of Hilary, the following Gentlemen were called to the degree of Barrister-at-Law:—

Edward Taylor Bartnell, Esquire.	Caleb Elias English, Esquire.
Ernestus Cromble, "	Thomas Hodgins, "

On Tuesday, the 9th day of February, in this Term, the following Gentlemen were admitted into the Society as members thereof, and entered in the following order as Students of the Laws, their examinations having been classed as follows:—

University Class:

Mr. James Windeat, M.A.	Mr. John Anderson Ardagh, B.A.
" J. Pennington Macpherson, B.A.	" Wm. Pryor Atkinson, B.A.
" John Turpin, B.A.	" George Bartholomew Boyle, B.A.
" H. Coffin Windeat Wethey, B.A.	" Frederick Lampman, B.A.

Mr. William Hamilton Jones, B.A.

Junior Class:

Mr. William Edward O'Brien.	Mr. James Saurin McMurray.
" Charles Arthur Jones.	" John Crawford.
" Henry Askine Irving.	" George Frederick Duggan.
" Warren Stock.	" Frederick Fanning.

Note.—Gentlemen admitted in the "University Class" are arranged according to their University rank; in the other classes, according to the relative merit of the examination passed before the Society.

Ordered—That the examination for admission shall, until further notice, be in the following books respectively, that is to say—

For the Optime Class:

In the Phœnissæ of Euripedes, the first twelve books of Homer's Iliad, Horace, Sallust, Euclid or Legendre's Geometrie, Hind's Algebra, Snowball's Trigonometry, Farnshaw's Statics and Dynamics, Herschell's Astronomy, Paley's Moral Philosophy, Locke's Essay on the Human Understanding, Whateley's Logic and Rhetoric, and such works in Ancient and Modern History and Geography as the candidates may have read.

For the University Class:

In Homer, first book of Iliad, Lucian (Charon Life or Dream of Lucian and Timon), Odes of Horace, in Mathematics or Metaphysics at the option of the candidate, according to the following courses respectively, Mathematics, (Euclid, 1st, 2nd, 3rd, 4th, and 6th books, or Legendre's Geometrie, 1st, 2nd, 3rd, and 4th books, Hind's Algebra to the end of Simultaneous Equations); Metaphysics (Walker's and Whateley's Logic, and Locke's Essay on the Human Understanding); Herschell's Astronomy, chapters 1, 3, 4, and 5, and such works in Ancient and Modern Geography and History as the candidates may have read.

For the Senior Class:

In the same subjects and books as for the University Class.

For the Junior Class:

In the 1st and 3rd books of the Odes of Horace; Euclid, 1st, 2nd, and 3rd books, or Legendre's Geometrie 1st and 3rd books, with the promblems; and such works in Modern History and Geography as the candidates may have read: and that this Order be published every Term, with the admissions of such Term.

Ordered—That the class or order of the examination passed by each candidate for admission be stated in his certificate of admission.

Ordered—That in future, Candidates for Call *with honours*, shall attend at Osgoode Hall, under the 4th Order of Hil. Term, 18 Vic., on the last Thursday and also on the last Friday of Vacation, and those for Call, merely, on the latter of such days.

Ordered—That in future all Candidates for admission into this Society as Students of the Laws, who desire to pass their Examination in either the Optime Class, the University Class, or the Senior Class, do attend the Examiner at Osgoode Hall, on both the first Thursday and the first Friday of the Term in which their petitions for admission are to be presented to the Benchers in Convocation, at Ten o'clock A.M. of each day; and those for admission in the Junior Class, on the latter of those days at the like hour.

Ordered—That the examination of candidates for certificates of fitness for admission as Attorneys or Solicitors under the Act of Parliament, 20 Vic. chap. 63, and the Rule of the Society of Trinity Term, 21 Vic. chap. 1, made under authority and by direction of the said Act, shall, until further order, be in the following books and subjects, with which such candidates will be expected to be thoroughly familiar, that is to say:

Blackstone's Commentaries, 1st Vol.; Smith's Mercantile Law; Williams on Real Property; Williams on Personal Property; Story's Equity Jurisprudence; The Statute Law, and the Practice of the Courts.

Notice.—A thorough familiarity with the prescribed subjects and books will, in future, be required from Candidates for admission as Students, and gentlemen are strongly recommended to postpone presenting themselves for examination until fully prepared.

Notice.—By a rule of Hilary Term, 18th Vict., Students keeping Term are henceforth required to attend a Course of Lectures to be delivered, each Term, at Osgoode Hall, and exhibit to the Secretary on the last day of Term, the Lecturer's Certificate of such attendance.

Ordered.—That the Subjects for Lectures next Term, be the Law of Mortgages, to be lectured upon by Samuel Henry Strong, Esquire; and the Law of Evidence to be lectured upon by John Thomas Anderson, Esquire.

ROBERT BALDWIN,
Treasurer.

Hilary Term, 21st Victoria, 1858.

STANDING RULES.

ON the subject of Private and Local Bills, adopted by the Legislative Council and Legislative Assembly, 3rd Session, 5th Parliament, 20th Victoria, 1857.

1. That all applications for Private and Local Bills for granting to any individual or individuals any exclusive or peculiar rights or privileges whatsoever, or for doing any matter or thing which in its operation would affect the rights or property of other parties, or for making any amendment of a like nature to any former Act,—shall require the following notice to be published, viz:—

In Upper Canada—A notice inserted in the Official Gazette, and in one newspaper published in the County, or Union of Counties, affected, or if there be no paper published therein, then in a newspayer in the next nearest County in which a newspaper is published.

In Lower Canada—A notice inserted in the Official Gazette, in the English and French languages, and in one newspaper in the English and one newspaper in the French language, in the District affected, or in both languages if there be but one paper; or if there be no paper published therein, then (in both languages) in the Official Gazette, and in a paper published in an adjoining District.

Such notices shall be continued in each case for a period of at least two months during the interval of time between the close of the next preceding Session and the presentation of the Petition.

2. That before any Petition praying for leave to bring in a Private Bill for the erection of a Toll Bridge, is presented to this House, the person or persons purposing to petition for such Bill, shall, upon giving the notice prescribed by the preceding Rule, also, at the same time, and in the same manner, give a notice in writing, stating the rates which they intend to ask, the extent of the privilege, the height of the arches, the interval between the abutments or piers for the passage of rafts and vessels, and mentioning also whether they intend to erect a draw-bridge or not, and the dimensions of such draw-bridge.

3. That the Fee payable on the second reading of any Private or Local Bill, shall be paid only in the House in which such Bill originates, but the disbursements for printing such Bill shall be paid in each House.

4. That it shall be the duty of parties seeking the interference of the Legislature in any private or local matter, to file with the Clerk of each House the evidence of their having complied with the Rules and Standing Orders thereof; and that in default of such proof being so furnished as aforesaid, it shall be competent to the Clerk to report in regard to such matter, "that the Rules and Standing Orders have not been complied with."

That the foregoing Rules be published in both languages in the Official Gazette, over the signature of the Clerk of each House, weekly, during each recess of Parliament.

J. F. TAYLOR, Clk. Leg. Council.
10-tf. Wm. B. LINDSAY, Clk. Assembly.

Legislative Council,
Toronto, 4th September, 1857.

EXTRACT from the Standing Orders of the Legislative Council.

Fifty-ninth Order—"That each and every applicant for a Bill of Divorce shall be required to give notice of his or her intention in that respect specifying from whom and for what cause, by advertisement in the official Gazette, during six months, and also, for a like period in two newspapers published in the District where such applicant usually resided at the time of separation; and if there be no second newspaper published in such District, then in one newspaper published in an adjoining District; or if no newspaper be published in such District, in two newspapers published in the adjoining District or Districts."

J. F. TAYLOR,
10-tf. Clerk Legislative Council.

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IS published monthly in the City of Toronto, at $4 per annum if paid before 1st March in each year; $5 if paid afterthat period.

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REMITTANCES.

March, 1858.—A. P., Orillia, $4; H. H., Clinton, $4; J. R., Toronto, $30; J. B, C., Smithville, $1; J. S. R., Iroquois, $4; R. D., Peterboro', $4; J. J., jr. London, $4; J. P, Weston. $1; W. R., Lanark, $4; J. R., do., $4; D McM., Perth. $4; T'p. of South Easthope, $16; J H., Aurora. $4; R. P. J., Belleville. $4; S. P C, Princeton, $4; A. McG., Stratford. $10; W. T., Erin, $4; W. A. S., Hamilton. $4; T. C., Clear Creek, $4; N. J. R., Sheriff Whitby. $4; M P. E., Hawkesville $4; A L., Judge, Hamilton, $4; E. G., Simcoe, $4; G. B., Milton, $3; G. C. McK., do, $3; G. T. R., do., $3; J. H., do., $3; D. McL., do., $3; C. T., do., $3; J. M., Esquesing, $3; T. R., Spencerville, $4; D. W., Dawn Mills, $4; D C., Esquesing, $4; P S P, Port Sarnia, $4; J. C., Port Albert, $4; T M., Mitchell, $5; G. McP., Carleton Place, $4; G. R. B., D.C.C., Ottawa. $10; W. M., Penville, $4; A. W., C.C. Abingdon. $4; Town of Whitby (Clerk's Office), Whitby $16; J. F. K., C.D.C. Warwick. $4.

DIARY FOR APRIL.

1. Thursday... *Maundy Thursday.*
2. Friday..... *Good Friday.*
3. Saturday .. Last day for Notice of Trial for Toronto Assizes.
4. SUNDAY... *Easter Sunday.*
5. Monday..... Chancery Hearing Term begins. County Court Term commences.
10. Saturday... County Court Term ends.
11. SUNDAY .. *1st Sunday after Easter.*
12. Monday ... Toronto Spring Assizes. Causes to be entered between 9 and 12.
17. Saturday ... Chancery Hearing Term ends.
18. SUNDAY .. *2nd Sunday after Easter.*
25. SUNDAY .. *3rd Sunday after Easter.*

The Upper Canada Law Journal.

APRIL, 1858.

TRIAL BY JURY ON ITS TRIAL.

Time out of mind Trial by Jury in civil as well as criminal cases has existed in England, and from the first unanimity of decision appears to have been required.

Much may be said against the peculiarity of unanimity in this time-honored institution, and indeed much may be said against the institution itself.

It is a fact that none of the Continental States of Europe have adopted trial by jury in civil cases. It is a fact that nearly all of the States which have adopted it in criminal cases have rejected the English characteristic of unanimity. In Belgium trial by jury was only established in 1830, and the decision is by a bare majority. In France it was introduced in 1791, and notwithstanding many fluctuations decision by majority is now the rule. In the German States such also is the rule. In Scotland, as there is a mode of getting at the facts of a case by what is termed precognition, a procedure by the sheriff, trial by jury in civil cases is the exception, not the rule. By a recent statute (17 & 18 Vic. cap. 59), if in a civil case the jury is unable to agree after a deliberation of six hours, the verdict of nine may be taken as the verdict of the whole. In the United States of America, when colonies of Great Britain, trial by jury in civil and criminal cases requiring unanimity of decision became the law of the land, and continues so to be.

Of trial by jury in England it may be well said, "time consecrates, and what is gray with age becomes religion." Still men there have been bold enough to question its wisdom, and irreligious enough to discuss its merits. No less an authority than Hallam, the historian, has pronounced it to be "a preposterous relic of barbarism:" (Supplemental Notes to Middle Ages, 262.) Without indorsing an assertion so sweeping we readily admit that trial by jury, if not defensible on reason, ought not to be supported on prestige, if not compatible with the safe, speedy, and economical administration of justice, ought not to be bolstered up and preserved solely because of its antiquity.

The first thought that occurs to the mind is, that if the system as a whole, or unanimity as an attribute of it, were indefensible, neither could successfully have escaped the innovations of modern law reform, nor indeed have been tolerated by a people so practical, so free, and so judicious as the people of England. We place little reliance on any argument based merely on the laws of surrounding nations. Of a nation, as of an individual, it may be affirmed that what is one man's meat is another man's poison.

In common with our fellow-men we subscribe to the apothegm of Bacon, "State super vias antiquas et videte quœnam sit via recta et bona et ambulate in ea;" or, in plain English, "We shall make a stand upon antiquity until we discern a way of improvement, and then only shall leave our present path."

Though we have reflected deeply upon the subject we have failed to discover the improvement to be effected by a majority verdict. Is it to be the verdict of a bare majority? Is it to be the verdict of a two-thirds majority? We believe the greater number of majority advocates are in favor of the latter. What are the arguments which they advance? such as the following:—

It is absurd to attempt to convince twelve men of different degrees of capacity of the truth or falsity of a particular state of facts. All analogy in social and political bodies is in favor of the majority system. It is at present in the power of one corrupt man by force of endurance—*argumentum ad ventrem*—to defeat justice. These we take to be the chief, and by many thought to be the unanswerable arguments against the requirement of unanimity.

Before going further we shall apply ourselves to the consideration of these arguments.

In the first place, it is *not* absurd to attempt to convince twelve men of the truth or falsity of a given state of facts, when the twelve men are jurors, though of different degrees of capacity. We appeal to facts. In how many cases are jurors discharged because unable to agree? Not in one case in one hundred! The fallacy rests in this, that twelve jurors are looked upon as twelve ordinary men, unassisted by the guiding and governing influence of a presiding Judge. There is no such thing strictly speaking as trial by jury. There is trial by judge *and* jury, which is a very different thing. When in ninety-nine cases out of one hundred men so placed *do* render unanimous verdicts it is surely gratuitous to say that they *cannot* do so.

In the second place, the argument drawn from analogy in political and social bodies is not a sound argument. A body of jurors is called upon to decide *facts*, not to express

opinions. Nothing more need we apprehend be said upon this head.

In the third place, though it is in the power of a corrupt juror by physical endurance to delay justice, it is *not* in his power to defeat it. He may "hold out" for three, six, nine, twelve, twenty, or twenty-four hours, without food, and may by so doing inconvenience his fellow jurors; but unless they are as corrupt as himself, they will not succumb to the *argumentum ad ventrem*. It is under such circumstances the tendency of man's nature to resist, not to yield to bullying injustice. Besides the case supposed is an extreme case, and one of a very exceptional character. To make it occur at all there must first be the corrupt man, which, owing to the selection, drafting, and empanelling of jurors under the laws of Upper Canada, is more likely not to be than to be. Then this corrupt man must have stronger powers of endurance than eleven other men indiscriminately chosen, which, according to the laws of nature and of chance, is more likely not to be than to be. The argument in every aspect is untenable. But let us turn from theory to practice, and what are the facts? When a jury, after having retired for a certain number of hours, less or more in the discretion of the Judge, are unable to agree, they are discharged, that is, released from the pains of hunger unsullied with the crime of perjury. No verdict is rendered. Plaintiff may again have his case brought to trial, when the chances are ten thousand to one that the corrupt man, with strong powers of physical endurance, will not be on the second jury. We think we hear our casuist say, though there be not the same man there *may* be another equally corrupt. Concede this plethora of corrupt men, and concede also the majority system, what follows? If there *may* be one corrupt juror, why *may* there not be two, three, four, five, six, or more? If four, the two-thirds majority scheme can be no cure of the evil! If six not even the bare majority scheme would be a cure!!

The truth is, and it must be told, that the argument of a corrupt juror, though a very common one, is an idle phantom. If corrupt jurors were as prevalent as we must suppose them to be to make the argument worth anything, there would be more juries discharged for want of unanimity than one in one hundred which is not the fact. Nor can it be the fact, or be taken to be the fact, unless it is argued that in ninety-nine cases out of one hundred there are at least ninety-nine juries, each having at least eleven corrupt jurors, which is absurd.

Now let us turn to the other side, and review the arguments in favor of unanimity.

The object of a trial by jury, as it is commonly called, is the discovery of truth. To discover truth when mixed with falsehood patient and anxious deliberation is essential. Without these any mode of trial, instead of being a blessing, would be a curse. Anything having a leaning towards lessening deliberation in trial by jury ought to be avoided. We submit that a departure from unanimity would have this effect.

First, let us suppose unanimity to be no longer necessary. The first object of the jurors upon retiring would be to marshal numbers. Should it be found that nine are agreed upon a particular verdict the opinions of the minority would be passed over without any discussion whatever. Thus would the necessity for deliberation be removed! Now suppose a unanimous verdict necessary. Any person dissenting would have the right to explain his views and to compel the majority to listen to them. Reason—not mere numbers—would be the characteristic of the jury room. Well has Tacitus said that truth is established by investigation and delay; but falsehood prospers by precipitancy. Under the present system any juror—no matter how humble his attainments—how insignificant his reputation—how lowly his station—if he speak truth, commands respect. Truth forces itself upon the understanding of man, wherever there is any disposition, however trifling, to receive it. One thought, if expressed in the pure atmosphere of truth, may flash conviction upon the willing mind. Investigation at least ensues, discussion takes place, and finally reason prevails.

Secondly, the verdict of twelve men is more likely to be correct than that of nine out of twelve. A learned writer says that *ceteris paribis* two men are more likely to be right when agreed than one, and for the same cause twelve men, than eleven, ten, nine, or any lesser number. Tried after this fashion, according to Poissen in his "Recherches sur les probabilities des judgemens," and Lacroix in his "Calcul des Probabilities," the probability of error in a verdict, when a majority of nine out of twelve is sufficient for decision, is about one to twenty-two, while if unanimity is exacted it is one to eight thousand.

Thirdly, when each juror knows that no verdict can be rendered without his concurrence he retires from the box with a due sense of responsibility. He cannot relieve himself by saying, I shall be content to be in the minority and so take no part in the verdict. I shall retain my opinion and allow the verdict to pass. He will rather say, I must give some verdict, that verdict must be true according to the evidence, if not true I shall be perjured before God and man. With these solemn thoughts he is in a right mood to search after truth. Without them the pretended search is a mockery. Anything which has a tendency to remove individual responsibility makes inquiry after truth by jurors a mockery. The majority system, for the reasons we have shown, has, we think, this tendency.

Fourthly, we must not restrict our view of trial by jury to the jurors themselves. We must look to its effect upon the community at large. A decision of twelve men when unanimous is more likely to command respect than that of nine out of twelve, especially when it is known that three dissent. So sure as one party to a suit wins, the other loses. The loser will, we maintain, more readily, more cheerfully, submit to a verdict against him, when he knows that it is the undivided opinion of twelve men in no way related to his opponent more than himself, and who can have no object than that of justice in deciding for the one or the other. The feeling for him, though perhaps of sympathy, is accompanied with that of respect for the law. This applies equally to criminal and civil cases; but in the former, as has been eloquently observed, unanimity gives strength and firmness to the stroke of justice.

These are so far as we can call to mind the arguments pro and con on this much vexed question. We think the unbiassed reader will have no difficulty in deciding between them. In our opinion the arguments directed against the form of trial by jury might with some good effect be levelled against the qualification of jurors. No shifting of numbers —no shuffling of units—can qualify an unqualified juror.

Having said so much concerning the *form* of trial by jury we desire to observe that we are not of those who think that it ought to be applied to the trial of *every* civil case involving questions of fact.

In Upper Canada trial by jury in civil cases is the rule, and in Lower Canada the exception. This, like other differences between the laws of the two sections of the Province, is traceable to a difference of origin.

In England a prejudice exists in favor of trial by jury. It is not only looked upon as the palladium of an Englishman's liberty, but as a panacea for an Englishman's wrongs, civil and criminal. True indeed Magna Charta declares that no man shall be condemned, except by the judgment of his peers. We glory in the declaration, but would confine it within bounds. Its object is to control criminal, not civil cases. Its object is to protect liberty where liberty is endangered.

It is hazarding too much to say that jurors are better fitted than Judges to determine all questions of fact. A verdict is judgment in form. Judgment is the result of reason. The power to reason accurately is not possessed in a higher degree by farmers, mechanics, or tradesmen, than by Judges—men of learning—men of ability—whose previous study and training peculiarly befit them for the task.

Some cases there may be in which, owing to rules of trade or other peculiar circumstances more within the knowledge of laymen than lawyers, the judgment of the former would be of the two the more correct. For such cases let there be trial by jury. But why should trial by jury be for *all* cases? Many suitors, were the option given to them, would prefer to have their disputes determined by a single intelligent Judge than by any jury. In Division Courts the right to demand, or rather to suffer a jury, is optional. Why should it not be so as much in the Superior as in the Inferior Courts? In the Inferior Courts where such is the case trial by Judge is the rule, and trial by jury the exception. Why then should suitors be forced in the Superior Courts or any Courts to submit to a mode of trial in which they may not have confidence? The reason is—antiquity—not wisdom, age—not reason, prestige—not usefulness.

Were trial by Judge in all civil cases to be optional we should less frequently hear of perverse verdicts. We should less frequently hear of jurors being withdrawn and no verdicts. We should less frequently hear of second, third, and fourth trials to the impoverishment of the suitor. The administration of justice would be more speedy and less expensive than at present,—and these after all are and ought to be the great ends of legislation.

Such have been for a long time our ideas on this important head of jurisprudence. They have greatly moved us towards a feeling of respect for the machinery for dispensing justice in civil cases in Lower Canada. If the administration of justice were to be changed in the manner we propose there would be an immense approximation made between the laws of the two sections of the Province.

Nor are the views we hold in regard to trial by jury exclusively our own. We have reason to believe that the opinions of many of the most intelligent men in our midst coincide with ours. In England similar views are steadily gaining ground. In the English *Law Times*, for 26th December last, the editor, who is a shrewd observer of legislative wants, expressed himself to the same effect as we do on this occasion.

We would sacredly preserve trial by jury in criminal cases. In Upper and Lower Canada the laws in this respect are identical. Few question their wisdom, none have gainsayed it.

Upper Canada is greatly dependent upon England in matters of law reform. It is the policy of our Legislature to await the working of a reform in England before hazarding an experiment here. We do not find fault with them for doing so in doubtful cases. But even in England, by the Common Law Procedure Act, 1854, it is provided that the parties to a cause may by consent in writing, signed by them or their attorneys, leave the decision of any issue or issues of fact to the Court (sec. 1). Our Legislature in 1856, while adopting the greater part of the Act, omitted this provision. The cause of the omission is not, we should

hope, a want of confidence in our judges. Our Judges are as fully competent as Judges in England to decide questions of fact. But whether or not the judges of our Superior Courts are certainly as competent as the Judges of County Courts. The Legislature having granted the right to the latter cannot with any appearance of consistency withhold it from the former. It may be that the Legislature is influenced in making the distinction by a desire to save the Judges of the Superior Courts from an unusual and not very pleasant responsibility. If this be the motive let the right of a suitor to ask for trial by the Judge be given us with limitations. In England such a trial cannot be had unless the Court, upon a rule to show cause, or a Judge on a summons in their or his discretion see fit to allow the trial. To this extent at least the English system might be safely adopted.

The Judges of the Court of Chancery in Upper Canada often without the aid of a jury determine questions of fact. Can it be said that the interests involved in Chancery are of less magnitude than those involved in actions at law? The fact is the reverse, and that it is so is universally known. Now that the power exists in Chancery, and the power and the right of the suitor exists in the Division Courts, the withholding it from Courts of Common Law of Superior Jurisdiction is an anomaly as tiresome to the bar as it is injurious to the suiter—as strange in practice as it is indefensible in principle.

MUNICIPAL LAWS—DISSOLUTION OF UNIONS—EFFECT ON COUNTY OFFICERS.

In 1849 the division of Upper Canada into Districts for judicial and other purposes was abolished (12 Vic., cap. 78, sec. 2).

In lieu of the division by Districts that of Counties was established. All officers and offices at the time of the passing of the Act appertaining to Districts were declared to appertain to Counties (sec. 3). Justices of the peace and other persons holding commission or office in the Districts were by the operation of the Act transferred to the Counties substituted for the Districts (sec. 37). Certain Counties not having the requisite population were for judicial and municipal purposes united (sec. 5); subject at a future time when having the requisite population to be disunited (sec. 10, et seq.). In every union of Counties the County in which the Court House and Gaol—formerly the District Court House and Gaol were situate, was declared to be the "senior County," and the other County or Counties when more than one the "junior County" or "Counties" (sec. 9). Upon the dissolution of a Union between Counties in the manner prescribed by the Act, none of the Courts or officers of the senior County as such have any jurisdiction or authority whatsoever in or over the County disunited, when a junior County (sec. 18).

This is the law, and as far as it goes is clear and satisfactory. The appointment of a staff of officials judicial and municipal for the County or Counties disunited is intended. But suppose a judicial officer, commissioner for taking affidavits for instance, appointed for a District or Union of Counties, upon a dissolution of the Union found to reside in the County disunited, is his commission thereby revoked? The question is one of very great importance, and as we shall proceed to show, owing to a conflict of authority is not yet settled.

The difficulty arises because of an omission in the Statute to enact that Justices of the peace and other persons holding any commission or office residing within the County or Counties disunited at the time of the separation shall *continue* to hold the commission, office or authority within the County or Counties disunited, *i. e.* junior County or Counties notwithstanding the separation. It may be that this is what the Legislature meant when passing 12 Vic., cap. 78, but is not what the legislature has expressed.

In the Act forming the County of Prince Edward into a separate District, (1 Wm. IV., cap 6,) passed in 1831, there was the necessary provision in these words,—"His Majesty's Justices of the peace and other persons holding any commission or office, or bearing lawful authority, and who shall be *residing* within the said County of Prince Edward at the time the same shall be declared and named, a separate District as aforesaid, shall continue to hold, enjoy and exercise the like commission, office, authority, power and jurisdiction within that District in the same manner that they previously held enjoyed and exercised within the Midland District" (sec. 5).

The continuance of the power was it will be observed made to rest upon the residence of the party within the County at the time of its separation. So it was held that a commissioner for taking affidavits appointed for the Midland District, resident within the County of Addington part of the Midland District at the time of the separation of Prince Edward, though entitled to administer affidavits for Frontenac, Lennox and Addington, the remainder of the District had no right to do so for the County of Prince Edward (McWhirter v. Corbett et al, 4 U. C. C. P. 203).

When, however, it was afterwards argued that the effect of 12 Vic., cap 78, is the same as that of 1 Wm. IV. cap. 6, the argument did not succeed. The facts as reported are, that on 7th August 1843, a commission for taking bail in and for the Gore District of which the County of Brant formed a part was granted to one George McCartney. The Gore District was divided into several Counties, of which Brant afterwards by separation became a distinct munici-

pality. It would seem though not expressly so stated in the report, that when Brant became separate McCartney was a resident of it. After the separation by virtue of his commission for the Gore District, he in the County of Brant took bail in a cause there pending. Subsequently the bail were sued on their recognizance and pleaded that McCartney was not a commissioner for taking bail in and for the County of Brant. And so the Court of Common Pleas notwthstanding the 12 Vic,, cap 78, sec. 18, and the argument by analogy from the 1 Wm. IV. cap. 6, held. The Chief Justice (Macaulay) said: "This is not like the case of McWhirter v. Corbett, which arose under the Provincial Statute 1 Wm. IV., cap. 6, for separating the County of Prince Edward from the Midland District, and erecting it *into a District, by section five of which Act the continuance* of commissions in each District respectively was made to depend upon actual residence at the time of separation; and I find *no sufficient authority* for holding the authority of the commissioner in this case as extended to or continuing in the County of Brant after its separation." (Carter v. Sullivan 4 U. C. C. P, 300.)

The point was again raised; but in the Queen's Bench where the Court, apparently without being aware of the decision of the Common Pleas, came to a different conclusion (Gleek v. Davidson 15 U. C. Q. B., 591). The facts of the two cases seem to be much the same. In the latter or Queen's Bench case, it appeared that in 1848, Otto Klotz was appointed a commissioner for taking affidavits in the District of Wellington which District afterwards became the United Counties of Wellington, Waterloo and Grey. In process of time Waterloo a junior County became a separate Municipality. At the time of the separation Mr. Klotz was a resident within its bounds. In October, 1855, by virtue of his commission for the District of Wellington admininistered an affidavit in the County of Waterloo. The Court held that he had a right to do so. The Chief Justice, (Robinson) said: "Being a commissioner under a commission of 1848, he continued to act as a commissioner for Waterloo being that part of the former District of Wellington, in which he resided" (p. 593).

We cannot reconcile this decision with Carter v. Sullivan et al, and without pretending to say which is right, think it very remarkable that Carter v. Sullivan et al was not noticed in Gleek v. Davidson. It was not according to the report cited by counsel and certainly is not mentioned by the Court. Upon a question so important, wherein the two Superior Courts of Common Law of Upper Canada differ, the interference of the Legislature seems necessary. It is hoped that some useful member will see that the point shall not be neglected in the passing of the consolidated Municipal bill now before Parliament.

BILL TO ALTER DIVISION COURTS LAW—LEGISLATING OUT OF OFFICE.

A bill has recently been introduced by Mr. Benjamin in the Legislative Assembly "to amend the Division Court Acts of Upper Canada." In one of its provisions we regard it as exceedingly objectionable.

It proposes that no one who is engaged in trade as a merchant shall be appointed Clerk of a Division Court, and that those clerks who are such shall be removed from office.

The reason for the proposed change as given in the preamble is, that persons appointed to the office of clerk who are engaged in trade are thereby given an undue advantage over other traders having recourse to the Courts. *This we believe has no foundation in fact, and the misconception* has arisen from overlooking an important provision in the present law. If clerks were allowed to sue in their own Courts, certainly there would be temptation and there their position might enable them to forward their own suits to the prejudice of others; but there is a clause in the Division Court Act that when *any Clerk or Bailiff, either by himself or jointly with any other person, is liable to be sued or may sue within the jurisdiction of his own Court*, the suit is to be brought *in the next adjoining Division Court*

This places not only the Clerk but the Bailiff on the same footing as other suitors, actions by and against them being entered in a court with which they are entirely unconnected.

Not merely is the proposed alteration unnecessary but it would be positively mischievous. We happen to know that in many places it is difficult to procure a person willing to accept the office of clerk who possesses the necessary education and business habits, and if a large class of persons be disqualified, the difficulty in securing a proper person for the office will be increased.

We object to the first clause as unnecessary and inexpedient.

We have heard of personal ill feeling towards an officer managing the insertion of a clause in an act of Parliament which quietly legislated the individual out of office; and it is just possible that a feeling of that kind or the coveting another man's office may continue to operate in certain minds. Let us not be misunderstood. We do not for one moment attribute unworthy motives to the introducer of the Bill, we know nothing whatever of the gentleman, and have no reason to suppose he would be a willing party to wrong; but we know how easy it is to disguise motives and give to the most selfish and underhand action the *appearance* of a move for the public good. M. P.'s, like other men, may be deceived by adroit arguments, par-

ticularly if employed by one or more of those who place him in power.

Now we would ask, is there any show of justice in legislating men out of office as proposed by the second section. If an officer has committed wrong—if he has taken advantage of his position to benefit himself to the detriment of others let him be removed, but do not punish without proof of wrong committed. Do not perhaps ruin a man on fanciful suspicions. To do so would be to form a dangerous precedent; and we hesitate not to say, even supposing it right in the future to disqualify, that it would outrage the principles of justice.

There is a curious provision in the latter part of the 2nd section—viz., that a judge failing to remove a clerk shall be liable to a fine, &c. Mr. Benjamin we are sure did not see the injurious and offensive character of this provision. It would have been well to presume that the judges would do without coercion whatever was enjoined upon them by the Legislature, and in any case the simple requirement would have been sufficient, for a judge failing to meet it would undoubtedly be guilty of a misbehaviour in office.

There is a party in the United States ever ready to assail the judiciary, but in this country we are happy to know such is not the case. We acquit Mr. Benjamin of all intention to cast a slur upon a body of men who are entitled to every consideration in the just discharge of their duties.

As to the 4th and 5th clauses the principle is good but the provision is unnecessarily complicated. Why not allow any one at his own risk to obtain a commission from the clerk in his own locality giving to his adversary notice &c., without bringing both parties to the County Town, and apply in effect the practice of the Superior Courts to the Division Courts.

As to the call for such a bill we never heard of any; and from our position as the only legal periodical in the country, had there been any general or strong feeling in favor of such a move we must have heard of it.

ESSEX CONTESTED ELECTION CASE.

We have been requested to make a correction in the report of this case as given in our last number. In the statement, *instead* of the words "The affidavits shewed that he removed himself and his family during the whole fourteen days required for service, &c.," *read* "The affidavits shewed that he removed himself alone apparently for several days, between 11th and 22nd January, and himself and family from 17th January, during that part of the fourteen days required for service, as reckoned from 7th January the declaration day." Such exchanges as copied the report are requested to notice the correction.

THE LAW OF LIBEL.

The following is a copy of the Lord Chief Justice Campbell's Bill to amend the Law of Libel:

"Whereas it is expedient further to amend the Law respecting Libel: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same as follows.

I. No person shall be liable to action, information, or indictment for libel in respect or on account of the publication of any faithful report of the proceedings at any sitting of either House of Parliament at which strangers have been permitted to be present.

II. In an action for an alleged libel, it shall be competent to the defendant, in addition to any other plea which he may now lawfully plead, to plead in bar of the said action, that the alleged libel is the report or part of the report of the proceedings of a public meeting lawfully assembled for a lawful purpose, and that the said report is a faithful report of the said proceedings, and that the plaintiff has sustained no loss or damage by the publication of the said alleged libel.

III. For the purpose of the foregoing enactment a public meeting lawfully assembled for a lawful purpose shall mean a meeting called by the sheriff of a county, the mayor of any city or borough, or other public functionary having authority to convene such meeting, to petition Her Majesty or either house of Parliament, or a meeting for the election of a member or members of Parliament, or a meeting of any council of any city or borough, or a meeting held under authority of any Act of Parliament for imposing any rate or otherwise in relation to the affairs of any parish or other district."

IMPRISONMENT FOR DEBT.

The subjoined article, which we take from the English *Law Times*, will be found of interest to us at the present time.

The *Times* has made an extraordinary mistake in attributing to Lord Brougham's Bankruptcy Reform Bill a design to favor debtors. The writer was probably led into this error by seeing that it contains a provision for the abolition of imprisonment for debt, and he jumped at the conclusion that Lord Brougham contemplates the discharge of debtors from all liability beyond the seizure of their property, if they have any, or if it can be found. But that is not the purport of his Bill, and we can venture to assert that it is very far indeed from Lord Brougham's object. His views are in truth very nearly the same as those which we have propounded here as being the principles upon which a good law of bankruptcy should be based: that is to say, that it should be a law for the *relief of creditors* and the *punishment* of fraudulent and improvident *debtors*; that an insolvent is *prima facie* a wrong-doer, on whom should be thrown the onus of proof that he has innocently deprived his neighbour of his property; that punishment in the form of imprisonment should be inflicted for an insolvency that cannot be so vindicated, and a criminal indictment preferred for insolvency tainted with fraud. So far as we can discover from their reported speeches, there is no difference of opinion between the law lords upon these essential foundations of a new law of bankruptcy; and therefore we look confidently to see them embodied in the measure which the Lord Chancellor has announced to be in preparation. It was with extreme pleasure that we read the emphatic condemnation of Lord Campbell of the present state of the law, which is based on precisely the opposite principle to that now recognised: namely, that its object is the relief of debtors, and that the onus

of proof of misconduct should be thrown upon the creditor. Lord Campbell feels, with all who have given thought to the subject, that the present state of commercial immorality is mainly due to the relaxations that have been unwisely permitted in the law of bankruptcy and insolvency, the practical effect of which has been to give impunity to fraud. When bankruptcy ceased to involve penal consequences, it ceased to be disgraceful, and it was the dread of the disgrace of it, much more than a sense of right, which formerly deterred men from hazarding failure fraught with such consequences. Moreover, when the law ceased to treat the non-payment of debts as a wrong, and took to pitying the debtor and punishing the creditor, it is not to be wondered at that the public should come to look upon debt with leniency, nor that rogues, quitting the more perilous paths of felony, should have directed their energies and skill to the more profitable and safe modes of plunder by debt, certain that nothing worse would come of it than a third-class certificate, leaving them, after failure, richer than they were when they started. After the feeling so strongly expressed in the House of Lords, we hope to see a really large and sound law of insolvency proposed by the Government.—*Law Times.*

DIVISION COURTS.

OFFICERS AND SUITORS.

ANSWERS TO QUERIES.

J. McM.—If the defendant has sold your horse you can it appears to us, waive the trespass and sue for the amount as for money had and received, although the price received for the horse exceeds ten pounds, but it is no part of a Clerk's duty to instruct you how to bring your action.

"*A newly appointed Clerk*"—suggests to us "the advantage of giving short statements of causes of actions of every description suited for insertion in the affidavit for attachment."

In the first volume of this Journal we did so to a certain extent, but if it appears to be the desire of officers we shall revert to the subject again, and enlarge upon our former collection. It is very material that the "Cause of action" should be properly stated in the affidavit for attachment, and be *so* stated that the *whole* of the plaintiff's claim is embraced, otherwise his rights under the attachment might be seriously prejudiced if not totally destroyed.

If before next month we can ascertain that other officers coincide with our correspondent the matter asked for shall be furnished.

M.—Consent can give no jurisdiction of matters over which the Division Courts have no jurisdiction. There is a section in the English Act giving the Courts power over causes beyond their jurisdiction when the parties consent. The case to which our correspondent refers was under that power, but there is no similar enactment for our Division Courts.

T. B.—We are not aware of any decision under our Division Courts Acts, as to the meaning of the term *title* to hereditaments used in the 1st sec. of the Division Courts Extension Act. Our own view is that a claim of possession is not a claim of title to land. It may be that in its most comprehensive sense the term *title* embraces the possession, but not in the sense in which it is used in the Act, so that a defence which would amount to a *plea* of leave and license would not of necessity bring title to the land in question.

S. M.—A set-off is in the nature of a cross action, and if decreed upon by the Court cannot be sued upon again, but as the plaintiff may at any time withdraw his case or become non-suit, so a defendant where he finds the evidence too weak to support his set-off may withdraw it, but such withdrawal must be explicit, or the defendant will be concluded and cannot bring a subsequent suit on such set-off.

To the Editors of the Law Journal.

GENTLEMEN,—I avail myself of your paper to request any brother Clerk who may have had any experience in the issuing of executions upon the determination of fence viewers (8 Vic., chap. 20) to mention what his practice has been. I have my doubts as to how far a Clerk is authorised to judge of the sufficiency of the award.

It is by enquiries and answers to matters of this kind we can inform ourselves, and any Clerk who is willing to contribute information which his experience or reading gives, adds so much to the general stock of information possessed by all the Clerks in Upper Canada, for I presume all take your valuable publication.

A BACKWOOD CLERK.

[Fully concurring with the writer of the above letter in the advantage of answers to queries of this kind as contributing to the general information of all officers, we willingly insert the communication.

Our correspondent is not right in presuming that *all* the Clerks take the *Law Journal*,—the great majority do so, but there are some so indifferent to any aid in the discharge of their duties, as to decline availing themselves of the advantages we offer. Time will show whether these individuals are not so to speak "penny wise and pound foolish"—EDS. L. J.]

L.—The 7th sec. of Rule 69, settles the point that the Division Courts have "no jurisdiction to try an action upon a note of hand, a part of the consideration of which was for spirituous liquors drunk in a tavern." A document "in the nature of a promissory note but payable in lumber" given upon such a consideration comes clearly within the meaning of the enactment and Rule, and the plaintiff cannot recover on it.

To the Editors of the Law Journal.

GENTLEMEN,—Will you be kind enough to inform me what I should do under the following circumstances:—A plaintiff enters a suit; the summons is served 22 miles, mileage—the case is heard and occupying a long time, an increased hearing fee is ordered by the Judge.

In consequence, as the plaintiff says of the case taking an unexpected turn defendant got a verdict against him. From first to last I got no fees in the case, and had to pay the bailiff's costs and fee fund charges out of my own pocket as I did not exact fees in the first instance, the claim being on a note and the defendant a responsible person. The plaintiff has applied for a new trial, and as his affidavits are strong is likely to get it, but he refuses to pay the fees, &c., and he has no tangible property. What course would you suggest to me in the matter? CLERK D. C.

[The practice of giving credit for fees to casual suitors is a very unsafe one for a Division Court Clerk, as this case shows. We would direct our correspondent's attention to the 3rd sec. of the D. C. Extension Act, which provides

that the Judge may enforce the payment of fees in *the same way as a debt ordered to be paid by the Court*, or perhaps the better course would be to submit the facts to the Judge who would no doubt decline hearing argument on the application for new trial till the fees fees were paid. If necessary the Judge's attention may be directed to the case of Farrant v. Baker, 22 L. T., 120, a decision in point.—EDS. L. J.]

To the Editors of the Law Journal.

GENTLEMEN:—In an action brought at the Division Court at town of P——, in the County of ——, by the publisher and proprietor of a newspaper, published in P——, against a gentleman residing in O—— in the County of ——, for the recovery of five pounds for an advertisement in said paper. It appeared that the defendant had given instructions for the insertion of advertisement by letter written by him the defendant at O——. The plaintiff having sued in the P—— Division Court, the Judge refused to give judgment against defendant, upon the grounds that as the letter was written in O——, although the work had been performed in P——, the cause of action arose in O—— and should have been sued there, and was out of the jurisdiction of Judge of P ——'s Court.

Will you have the kindness to give me your opinion in your next publication as to whether or not the defendant was not liable in the P—— Court, inasmuch as, although the letter was written in O——, it was received by the publisher through post in P——, consequently he received his instructions in P——, and the work was also performed in P——.

Yours respectfully,

P——, March, 8, 1858. C. J. H.

[There is some difference of opinion we believe amongst the profession and the County Judges respecting the point our correspondent desires to be informed upon. Under these circumstances we can only say that two at least of the County Judges (Gowan and Harrison) take the same view as our correspondent and would have held that the cause of action arose in P——. The following case may be consulted with advantage—Mondle v. Steele, 8 M. & W., 640.

We would be glad to be favoured with any decision on the point which is a very important one.—EDS. L. J.]

To the Editors of the Law Journal.

GENTLEMEN:—Thanking you for past favours I beg to enquire,—

First,—As it is laid down as a legal axiom that no property passes to him who buys from one against whose effects an unsatisfied writ of execution exists,—and as the buyer has thus acquired no ownership, can he confer the rights of property on another?

Secondly,—Can any person with impunity obstruct an officer on his travel to enforce a writ on the pretence that the road he is on is a private one, or that the course he is traveling is not a road?

Upon your answer to me published in the February number of this year's *Law Journal*, I would observe that a Bailiff is required by law to endorse on his writ of execution the *date* of seizure, and it seems unreasonable to suppose that he should do this and omit noting down *what* he has seized, and if he does note down what he has seized, the inventory so made is to all intents a "schedule of the property seized," and appears to me to be as much embraced within the meaning of the tariff as if made under any other kind of writ, for neither the acts nor the schedule says under what *kind* of process *only* the schedule is to be made. The fee is for every schedule of property seized, etc.

And on reading the schedule it is seen that Bailiff is to be paid for *necessary* mileage, and the *oath* accordingly *is* that Bailiff *necessarily* travelled so many miles.

Now Bailiff travels to defendant's residence is this necessary? and is there informed that "he's away," and whether he is really "away" or is only "not at home" to particular parties, Bailiff is unable to serve him, and the question *now* is, is it necessary to go again? and if so of the two necessaries —which one is unnecessary? Or suppose Bailiff to learn where defendant *is* gone and to follow him there, and there find that he has gone to a certain other place and so on, until Bailiff overtakes and serves defendant at almost the verge of the County,—here the question is at what point did the *necessary* travel cease? Or again, suppose Bailiff to follow defendant from place to place without being able to overtake him until he has nearly reached the Division Court office, where (despairing of being able to elude Bailiff) defendant was rushing to give cognovit to Clerk *before* service and so *save* mileage. In this case I will suppose defendant to live 10 miles from Clerk's office, but the "run" was so circuitous that 40 miles has been travelled, and the question is, where did the necessary mileage terminate?

Regarding your strictures upon the proposed tariff, published in the same number, and touching the objection to the 3rd item, I can only say that while Bailiffs are supposed to belong to a class who cannot be credited even upon oath, I am without an argument which I think worth advancing.

The 8th item is identical with the 7th item in the Brant tariff, and is preferred, and *is not* disapproved by the *Law Journal* in July, 1857.

Touching the 13th item, I deny any sinister motive. Bailiff's sales are proverbial sacrifices, and one reason is the manner in which by law they must be conducted. People know that defendant *may* redeem at any time before the sale, and therefore it is advantageous to inform them, just at the time of sale, that he has *not* done so.

The 15th item occurs in the Brant tariff as the 7th, and as the 8th in the Hamilton tariff, and as it met with the unqualified approbation of the *Law Journal*, when emanating from the above-named places; I have concluded, that its different reception from Grey is referable to oversight alone.

Why the 18th item is objected to I know not, except through the same mode of reasoning as must have prevailed when objecting to the 8th, *i. e.* that Bailiffs may properly be required to give time for little or nothing that Clerks should be handsomely paid for. I say this without envy. But just think, at the last sittings of our Court 300 cases were disposed of in one day. I need not tell the *Law Journal* what this was worth to Clerk exclusive of cognovits, subpœnnes, &c., &c., while Bailiff who was actively engaged the whole time and three other days, and his horses, (Clerks need no horse) on feed, and "winning" nothing does not get as much as would buy him a dinner on one of those days. So in the present instance Clerk gets 20s. for his return to Treasurer. A few Courts back my return to Court covered 16 pages of foolscap for which as you know I got not one "red cent." Perhaps we shall learn by and by the *Law Journal's* reason desiring to continue this seeming (?) anomaly. With many thanks and best wishes, I am yours, &c.,

PAUL DUNN.

[*Answer to 1st Query.*—As a general rule we would say that no property passes.

To 2nd Query.—Officers are not warranted in trespassing on private property, but a *pretence* of the kind may be disregarded.

As to the rest of our correspondent's letter we let him speak for himself; all that we have to say just now is that he does not convince us. He is evidently a little ruffled, and possibly a little jealous to boot.—EDS. L. J.]

SUITORS.

Commitment on Judgment Summons.

NOTES OF ENGLISH CASES, FOR INFORMATION OF SUITORS (*Continued*).

Hern v. Pitt. (*Gloucestershire Co. Court.*)

Poole, solicitor, made an application to have a warrant of commitment renewed under the following circumstances:—

In April last, the defendant was summoned to appear before the Court upon a summons after Judgment, when his Honor found the defendant had been guilty of fraud and ordered him to be imprisoned for 21 days, the warrant not to issue until the defendant applied for it, so as to enable the defendant to make terms with the plaintiff. Terms were offered but not acceded to, and the defendant promised to make other terms more favorable to the plaintiff's views but failed to do so, and did not paid any part of the debt and costs. In November following, the plaintiff applied to the Clerk for the warrant, who refused to issue same without an order from the Judge.

Poole now made the application for the warrant to issue against the defendant in pursuance of the order made in April.

His *Honour* said, that after a lapse of so long a time since the order was made, he should not think it right to issue a warrant without hearing what the defendant had to say The defendant must be summoned before him again.

Poole said this was a commitment for fraud, and not on account of the defendant'a inability to pay.

His *Honour*,—That may be. I cannot tell but there has been a condonation on the part of the plaintiff.

Poole,—The plaintiff is in Court and can be examined to show that there has not been any pardoning of the defendant.

His *Honour*,—I should like to have the defendant here to cross examine the plaintiff.

Application refused.

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

(*For the Law Journal.*—By V——.)

[CONTINUED FROM PAGE 63, VOL. 4]

EXECUTING WARRANT AGAINST THE PERSON.

The arrest.—To constitute an arrest, the party should if possible be touched by the officer; bare words will not make an arrest without laying hold of the person or otherwise confining him. But if a Bailiff come into a room and tell a party he arrests him and locks the door, this is an arrest for he is in the custody of the Bailiff, or if in any other way the party submit himself by word and action to be in custody it is an arrest.

The Bailiff whether known as such or not, ought to produce his warrant if required, but should in no case part with the possession of it. If the party snatch or take the warrant the Bailiff may force it from him, using no unnecessary violence in so doing. As in the case of a constable where resistance is made the utmost caution and forbearance should be used, but the Bailiff may lawfully use force to overcome resistance—that force not exceeding the necessity of the case and ceasing the instant resistance ceases.

Whenever difficulty is apprehended in effecting an arrest the Bailiff may call any constable or peace officer to his assistance, as constables and peace officers within their respective jurisdictions will be bound to aid the Bailiff to make an arrest.

It would seem that where the Bailiff uses proper precaution and acts with reasonable firmness, he is not liable in case of a rescue being made.

When an arrest is made, the party arrested should be at once brought to gaol, unless indeed he pay the amount mentioned in the warrant with the costs, and there seems no objection to the Bailiff taking it from him, although perhaps in strictness he would not be warranted in doing so. No more force or restraint should be imposed on the prisoner than is necessary to prevent his escape, and no delay should be made in placing the party in gaol. The warrant is left with the gaoler.

The Bailiff should obtain a memorandum from the gaoler of his having received the warrant and the party named therein from the hands of the Bailiff.

As in other cases, the Bailiff must make return to the Clerk of what he has done under the warrant.

THE MAGISTRATE'S MANUAL.

BY A BARRISTER-AT-LAW AND J. P.

OFFICE OF JUSTICE OF THE PEACE.

A Justice of the Peace, or as he is sometimes called a magistrate, is an officer appointed by the Crown for the conservation of the peace, and for the execution of certain duties comprehended within his commission, or within certain Statutes which give him authority to act. In general, he has no coercive power beyond the limits of the County, Union of Counties, or Judicial District, to which and for which, he is appointed. His authority is either ministerial or judicial—*ministerial* when his duties, &c., are of a preliminary character, such as receiving information in cases of felony and misdemeanor—issuing summonses and warrants to bring parties charged before him—taking the depositions of witnesses—examining alleged offenders and bailing or committing for trial,—*judicial* when he not only issues process to bring the parties before him, but *tries* and *determines* the matter of complaint without the intervention of a jury, and inflicts punishment upon the offender by fine or imprisonment. A magistrate has also a general authority for the conservation of the peace.

In the present work it is proposed to treat of *the ministerial duties of Justices of the Peace*, and their general authority as conservators of the peace.

MINISTERIAL AUTHORITY.

In treating of this division we shall proceed in the following order:—I. *Observations on matters antecedent to information or complaint.*—II. *Information or complaint.*—III. *Summons or warrant.*—IV. *Attendance of Witnesses.*—V. *Hearing or investigation.*—VI. *Bailing or committing for trial.*

I. OBSERVATIONS ON MATTERS ANTECEDENT TO INFORMATION OR COMPLAINT.

Power of Magistrate.—A Justice of the Peace as a minister of justice has power when acting ministerially to *inquire* into, every crime of which the law takes cognizance. But as his duty in this particular may be said to be the performance of certain official formalities, he has little judicial discretion to exercise; the proceeding which he *initiates* being subsequently carried before a higher tribunal for judicial determination. There are however exceptions to this rule, for by recent enactments magistrates are empowered to hear and determine certain matters criminal.*

Crimes—what.—A crime is an offence against the laws of a country, of a nature so grave that the public become the prosecutors. It is a wilful violation of some well understood rule of society, and may consist either of commission or positive transgression, of omission or positive neglect. It is termed either a felony or misdemeanor, according to the magnitude of the offence.

Criminals—Who.—It is a general rule that no person shall be excused from punishment for disobedience to the laws of a country, unless he be expressly defined and exempted by the laws themselves.† Foreigners as well as subjects are bound to obey the law.‡ The law is administered upon the principle that every one must be taken conclusively to know it without proof that he does know it. As crime is the *wilful* violation of law; it follows that those who are incapable of understanding the laws, cannot with propriety be said to transgress the laws.‖ Such persons though transgressing the law, in fact, are in effect excused from punishment. Though ignorance of the law is not in general, any excuse for crime, yet infancy and want of reason or ordinary intelligence is, at times so. A minor within the age of seven years cannot be punished for any *capital* offence, whatever circumstances of a mischievous discretion may appear. On the attainment of fourteen years the criminal actions of a minor are subject to the same modes of construction as those of the rest of society Between the years seven and fourteen, a minor is presumed unacquainted with guilt; yet this presumption diminishes with the advance of the offender's age, and depends on the particular facts of the case, except in the case of rape if under fourteen the offender is deemed in law incapable of committing the offence; the law supposes physical imbecility. If the offence be any notorious breach of the peace, as a riot, battery, or the like, a minor above the age of fourteen is equally liable to be proceeded against for crime, as a person twenty-one years. When a person attains twenty-one years, he is no longer a minor, and if of sound mind is liable for the consequences of all his actions.* This brings us to the second excuse for crime—want of reason or ordinary intelligence. Any person of the age of discretion is presumed of sound mind, till the contrary is proved. Persons not of sound mind in reference to crime may be divided into idiots or lunatics. An idiot is a fool or madman from his nativity, and one who never had any lucid intervals—a lunatic, on the contrary, is a person who though at times wanting reason, yet has lucid intervals. If he commit a crime when in a lucid interval, he is liable to the consequences of his acts.† If a man voluntarily make himself drunk this is no excuse for a crime committed while in that state. He must take the consequences of his own act,‡ but if habitual drunkenness has induced positive insanity, the individual would be held wholly responsible for his acts. A married woman cannot be punished for committing a bare theft, or even a burglary by the coercion of her husband or in his company, which the law construes to be a coercion. This, however, is only a presumption of law. If upon the evidence it appear that the wife was not drawn to the offence by her husband, she is punishable. So if she commit treason, murder, or robbery whether coerced by her husband or not, she is punishable. This rule applies not only to murder but to all those crimes which like murder are prohibited by the law of nature.

Classification of criminals.—When two or more persons are brought to justice for one and the same felony, they are to be considered either as principals in the *first* degree—principals in the *second* degree—accessories *before* the fact, or accessories *after* the fact. 1. Principals in the in the first degree are those who have actually, and as it were, with their own hands committed the fact or offence charged. 2. Principals in the second degree are those who were present aiding and abetting at the commission of the fact or offence charged, and are upon this account commonly called aiders and abettors. 3. Accessories before the fact are those who being present at the time the offence is committed, procure counsel, command or abet another to commit a felony. 4. Accessories after the fact, are those who knowing a felony to have been committed by another, yet receive, relieve, comfort, or assist him.‖

Place of inquiry.—A Justice may proceed to investigate crime, that is, to act ministerially in any room or building most convenient for the purpose. When acting ministerially, the room in which he sits is not deemed an open Court, by which is meant that no person has a right without the assent of the Justice, to be present. In fact, if it appear to the Justice that the ends of justice will be best answered by conducting the investigation in private, he may order that no person shall have access to the room or remain there.§ This, of course, is a step which ought not to be taken, except in cases where it is really necessary for the sake of the public good. When a Justice of the Peace acts judicially, he has no power to exclude the public.¶ The necessity for observing the dividing line between his duties as a judicial and ministerial officer is here apparent, and requires particular attention.

*The Statute 20 Vic. cap. 29, which is intitled "An Act for the more speedy trial and punishment of *juvenile* offenders," enables two Justices of the peace at the option of the party accused "of any offence which is now simple larceny or punishable as simple larceny," when the age of the offender does not exceed sixteen years, to *hear* and *determine* the case, awarding imprisonment in the common gaol for any term not exceeding three calendar months or a fine not exceeding five pounds. Any Judge of a County Court in Upper Canada being a Justice of the Peace, any Recorder of a City being a Justice of the Peace, any Police Magistrate sitting in open Court, and any stipendary magistrate having by law the power to do acts usually required to be done by two or more Justices of the Peace, is empowered to hear and determine every charge under this Act as fully and effectually as two or more Justices of the Peace.

† 1 Russ. Cr. ‡ Reg. v. Esop, 7 C. & P. 456. ‖ Tomlin "Crimes."

* Russ. 1. *et seq.* † 1 Russ. 5. ‡ Re. v. Thomas, 7 C & P. 820. ‖ 1 Russ. 26 *et seq.* § 16 Vic. cap. 179 sec. 11. ¶ 16 Vic. cap. 178 sec. 11.

U. C. REPORTS.

COMMON PLEAS.

(Reported by E. C. JONES, ESQ., *Barrister-at-Law.)*

MUNICIPAL COUNCIL OF HURON AND BRUCE *v.* MACDONALD ET AL.

Ejectment—Court Houses—Custody of.

Upon ejectment brought to try the question whether the sheriff or the municipal council were entitled to the control of the court house, and the appointment of a custodian of it.

Held, that the title of the plaintiffs, by virtue of a deed from the town council of the town of Goderich, being admitted, the defence must fail, the question in dispute not being decided.

This was an action of ejectment brought to recover possession of certain property, being the court house in the market place in the town of Goderich.

Defence for the whole.

The plaintiffs by their notice, claimed under and by virtue of a deed from the town council of the town of Goderich to the plaintiffs.

By the defendants' notice, the defendant Macdonald asserted title in himself to the court house, situated on the said land, as sheriff of the united counties of Huron and Bruce, and as such sheriff entitled to the care and custody of the same by virtue and under the statute in that behalf made and provided.

And the defendant Fraser claimed the right to the occupancy or tenancy of the premises in dispute in this cause, under and by virtue of an appointment duly made by the sheriff of the united counties of Huron and Bruce, in pursuance of the statute in that case made and provided.

At the last assizes at Goderich, where the cause was entered for trial, a verdict was taken for the plaintiffs by consent, subject to the opinion of the court upon the following facts agreed to by the counsel on both sides.

The title of the plaintiffs to the land in question is admitted, as appears by the paper annexed, signed by the defendants' attorney, and the 20 Vic., ch. 88. The building upon it is used as a court house, and public offices for the united counties of Huron and Bruce: the sheriff, clerk of the peace, registrar clerk of the county court, clerk of the county council, and county treasurer, having their offices there, but the plaintiffs do not admit any right on the part of all these officers to such accommodation. The gaol and court house are separate buildings, half a mile apart. The sheriff has appointed a keeper of the gaol, who lives in that building. The court house and public buildings aforesaid, have appartments appropriated for the residence of a keeper, who, on the first occasion, was appointed by the municipal council, the sheriff at the time claiming the right to appoint, afterwards the sheriff put in a keeper chosen by himself, without reference to, or consent of, the council, and against their expressed wish. This person now claims possession of the building as against the council under his appointment by the sheriff, and refuses to leave though the council wish to dismiss him.

This action has been brought in consequence, and the question in dispute is whether the sheriff or the municipal council has the right to appoint the keeper, and in whom the care and keeping and right to possession of the court house, buildings and offices above mentioned is under the circumstances stated.

Robinson, C., for plaintiffs.

D. G. Miller and *Cameron, H.*, for defendants.

Draper C. J.—We do not feel called upon, in an action of ejectment brought by the municipal council to recover possession of the court house in and for the counties of Huron and Bruce, to decide upon the validity of the appointment of the housekeeper of that building, or in whom the right to appoint such housekeeper rests.

The plaintiffs' title to the building is admitted, and the defence being general sets up a right to exclude the municipal council from possession. We are quite clear the sheriff has no such right and cannot confer it by his appointment upon the other defendant and that is enough to determine this action in the plaintiffs favour. They have an undoubted right to hold their meetings there.

The court house, from its very name, as from the provisions of law, requiring the erection of a gaol and court house in every county or union of counties before they are constituted separate municipal authorities, is a building devoted to and intended for certain public uses. The plaintiffs may be considered as holding this building, and the legal estate in it, for and subject to these uses, and would be guilty of a breach of a quasi trust, and as regards the courts of justice of a high contempt, if they pretended to prevent its use for such public purposes; but speaking only my own impression, and not as determining any question, I apprehend it will be found that, subject as aforesaid, the property and entire control of the building is in them.

Judgment for plaintiffs.

CHAMBERS.

(Reported for the Law Journal, by C. E. ENGLISH, ESQ. and A. MCNABB, ESQ.)

MCLAREN V. HUTCHISON, AND ANOTHER.

Interrogatories—Affidavit of Merits.

Application for leave to deliver interrogatories under the 176 and 177 sections of the C. L. P. A., 1856, must be supported by a positive affidavit of merits.

(January, 1858.)

BURNS, obtained a summons on the 20th January for leave to deliver interrogatories to the plaintiff, along with the pleas for the defendant, Hutchison.

The affidavit upon which the summons was moved was made jointly by the defendant Hutchison, on whose behalf the application was made, and the attorney—and stated that Hutchison had a good defence to the action on the merits if he could discover and prove that plaintiff knew all about the transactions, on account of which he (Hutchison) accepted the bill declared on: or held the same without value, or as trustee for the defendant George. The affidavit also contained the additional statement required by the statute.

McKelcan showed cause. He submitted there was no sufficient affidavit of merits, the one filed being only conditional and uncertain and containing no positive statement of a meritorious defence.

Burns, in support of the summons, submitted that the affidavit was quite sufficient to support the application, and said it was the only one under the circumstances that could be made, and that the C. L. P. A., 1856, (sec. 177) does not call for and never was intended to require any stronger affidavit than the one filed. In fact he argued it was just such an affidavit as showed the necessity of this proceeding.

RICHARDS, J., The statute requires an affidavit of a good defence upon the merits. You state that you have such a defence if you can discover and prove certain facts, of the existence of which you have at present no knowledge. This clearly is no substantial statement sf merits. I do not see that we can depart upon an application of this kind from the ordinary practice as to the contents of an affidavit of merits.

Summons discharged.

MCINTYRE V. BROWN.

Affidavit to hold to bail—Capias—Amendment.

When the affidavit to hold to bail set out a cause of action upon the common counts for goods sold and delivered, and also upon an executed contract for the delivery of certain lumber; but stated only an aggregate amount due—affidavit held sufficient.

(January, 1858.)

The defendant had been arrested for the sum of £1,500. The affidavit stated that defendant was justly and truly indebted to the plaintiff in that amount "for goods sold and delivered by plaintiff to the defendant at his request, *and* upon a contract by plaintiff *to* the said defendant, to deliver to the said defendant, a *quantity* of sawed lumber which was performed by him, (plaintiff) and to be paid for by the said defendant. The affidavit further stated that the said sum of one thousand five hundred pounds was then, (date of affidavit, 2d Dec. 1857,) justly and truly due from defendant to the plaintiff.

The writ was issued and the defendant arrested on 2d December and was kept in custody of the officer, but not committed to jail till about 1 o'clock in the morning of the 3rd. The defendant

was served with what was supposed to be a copy of the writ at the time of the arrest, but it was discovered that the supposed copy of writ was inaccurate, some of the blank spaces in the printed form being filled up with the name of the plaintiff instead of that of defendant. In consequence of this another copy of the writ was served on the defendant before 9 o'clock on the third of December in which the errors of the former copy were corrected.

On the 7th December, an application was made in Chambers and a summons obtained to show cause why the writ of capias issued and the arrest of the defendant thereunder and the copy of the said writ and the service thereof on the defendant should not be set aside for irregularity with costs, and the defendant altogether discharged from the custody of the Sheriff of the County of Kent under the said writ of capias, and the bail bond if any be, delivered up to the defendant, to be cancelled upon the grounds —that the affidavit to hold to bail upon which the writ of capias was issued was uncertain and insufficient in this that it set forth an indebtedness upon two different causes of action, one being for goods sold and the other upon a contract—but did not state the amount due to the plaintiff upon each of such different causes of action but merely stated the aggregate amount of the debt—and further in this that the particulars of the contract mentioned in the affidavit were not set forth with sufficient certainty, neither the date nor the consideration nor the conditions of the said contract being stated nor the time within which it was to be performed, nor the terms of payment nor the amount to be paid, nor the amount due thereon and no sufficient performance of the said contract by the plaintiff being shewn or any breach thereof by the defendant; also upon the ground that the affidavit shewed the debt if any to be due to one Robert *James* McIntyre, but the precipe filed was for a writ of capias for Robert *John* McIntyre, against the said defendant, and the writ of capias was at the suit of Robert J. McIntyre, and upon the further ground that the copy of the said writ of capias served upon the said defendant was irregular in this, that the Sheriff was commanded therein safely to keep the said defendant in custody until he should have given bail, or until the said Robert J. McIntyre, (being the plaintiff,) should by other lawful means be discharged from the Sheriff's custody, and that the name of the plaintiff was substituted for that of the defendant throughout the subsequent parts of the copy of writ.

McKelcan in support of the motion cited *McKenzie* v. *Reid*, 1 U. C. R., 396; *Lyman* v. *Brethour*, 2 U. C. Cham. R. 108.

D. B. Read, showed cause.

McLEAN, J.—The 23rd section, of C. L. P. Act 1856, provides that it shall not be lawful to issue any writ of capias unless an affidavit be first made by the plaintiff, his servant or agent, *of the plaintiff's cause of action* and that the amount thereof is justly and truly due to the plaintiff, and also that such plaintiff his servant or agent hath good reason to believe and verily doth believe that the defendant is immediately about to leave Upper Canada with intent and design to defraud the plaintiff of his said debt. The plaintiff in this case has sworn to a specific amount of debt as being due to him by the defendant, and the only question is whether he has stated his cause of action sufficiently, or whether it is stated in terms so ambiguous as to make it uncertain what cause of action the plaintiff is proceeding on. The debt is alleged to be due for goods sold and delivered by the plaintiff to the defendant at his request, and if it had stopped there, no doubt could arise as to the cause of action, but it goes on," and upon a *contract by me* to the said Sylvester Brown *to deliver* to the said Sylvester Brown a *quantity of sawed* lumber, and *performed by me* to *be paid for by the said Sylvester Brown*." The latter portion relating to a contract for the delivery of lumber, the defendant seems to consider as necessarily forming a second cause of action, and if so he contends that the affidavit should shew the amount due for each cause of action, and that it is deficient in not doing so, and in support of that view he cited the case of *Mackenzie* v. *Reed*, 1 U. C. R. 396, in which Macaulay, J., set aside an arrest on a promissory note and for goods sold and delivered, because the affidavit did not shew how much was due on the promissory note and how much for the goods. I should have been unwilling to set the arrest aside in that case. I think, inasmuch as there was a cause of action stated in the affidavit and the defendant was made aware of the amount of plaintiff's claim and what that claim was for. But admitting that the case was properly decided, it does not necessarily form a guide in this case, because the cause of action stated in the affidavit of plaintiff does not necessarily embrace two distinct grounds of action; the defendant may be indebted to plaintiff for goods sold and delivered, and these goods may have been sold and delivered under a contract on the part of plaintiff to deliver and on the part of defendant to pay—the whole may form but one cause of action and may be so intended by the plaintiff, though certainly very clumsily expressed. The plaintiff if he delivered lumber under a contract might undoubtedly sue for it as for goods sold and delivered, all the stipulations on his part being performed. His right ultimately to recover must depend upon the completion of his contract. It appears to me that the latter part of the cause of action stated in the affidavit has been added by way of caution, and not necessarily to shew an additional ground for the arrest. The case of *Hague* v. *Levi*, 9 Bing. 595, is very much like this, and seems to be in accordance with the view which I have always taken in such cases, viz., that an arrest ought not to be set aside except upon very plain and unavoidable grounds. I cannot in this case say that there is any absolute defect in the affidavit, though the cause of action is so expressed that it might possibly be taken to embrace two distinct grounds.

The affidavit being as I think sufficient, the writ and copy or the copy may be amended under the 37th section of the C. L. P. A. That section and the 291st section show strongly the desire of the Legislature that all necessary amendments shall be made in the proceedings in a cause to promote the ends of justice.

There seems to have been a great want of proper care in drawing the several papers in this case and certainly there would be less hesitation in setting them aside summarily if the attorney who drew them were the only person liable to suffer. The plaintiff's interest should not however suffer from the want of care on the part of his attorney. It appears to me that plaintiff may be allowed to amend such proceedings as are objected to on payment of the costs of amendment, and of all costs of this application.

PHILLPOTTS v. HARRISON.

Ejectment—Interrogatories.

The defendant in an action of ejectment may administer interrogatories to the plaintiff under 176 sec. of the C. L. P. A., 1856 touching the nature of plaintiffs title but not as to the nature of the evidence whereby he intents to prove that title. One party may interrogatorate the other as to facts necessary to sustain his own case although the effect of the answers may be to show the weakness of the case of the party answering.

(January, 1858).

This was an action of ejectment. Annexed to the writ of ejectment there was a notice as follows:—Take notice that the plaintiff in this action claims title to the premises for which this action is brought by length of possession by himself and those from whom he claims, and also claims title under a conveyance from one A. D.—This notice was not at the time of the application filed by the defendant.

Defendant having appeared obtained a summons under the 176 sec. of the C. L. P. A. 1856 for leave to deliver to plaintiff certain interrogatories in writing and that the plaintiff should answer them within ten days.

The interrogatories proposed were as follows:

1. When do you allege that your possession or the possession of those through whom you claim commenced so as to give you a title by possession? Give dates.

2. With whom did such possession commence? Give names.

3. Through whom or what persons did the land come into your possession from the person with whom it first commenced? State the links.

4. Do you contend that A. D., your bargainor is either a sole devisee or sole heir at law or a person deriving title under the devisee, or devisees, heir at law or heirs at law of J. D., deceased the second mortgagee of the land and premises in dispute? If so, which? State the nature of your paper title and the links through which you trace it?

Phillpotts showed cause and contended that defendant had not sufficient materials before the court to decide upon—inasmuch as he did not show what was the title under which the plaintiff claim-

ed in his notice nor what was the nature of the title under or by which he the defendant claimed to hold possession. That the defendant did not swear in his affidavit in the words of the statute "that he had a good defence to the action on the merits" but merely that he was advised that he had such a defence; that he did not even swear that he so believed; that the affidavit of defendants Attorney, that he believed defendant has a good defence on the merits, did not comply with the requirements of the statute. That the effect of answering the interrogatories might be to discover defects in plaintiffs title. That unless the facts were shown his Lordship could not decide whether these questions were proper to be answered or not, that defendant for ought that appeared might have gone in under a tenant or mortgagor of plaintiffs or some one under whom he claimed.

Harrison contra contended that defendant being in possession had a right to a discovery of the title under which it was sought to dispossess him, and that the dictum of Lord Hardwick 1 Ves. 249 is an authority to show that he is authorised to have that title spread out no matter whether he were a mere doer in possession or not—that the position of a party in possession defending that possession is different from that of a plaintiff seeking to disturb the possession of another. That in the latter case he must succeed by the strength of his own title and not through the weakness of his adversary's, and therefore that courts are often unwilling to grant discovery which may shew the defective title of the party in possession. But when the positions are reversed then that a defendant has a right to know by what title he is to be disturbed. He referred to sec. 176 and 222 of C. L. P. A., 1856 the former being a transcript of sec. 51 of the English Act of 1854, and to Osborne v. London Dock Co., 10 Ex. 698; Edwards v. Wakefield, 6 E. & B. 461; Hitchroft v. Fletcher, 11 Ex. 544; Whately v Crouter, 5 E. & B. 709; Chester v. Wortley, 17 C. B. 410; Gormon v. Parrott, 30 L. Times Re. 65; Hirton v. Bott, 29 L.T. 228 Ex. May 28th, 1857, Doc. Dem. Holdane et al v. Harvey 4 Burr, 2487; Horsman v. Horsman 2 U. C. L. J 211.

RICHARDS, J.—I am opinion that the statement of plaintiff's claim, and also of the Defendants, should be before the Judge before he can be in a position to decide properly as to the interrogatories being such as could be permitted. Coombes v. Morrison, 5 E. & B. 984 is an authority on this point; Lord Campbell says—"He must always shew the nature of his case in order to satisfy the court that the interrogatories are pertinent;" and again, "It is impossible that a Judge can exercise his discretion as to permitting interrogatories or not, unless he has the cause of action before him." It appears to me that both parties may shew facts by affidavits, to satisfy the Judge that the questions are or are not pertinent. As far as I can satisfy myself of any settled rule on the subject, the authorities go to this extent, that "though in general the defendant has no right to a discovery of the plaintiff's title, yet, in certain cases, he will be entitled to a discovery of the *nature*, though *not of the evidence* of that title:" see Lord Abinger in 1 Y. & C. 216. This, it will be observed, applies to the right of the defendant to enquire as to the plaintiff's title. In the late case of Horton v. Bott in the Court of Exchequer, Baron Bramwell in pronouncing the judgment of the Court, observes after reviewing the authorities on the subject,—"In the result we find no case in which the plaintiff, as in the present case, making a claim thereby gives himself a right to call on a person in possession to state by what title he is so." It may perhaps be found in the end that all that can be sought for under interrogatories in cases of Ejectment in England, is really provided for by the 222nd section of our Common Law Procedure Act, under which the plaintiff is required to set forth the *nature* of his title with convenient certainty. At all events, the conclusion that I have arrived at, and which is suggested above, is, that although a plaintiff may be interrogated as to the nature of his title, he cannot be called upon to give the evidence by which he intends to support that title. The doctrine that a party in possession being a wrong doer against every body, may call upon a plaintiff in ejectment to discover his title, and to let it out that defendant may see whether the title is not in another, is much modified if not entirely over-ruled as to the latter proposition: see observations of Lord Cottenham in Attorney General v. The Corporation of London, 12 Beav. 256-7-8; Wigram on Discovery, 285; Hare on Discovery, 198, 205, 210.

It seems to me to be settled by the weight of authority; that one party may interrogate the other as to facts necessary to sustain his own case, although the effect of the answers may be to show the weakness of the case of the party answering. The Court of Exchequer rather at one time inclined to the opinion that the discovery obtainable through interrogatories under the Common Law Procedure Act, was more extensive than by a bill of discovery in Chancery. It is probable, however, that that view will not be supported, for in giving judgment in Horton v. Bott, Baron Bramwell remarks that "the 57th sec. of Eng. Act of 1854 enacts that interrogatories may be required to be answered upon any matter as to which a discovery may be sought. Of course this must mean according to the rules existing in Courts of Equity;" and in conclusion speaking of the right claimed to file interrogatories in that case, he says,—"if it is to be established at all it had better be in a Court of Equity familiar with these questions." That was the case of a plaintiff in ejectment calling upon the defendant, the party in possession, to answer interrogatories stating by what title he was in possession. The Court of Queen's Bench in England have held that the power is similar to that exercised in the Court of Chancery on a bill of discovery, and is to be limited to those cases. If I am to asume the facts stated in the argument as to the nature of the plaintiff's claim to be correct, I should be of opinion that the three first interrogatories ought to be disallowed, as they enquire as to the nature of the evidence by which plaintiff intends to prove his claim, rather than the nature of the claim itself. I incline to the opinion that the last question is admissible.

In addition to the cases mentioned in the argument, the learned judge referred to Bird et al v. Malsey 1 Scott, N. S 308, application refused when plaintiff could obtain information from his own agents; Chester v. Wortly 18 C. B. 239; Bates v. Christ's College Cambridge, 29 L. T. Rep 16, as to answers; Letley v. Easton, 18 C B, 643, no ground to refuse because defendant's customers may be exposed to actions—Croomes v. Morrison 5 E. & B. 954, as to materials on which to form application.

RIDOUT v. ORR.

Pleading—Computation of Time.

The eight days allowed for pleading are to be reckoned inclusively of the first day.

(December, 1857.)

A summons was obtained to show cause, why a judgment signed on the 19th October, 1857, for want of a plea should not be set aside with costs as being signed too soon: the declaration having been served on Saturday the 10th October, and judgment having been signed on Monday the 19th of the same month.

Richards, J.—The 112th sec. of the C. L. P. Act, 1856, provides "In cases where defendant is within the jurisdiction, the time for pleading in bar unless extended by the Court or a Judge shall be eight days, and a notice requiring the defendant to plead thereto in eight days otherwise judgment may be endorsed on the copy of the declaration served." This is similar to sec. 63 of the English Act.

The 166th rule of our Courts of Trinity term, 20 Vic. reads as follows:—"In all cases in which any particular number of days, not expressed to be clear days, is prescribed by the rules or practice of the Courts the same shall be reckoned inclusively of the first and last days unless the last day shall happen to fall on any day on which the crown offices are not required to be open, in which case the time shall be reckoned exclusively of the last day."

In England the 174th rule similar to the 166th above quoted, reads—"The same shall be reckoned exclusively of the first day and inclusively of the last unless the last day shall happen to fall on Sunday, &c." No doubt in England under the rule according to the case of Rowbery v. Morgan, 9 Ex. 730, the judgment would be signed too soon, as then the day of service would be excluded and the last day would expire on Sunday, in which case under the rule, that day would be excluded also. The case referred to also decides that were a certain number of days are given under a statute within which an Act is to be done, Sunday although the last day is to be included unless the statute otherwise provide.

Summons refused.

McKAY v. BURLEY.

Pleading—Several Traverses.

If defendant without first obtaining leave, traverse separately two distinct allegations in the declaration each plea being an answer to the whole cause of action, plaintiff may sign judgment as for want of a plea.

(March, 1858.)

Mr. McMichael had obtained a summons to set aside an interlocutory judgment signed as for want of a plea, defendant having pleaded without leave, in an action on the case for seduction the following pleas. 1st., not guilty. 2nd., that cause of action did not accrue within six years. 3rd, that the the girl was not the servant of the plaintiff. 4th., infancy.

Burns, shewed cause. Under sec. 125 of the C. L. P. Act, 1856. defendant has a right to traverse as many allegations as he choose, the pleas put in perfectly regular. (Hagarty, J.—This clause was only intended to prevent traverses of particular facts being held bad as amounting to the general issue.) It has been held by Mr. Justice Burns that we can have several traverses under this clause.

Hagarty, J.—(After consulting with Mr. Justice Burns): These pleas are already not allowable without a Judge's order; but I have no objection to let defendant in on the merits. Order granted to set aside Judgment, and for leave to plead upon payment of costs.

NEALE v. WITHROW.

Commission to examine Witnesses—Publication.

When a commission to examine witnesses has been executed and returned into Court, an order ex parte will be granted for opening the commission and publication of the evidence, notice to the opposite party being required of the time when commission is to be opened.

(March, 1858.)

An application was made for an order to open a commission for the examination of witnesses, obtained by the plaintiff, which had been sent to England for execution and had been returned by the commissioner to the Clerk of the Court of Common Pleas.

The Clerk of the Court had been applied to to appoint a time for opening the commission, that notice might be given to the opposite party, but had refused to grant an appointment or to break the seal; and plaintiff now asked for an order for publication. In support of the application he cited—Gordon v. Fuller, 5 U. C. O. S., 174; Pegg v. Pegg, 7 U. C. R., 220; Davis v. Nicholson, 7 Bing, 348, & 5 M. & Pun, 185; McIntyre v. Layford 1 C. & P. 606; Proctor v. Lainson, 7 C. & P., 627; Williams v. Hall, 1 Price, 93; and also referred to 2 Geo. IV., cap. 1, sec. 17 & 18. Rule 32; 1 Arch. Practice, 9 ed. 312; Bagley's Practice, 326.

Burns, J.—An order may go that the commission be opened by the master in presence of the parties, and papers and evidence may be examined by them and if either party be not present the master may open the commission upon production of a notice duly served upon the absent party, of the time when the commission was to be opened.

Order accordingly.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

WHITEHALL, *Monday Feb. 15th*, 1858.

Between John George Bowes, *Appellant*, and the City of Toronto *Respondents.*

UPON AN APPEAL FROM THE COURT OF ERROR AND APPEAL OF UPPER CANADA.

Reported by EDWARD MORTON, *Short-hand Writer.*

Present—The Rt. Hon. the Lord Justice Knight Bruce; the Rt. Hon. the Chancellor of the Duchy of Cornwall; the Rt. Hon. Sir Edward Ryan; the Rt. Hon. the Lord Justice Turner.

Counsel for the Appellant—The Attorney-General and Mr. Osborne.—*Solicitors*—Messrs. Braikenridge.

Counsel for the Respondent—Mr. Rolt, Q. C., M. P., Mr. E. I Lloyd, Q. C., and M.. Lewin.—*Solicitors*—Messrs. Minet and Smith, 3 New Broad Street, London.

This case (in which the appellant's counsel were heard on the 5th, 6th, and 8th of the present month) having been called on this morning,

The LORD JUSTICE KNIGHT BRUCE intimated to Mr. Rolt that the Committee having deliberated upon the case since it had been last before them, their Lordships did not think it necessary to trouble the respondents' counsel.

His Lordship then proceeded to deliver the following judgment:—

This appeal originates in a suit which in the year 1853, was instituted in the Court of Chancery of Upper Canada by certain inhabitants of the City of Toronto, on behalf of themselves and all other inhabitants of that city, against Mr. Bowes, the appellant here, and the Corporation of the City of Toronto, the respondents here. In the course of it, after Mr. Bowes had answered, the Corporation was by order substituted as plaintiff for the original plaintiffs, and ceased accordingly to be a defendant. The order is stated in the fourth page of the Appendix. Witnesses having been examined on each side, the Court, at the hearing, pronounced a decree in favour of these respondents, which, affirmed on appeal in the Court of Error and Appeal of Upper Canada, by the opinions of the majority of the judges, has been brought for final review hither. The original decree, dated 9th October, 1854 (it was made by the chancellor and two vice chancellors), and the order of affirmance, dated 1st March, 1856, are to be found in pages 94 and 97 of the Appendix. The appeal was fully and ably argued before us, on the part of the appellant.

The object of the suit, attained by the decree, was to charge the appellant in favour of the corporation of the city of Toronto, the respondents, with the amount of profit made by the appellant or the firm of Bowes and Hall (of which the appellant was the principal member) by means of the acquisition and subsequent disposal of certain debentures issued by the Corporation. The claim was grounded on the connection of the appellant with the Corporation, he having been in the year 1850 one of the aldermen, and throughout the years 1851, 1852, and 1853, the Mayor of Toronto, and so a leading member of corporate body.

Though the 97 pages of the Appendix contain much matter substantially useless, the important facts are separable without much difficulty from the mass.

In the year 1850, a railroad, now called the "Ontario, Simcoe, and Huron Union Railroad," had been authorised, and was contemplated and intended, if not begun to be constructed, which was generally supposed likely to be useful and advantageous to the trade and inhabitants of Toronto. The leading members of the Corporation therefore seem to have thought that the project might with propriety be assisted from their municipal funds. Accordingly an act of the Canadian Legislature was obtained (13 & 14 Vic. cap. 81), of which this is the substance, so far as is now material:—

"That it shall and may be lawful for the Mayor, Aldermen, and Commonalty of the City of Toronto, in pursuance of any by-law of the said municipal corporation, in the name or on the credit and behalf of the said municipal corporation, to issue debentures to an amount not exceeding £100,000, nor in sums less than £5 each, for and towards assisting in the construction of the proposed railroad of the said company, and to provide for or secure the payment thereof in such manner and way as to the said municipal corporation shall seem proper and desirable; and further, that it shall and may be lawful for the said municipal corporation of the City of Toronto, and other municipal corporation within or through whose jusisdiction the proposed railroad of the said company may pass, to assist otherwise in the construction and forwarding of the said proposed railroad in such manner as to any municipal corporation may seem proper and desirable on grounds of public utility."

Then it is enacted—

"That any other municipal corporation within or through whose jurisdiction the proposed railroad of the said company may pass shall and may, for and towards assisting in the construction of the said proposed railroad, issue debentures to an amount not exceeding £50,000, in the same manner and upon the same terms as the said municipal corporation of Toronto are hereby authorised to do."

There is a third section, which is not now material.

It became law on the 10th August, 1850. And on the 25th November, 1850, the Common Council (the governing body) of the Corporation came to a resolution to this effect:—

"Resolved—That the sum of £25,000 in debentures, payable twenty years after date, with interest, at 6 per cent. per annum, payable half-yearly, be granted in aid of the Ontario, Simcoe, and Huron Union Railroad Company, on the conditions set forth in the second clause of the Report, No. 21 of the standing committee on finance and assessment; and in order to extend the benefits of the said railroad, to all parts of the city, it be another condition of the above grant that the terminus for passenger trains shall be erected on a portion of the market block property, now vacant, such portion to be leased to the company at a nominal rent for ninety-nine years, and that the line of railroad shall be carried along Palace and Front streets, to the full extent of the city water lots."

And in the next year (1851), on the 18th of August, the Common Council adopted by resolution the report of a select committee of that body (made in consequence of a reference to the committee), which report was thus:—

"That upon the most attentive consideration given by your committee to the propositions signed by Mr. Arnold, as chairman, and after frequent interviews with the manager, as well as with one of the contractors of the company, your committee would recommend that in lieu of the propositions (or either of them) the council loan to the said company their debentures to an amount not exceeding £35,000, payable in twenty years, with interest on the same payable half-yearly, issuable in the same ratio as the bonus of £25,000, taking as security for such debentures the bonds of the said company to same amount, payable in ten years, with interest half-yearly, secured on the road, to the satisfaction of this corporation, upon the recommendation of the city solicitor.

"And further, that it be a condition to this loan, that the road from this city to Lake Simcoe, or the Holland River, be completed in two years from the 1st of January next.

"And further, that as long as the loan of £35,000 continues, the Mayor of this city, for the time being (if he be not a director in any other company), be a director in the above-mentioned company; if he be a director in any other company, then any alderman of the city, for the time being, to be nominated by this council to be a director of the said company."

On the 28th of June, 1852, the Corporation made a by-law, by which, after reciting what had taken place on the 25th of November, and after certain other recitals, it is "enacted" (such is the term they use) "by the Mayor, aldermen, and commonalty of the City of Toronto"—

"1st. That it shall and may be lawful for the Mayor of the City of Toronto to cause any number of debentures to be made out not exceeding in the whole the sum of £60,000, and to cause such debentures to be issued to the Ontario, Simcoe, and Huron Union Railroad Company, in the proportion specified in the before-recited resolution, as the work on the said road progresses.

"2ndly. That of the said sum of £60,000, the sum of £25,000 shall be as a gift to aid in the construction of the said road, and the remaining £35,000 shall be as a loan to the Ontario Simcoe, and Huron Union Railroad Company; and for the securing of the said payment of the said loan in ten years, with interest at the rate of 6 per cent. per annum, payable half-yearly, the said company shall give to the city of Toronto their bonds, secured upon the said road, to the amount of such debentures from time to time issued to the said company on account of the said loan.

"3rdly. That all such debentures shall be under the common seal of the said city, signed by the Mayor for time being, and countersigned by the chamberlain for the time being of the city of Toronto, and shall bear interest at the rate of 6 per cent. per annum, payable half-yearly at the Bank of Upper Canada—and all such debentures shall be redeemable at the Bank of Upper Canada provided always that none of the said debentures shall be for a less sum than £25, nor payable at a more remote period than twenty years from the issuing thereof.

"4thly. That the interest on the said debentures shall be and the same is hereby charged and chargeable, and shall be paid and borne out of the moneys which shall come into the hands of the chamberlain of the said city for the time being, to and for the uses of the said city.

"5thly. That for the payment and redemption of the principal sum secured by the said debentures, there shall be raised, levied, and collected, in the year next before such debentures respectively fall due, an equal rate in the pound upon the assessed value of all rateable property in the said city of Toronto and liberties thereof, over and above all other rates and taxes whatsoever, sufficient to pay the principal sum secured by such debentures respectively falling due as aforesaid, unless otherwise provided for the repayment of the said loan, or any part thereof, by the O. S. & H. U. R. Company, or by act of the Mayor, Aldermen, and Commonalty of the city of Toronto, authorising the issue of other debentures in lieu thereof in that behalf duly made and enacted."

This is signed by the appellant as mayor.

Much doubt, to say the least, was entertained and expressed as to the legal validity of this bye-law, and it is very possible that the doubt was not without foundation. It is to be collected, however, from the materials in the cause, that before the 28th June—before, in fact, 24th of that month—by arrangements and an agreement made between the managing body of the railroad company and Messrs. Story and Co., who had contracted with the company for the construction of the railroad, Messrs. Story and Co. were to receive, and had, as between them and the railroad company, become entitled to the debentures to be issued under the resolutions of November, 1850, and August, 1851, respectively. The expression "to be issued" is used, because until a time subsequent to the 28th June, 1852, none as we believe, were in fact issued, and on that 28th June, before the making of the bye-law so dated, the finance committee of the corporation received from Mr. Berczy, acting on behalf of the contractors as well as of the railroad company this letter, addressed to the chairman of the committee:—

"Toronto, June 28, 1852

"Mr. Alderman Thompson, Chairman, Finance Committee:

"Sir,—On the part of the directors of the Ontario, Simcoe, and Huron Union Railroad Company, and the contractors of the said company, I beg intimate to you that we are prepared to take the debentures of the corporation under a bye-law, without the form of advertising for three months, and to assume the entire responsibility of so receiving them.

"The contractors, acting under legal advice, agree to this course as the best that can be adopted under the peculiar circumstances in which they are placed.

"Should the above mode not be adopted, I submit, as the next best course, that a resolution should be passed by the council similar to the draft enclosed.

(Signed) CHARLES BERCZY, President."

What took place in the following month, on the 29th and 30th of July, 1852, appears in the 78th and 79 pages of the Appendix in these words:—

"Resolution of the Common Council of the 29th of July, 1852:—

"On the 29th of July, 1852, the Mayor communicated to the council the expediency of confirming an offer which he had made to the contractors of the Ontario, Simcoe and Huron Union Railroad, in consequence of some difficulty which had presented itself in the matter of the directors giving the city security upon the road for the amount proposed to be advanced to the directors by way of loan, and which offer the Mayor stated to have been in substance as follows:—

"That the contractors should agree to relinquish the grant of £25,000 made by the council in aid of the railroad, which said grant has been transferred by the directors to the contractors, and that the directors should relieve the council from the agreement to loan the company the sum of £35,000 upon certain security, upon condition that the council should take stock in the said road to the extent of £50,000, paying therefor in debentures, at the same times, and in the same proportions as the work progresses, as it was agreed the said grant and loan should be advanced—to which said contractors had assented."

"Upon this communication, the Council adopted the following resolution:—

"Whereas, his worship the Mayor has informed this Council, that the contractors of the Ontario, Simcoe and Huron Union Railroad Company have accepted a proposition made by him, sub-

ject to the approbation of this Council, in view of the difficulties which have existed in the execution of a mortgage bond, by way of security for the loan of £35,000 formerly voted by this Council, to the effect that the contractors shall surrender the grant of £25,000 made by the Council and transferred to such contractors in part payment of their contract, and also that the directors shall waive the aforesaid loan of £35,000 altogether, on condition that, in lieu thereof, the Council will take stock to the amount of £50,000, to be paid by the issue of city debentures in the same proportions as the debentures for the above loan and grant were authorized to be issued."

"Be it therefore resolved, that the standing committe on finance and assessment be authorized to complete such arrangement, provided that no legal difficulty shall occur in carrying out this resolution; and provided also, that no alteration shall take place in the conditions upon which a portion of the market block was granted to the said company, particularly with regard to carrying the railroad to the eastern limits of the city water lots.

"This resolution was communicated to the board of directors of the Ontario, Simcoe and Huron Union Railroad Company, and to which the following reply was received:—

"Office of the O. S. & H. U. R. Co.,
Toronto, 30th July, 1852.

"To the Worshipful the Mayor of Toronto,

"SIR,—The board of directors have under consideration a resolution of the Council, passed on the 29th instant, relating to a proposed new arrangment for the issue of debentures to the contractors, a minute of the finance committee thereon, and a letter from M. C. Story & Co., stating their willingness to accept the propositions embodied in the resolution of the City Council first mentioned; I now beg to send you a copy of a minute made by the directors of this company in relation to the documents referred ot:—" And the Common Council then

"Resolved—That the board of directors agree to the proposed arrangement between the City Council and M. C Story and Co., submitted in the resolution of the City Council of the 29th inst., without prejudice to the existing agreements between the Council and the board and the contractors, in the event of the one proposed not being accomplished; and, further, without prejudice to the other parts of the said existing agreements, which are not to be affected in any way by the substitution proposed for certain parts of those agreements."

On the 9th October in the same year an act passed the Canadian Legislature (16 Vict., cap. 5, Canada) which, after certain recitals, enacted, "That it shall and may be lawful to and for the City of Toronto to raise by way of loan upon the credit of the debentures hereinafter mentioned from any person or persons, body or bodies corporate, either in this province, in Great Britain or elsewhere, who may be willing to lend the same, a sum not exceeding the sum of £100,000 of lawful money of Canada."

Section 3, enacted "That the sum of £50,000, part of the said loan so to be raised as aforesaid, shall be applied by the said City of Toronto in the payment of the promissory notes of the said city now current in this province, and in the redemption of such of the debentures of the said City of Toronto as were issued prior to the passing of the act passed in the twelfth year of Her Majesty's reign, and intituled An Act to provide by one general law for the election of municipal corporations, and the establishment of regulations of police in and for the several counties, cities, towns, townships and villages in Upper Canada, and may fall due within the ten years next after the passing of this act.

"Section 4. That the funds derived from the negotiation of the said debentures so to be appropriated as aforesaid shall, when received, be deposited by the chamberlain of the said city for the time being in the Bank of Upper Canada, at Toronto, and only be withdrawn therefrom as they may from time to time be required for the payment and redemption of the said promissory notes and debentures in the next preceding section of the act mentioned.

"Section 5. That the sum of £50,000, the remainder of the said loan so to be raised as aforesaid shall be applied in payment of 10,000 shares of the capital stock of 'The Ontario, Simcoe and Huron Union Railroad Company' lately purchased by the said City of Toronto, under resolution of the Common Council passed on the 29th day of July, 1852, in manner herein provided; and it shall be the duty of the chamberlain of the said city for the time being (and he is hereby authorized and empowered so to do) forthwith, with the consent of the holders thereof, to call in such debentures of the said City of Toronto as may have heretofore been issued under any bye-law of the Common Council of the said city, and taken in payment of such stock, and to substitute therefor so much of the funds received on account of the debentures to be issued under this act as may be necessary for that purpose."

Soon afterwards, on the 18th October and 1st November in the same year 1852, the Corporation made two bye-laws, thus expressed:—That of the 18th October recites the bye-law of the 28th of June, the Act of the 13 and 14 Vict., cap. 81, and much or all of the subsequent arrangements; and enacts:—

"That it shall and may be lawful for the Mayor of the said City of Toronto to subscribe for, take, receive and hold stock in the said Ontario, Simcoe and Huron Union Railroad Company to the amount of £50,000, for and on behalf of the said City of Toronto; and for the payment of the same it shall and may be lawful, and it shall be the duty of the said Mayor, for the time being, of the said city, to appropriate so much and so many of the said debentures, authorised to be issued under the provisions of the bye-law hereinbefore recited, as may be requisite and necessary for that purpose, and that the said debentures shall be issued by him for that purpose at the times and in the same proportions as is provided by the bye-law hereinbefore recited, subject however to the same conditions relative to the passenger terminus of the said railroad, and the continuance of the said railroad along Front and Palace Streets, as are contained in the recital of the said bye-law and the resolutions of Common Council of the 29th day of July last."

"That the dividends from time time paid and payable upon the stock so held by the said Mayor, on behalf of the said City of Toronto, in the said Ontario, Simcoe and Huron Union Railroad Company, shall be applied by the Chamberlain of the said city in such manner as, by resolution of the Common Council of the City of Toronto, may from time to time be directed."

Then comes the bye-law of the 1st of November, which is termed "An Act to provide for the issue of £100,000 debentures, to consolidate a part of the existing debt." It recites a sufficient part of what had gone before, and then enacts:—

"1st. That it shall and may be lawful for the Mayor of the City of Toronto to raise by way of loan, from any persons, body or bodies, corporate or politic, who may be willing to advance the same upon the credit of the debentures hereinafter mentioned, and the special rate hereinafter imposed, a sum of money not exceeding in the whole the sum of £100,000; and to cause the same to be paid and applied in the manner prescribed by the Act of the Provincial Legislature authorising the negotiation of the said loan.

"2ndly. That it shall and may be lawful for the Mayor of the City of Toronto to cause or direct any number of debentures to be made out for such sum or sums not exceeding in the whole the said sum of £100,000 as any person or persons, body or bodies corporate or politic, shall agree to advance upon the credit of such debentures and the special rate hereinafter imposed; such debentures to be under the common seal of the said city, signed by the Mayor and countersigned by the chamberlain of the city for the time being, and made out in such manner and form as the Mayor shall think fit.

"3rdly That the interest on such debentures shall be payable half-yearly, on the 1st of April and 1st of October in each year, at such banking house or place in London, or elsewhere, as may be agreed upon between the Mayor of the said city and the party or parties who may advance the said loan, or any part thereof.

"4thly. That the principal sum of £100,000 shall be made payable at twenty years from the 1st day of October 1852, at the banking house or place in London, or elsewhere as may be agreed upon as aforesaid.

"5thly. That a special rate of tenpence in the pound upon the assessed value of all rateable property in the city and liberties, over and above all other rates and taxes, shall be raised, levied, and collected annually for the purpose of paying the interest and creating a sinking fund of two per cent., for the payment of the principal of the said loan of £100,000, from the year 1852 until

the year 1873, or until the said debentures shall be fully redeemed or provided for.

"6thly. That if in any of the years during which the sum of tenpence in the pound *special rate by this act authorised to be* levied there shall be any surplus, after paying the interest on the said loan and providing for the sinking fund hereinafter mentioned, the said surplus shall be invested with and added to the said sinking fund for the purpose of paying the said loan of £100,000 secured by the said hereinbefore mentioned debentures."

It is now necessary to revert to the month of June, 1852.

It appears that the appellant who was at Toronto certainly on the 12th was at Quebec on the 24th of that month, and had then and there with a gentleman called Hincks, a person in office and a member of the Canadian Legislature, certain communications, the nature of which may be collected from the evidence given in the cause by Mr. Hincks himself, as a witness on the appellant's behalf. It will be sufficient to read some extracts from Mr. Hincks' testimony in chief and on cross-examination.

In page 46 of the Appendix, he says:—

"Sometime in the latter end of June, 1852, soon after my return from England, Mr. Bowes proposed to me to join him in purchasing certain debentures of the City of Toronto, then about to be issued. Mr. Bowes told me that the contractors had been trying to sell them, but without success; that they would, he thought, take 80 per cent. for them; the amount about to be issued was about £25,000. I agreed to join him in the purchase at that price; the highest value of such bonds at the time was 85. I mean that purchases in small sums might be made at that price. Mr. Bowes and I had some conversation as to the mode of raising the money to pay for them, in case he succeeded in effecting the purchase; he told me that he had sounded the cashier of one of the banks, who had given him encouragement. I told him that if I were concerned in the operation, it would be on the express condition that the money should be raised in England; that I had no doubt of getting it for twelve months at 6 per cent. per annum, which would give us plenty of time to dispose of the bonds, and that if he could secure the purchase, I would undertake the entire management of the transaction. This conversation occurred on the 24th of June. My reason for being pretty positive as to the exact day, is that I examined the registry book at Swords' Hotel, where Mr. Bowes usually stopped, and find by it that he arrived in Quebec on that day, and does not appear to have remained in town over night. In this way I am enabled to state the exact day on which the conversation occurred; but, independently of this, I can state, from my own recollection, that it must have been about that time.

"In reference to what I have said as to 85 per cent. being obtainable for these debentures, when sold in small sums, I wish to add that I do not believe that more than 80 could be got for them, when sold in large sums."

In page 49, in answer to the question:—

"In the passing of an act authorising the City of Toronto to raise £100,000 to consolidate a part of the city debt, did you take any, and if any, what part; or did you exercise any, what influence upon any other person in procuring that act to be passed, or had you or the said Bowes any object in procuring such act because of your interest in the said debentures purchased by you and him from the contractors of the said railway?"

He says:—

"I was present when the bill passed one of its stages, and may have been at all of them. I took no part and used no influence to carry it through the House of Assembly. I am not aware of any influence being used by any one to carry it. It was of a similar character to bills passed for the same object for the cities of Kingston and Hamilton, and I think Montreal. There was no opposition to any of these bills; the object of all was the same, simply to require a less oppressive sinking fund than that required by the Upper Canada Municipal Act. The City of Toronto would have had to borrow whether the new act passed or not. So far as the act legalized the debentures issued to the railroad contractors, or provided for the substitution of other debentures for them, it was in consequence of a distinct understanding before the conclusion of the purchase of the said debentures by us, and at the time of the passing of the by-law under which they issued, that the city would take the necessary steps to remove doubts as to the legality of the issue of the debentures. I have no doubt that the city could have been compelled to do so in some way. After the passing of the act *in* question, and after comments had been made as to the propriety of legalising debentures which were already in circulation, the legislature on its re-assembling in 1853 confirmed the validity of debentures issued to the same parties by the county of Simcoe, and which were objected to as illegal, and this even though a motion to quash the bye-law on the ground of illegality was then pending before the courts."

In the page 50 he is asked:—

"Did you or did you not transmit to Mr. Bowes any part of his share of the proceeds of the sale of the said debentures purchased by you and him in bills of exchange upon England; and did you or not purchase such bills in the ordinary course of business; and where did you purchase the same; and why did you transmit to Mr. Bowes his share or any part of his share in the profits of the said transaction by bills on England?"

He answers:—

"I did remit Mr. Bowes a portion of the profit realized by the transaction on bills of exchange on London, drawn by the Receiver-General; that exchange was sold, without any intervention of mine, at the highest price that could be obtained, and in the usual way. It was drawn against balances or special funds, by the Receiver-General, and it was only when the bills were brought to me to be countersigned that I became aware of the sale. They were sold to the Bank of Upper Canada, and drawn in favour of the manager of the branch of that bank at Quebec. When I saw them, it occurred to me that they would be a convenient mode of remitting to Mr. Bowes, as exchange is usually higher in Toronto than at Quebec, and I knew that Mr. Bowes required exchange in his business. I sent to the Bank of Upper Canada to buy the exchange. I had no interest in the matter; I charged Mr. Bowes just what I paid, and gave him either a bank cheque or bank notes for the balance, on his next visit to Quebec. The exchange was endorsed by Mr. Bradshaw, the manager of the Quebec branch of the Bank of Upper Canada, in the usual way."

In page 51, and after it, there is this—

"Q.—What amount of debentures did Mr. Bowes first propose to you to purchase; and was such proposal made in writing or verbally, and when and where?"

"A.—The proposal was made verbally to me at Quebec. I think the amount spoken of was either £24,000 or £25,000. I think that we must have had conversation at the time with reference to the remainder of the debentures, as it was expected that the railroad company would get in all £60,000, which, under the terms of their agreement with the contractor, were to be taken by them in payment. The proposal was made to me on the 24th of June, 1852.

"Q.—Had you any other and how many conversations with Mr. Bowes subsequent to the said 24th of June, on the subject of these debentures, previous to your finally agreeing to purchase them?

"A.—No; I may have had two or more conversations with him on the 24th of June, but he left Quebec either on that day or the next. I did not see him again for several weeks. I told him then (that is on the 24th of June), that if the owners of the debentures would sell them at the price which he told me he thought they would, that I would join him in the purchase.

"Q.—After agreeing to the purchase of the debentures in question, did you enjoin secrecy on Mr. Bowes of his or your connection with the purchase, and when, and from what motive, and was it in writing or orally?

"A.—I have no distinct recollection of the time or mode of communicating with Mr. Bowes on the subject of secrecy, but I have no doubt that at some time in the early stage of the transaction I did impress upon him the importance of keeping the transaction as a most confidential one. My belief is that any prudent person engaged in such a transaction would adopt such a course; but I am ready to admit that the course pursued towards me by the press did influence me in wishing to prevent their obtaining any knowledge of my private transactions. I was not influenced by any feeling that the transaction was an improper one, either on the part of Mr. Bowes or myself. I mentioned the circumstance confidentially to some of my friends, and I was aware that Mr. Bowes gave the same confidence to at least one of his friends. It

is the custom of all persons who engage in tranactions of this nature to keep them as secret as possible, and this is one reason why the intervention of brokers is generally sought.

"Q.—Are you aware that after Mr. Bowes had purchased the debentures in question, he declared in a meeting of the City Council at Toronto, that he was not interested in them, or in thhir negotiation? Had he your sanction for making such a declaration in his place as Mayor of the City to the City Council?

"A.—I have seen by the newspapers that Mr. Bowes is reported to have made such a declaration. He had not my sanction for making it. So soon as I became aware that Mr. Cotton and Mr. Bowes had quarrelled, which was about the latter end of November, 1852, I was perfectly aware that the transaction could not be kept secret, and I either directly or through a friend in Toronto, or in both ways, authorised Mr. Bowes, and advised him to state every fact connected with it. My belief is, that this must have been some time before the declaration of Mr. Bowes in the City Council, alluded to in the question. I should say, in conversation with Mr. Bowes on the subject, he invariably declared that so far as he was concerned, he had no objection to the transaction being made public, but that he knew that my enemies would make it a subject of attack on me, and it was for this reason that I was particular in communicating my desire that he should state the whole matter.

"Q.—How many letters did you receive on the subject of these debentures from Mr. Bowes, from first to last of this transaction? Please produce them, or account for not doing so, and if you have destroyed them state particularly when and why?

"A.—I received a great number of letters from Mr. Bowes during the latter part of the year 1852; they were on a variety of subjects, and Mr. Bowes was in the habit of writing on all subjects in the same letter. They were principally on the subject of the Toronto Esplanade, the Toronto and Guelph Railway, for which he wanted the provincial guarantee, a separate Division Court for Toronto, and other matters which I do not particularly recollect. I have not, to my knowledge, any of Mr. Bowes' letters in my possession. I cannot recollect the precise time when they were destroyed; but I recollect having some of them in my possession in the autumn of 1852, because Mr. Bowes happened to be at my house, where these, with other letters, were lying in an open desk, and he made a remark upon the loose way in which I kept my letters, and said that he thought they ought to be destroyed, and I think, said that he was in the habit of destroying mine. I told him then that I would destroy any that I had; and I subsequently destroyed them when destroying other letters. I treated them just as I do all my private correspondence, unless where some special reason requires their retention. Mr. Bowes' letters contained very little on the subject of this transaction, as he took no part whatever in the management of it beyond obtaining the offer of sale by the contractors. It is very probable that Mr. Bowes may have written to me on the subject of the Bill for the Consolidation of the City Debt, though I have no recollection that he did so. I think that he principally communicated on that subject with Mr. Attorney-General Richards, and that any communications with Richards or with me were verbal. Mr. Bowes seemed anxious that the City should not be required to provide a sinking fund. The Government had fully considered the subject of a sinking fund with reference to the Consolidated Municipal Loan Fund Act for Upper Canada, and determined to insist on a sinking fund of a similar amount being provided in all the Corporation Loan Acts, and this course was followed in the cases of Montreal, Toronto, Kingston and Hamilton. Among the letters from Mr. Bowes which have been destroyed, must have been included any containing references to the transaction in the Toronto debentures. I cannot possibly say how many of these letters had reference to the debentures.

"Q.—Were the letters having reference to the debentures written to you by Mr. Bowes, or in the name of Bowes & Hall?

"A.—They were all in the name of Mr. Bowes himself; but in the letter acknowledging the receipt of the exchange, he told me that the firm had used it.

"Q.—Was that the first occasion upon which the name of the firm appeared in connection with this transaction?

"A.—Yes.

"Q.—Did you write to Mr. Bowes on the same subject, and how often, and were your communications addressed to Mr. Bowes, or to Bowes and Hall? Produce copies of all the letters you so wrote on the subject of these debentures.

"A.—I wrote frequently to Mr. Bowes on the subject of this debenture transaction, as well as on other matters, respecting which he addressed me. I always addressed Mr. Bowes, and not the firm of Bowes and Hall. I have no means of judging how many letters I addressed to Mr. Bowes. I was not in the habit of keeping copies of them, and I very seldom keep a copy of any unofficial letters. I have a private letter-book, which is at present mislaid, but I am certain it contains no letter to Mr. Bowes; and I have asked the gentleman who copied the letters which are in that book, and he is also certain that it contains no such letter. I am therefore convinced that I have no copy of any letter which I have addressed to Mr. Bowes. I have not had any letter copied in that private letter-book for the last twelve months. The book, I have no doubt, was mislaid when I changed my residence last summer.

"Q.—How many letters had you written to and received from Bowes, on the subject of the debentures, previous to your letter of the fifth of July, 1852, to Mr. Ridout?

"A.—I had received one, and I think had written none.

"Q.—Did you write by the same mail to Bowes, that is by the mail of the 5th of July?

"A.—Yes, I have no doubt that I did so. I have no copy of that letter.

"Q.—In your conversation with Mr. Bowes at Quebec, was it agreed that you should purchase £24,000 or £50,000 of debentures?

"My recollection is that the sum was £25,000. I afterwards learned that the amount at the disposal of the contractors was £24,000.

"Q.—When were you first informed that instead of £24,000 there were to be issued to the railway company £50,000 of debentures, being the amount subscribed by the City of Toronto, and by whom?

"A.—I have no doubt that I was informed by Mr. Bowes immediately after the arrangement was effected, but I do not recollect the precise time, but it must have been about the beginning of August.

"Q.—Are you aware whether this change was suggested by Bowes, and strenuously advocated and promoted by him in the City Council of Toronto?

"A.—I am not aware that such is the fact. I have heard that the change was suggested by Mr. Berczy, president of the railroad company. The arrangement was most beneficial to the City, and I am convinced that the City will benefit to the extent of £20,000 by the change.

"Q.—On what day did you definitely agree with Mr. Bowes to purchase the debentures?

"A.—On the 24th day of June a conditional agreement was made, which depended on the contractors being willing to sell on the terms stated, and on our being able to obtain the necessary funds. The final purchase I consider to have been made when Mr. Bowes accepted the offer which he had received about the 30th day of June, and which, I believe, was on the 8th day of July, 1852, after having heard from me."

In page 55 he is asked:—

"Was it distinctly understood by Mr. Bowes, at the time you agreed to join him in the purchase of the debentures you afterwards purchased together, that you expected to get the money to pay for them from parties in England, and that you would communicate forthwith with those parties?

"A.—It was so distinctly understood."

In page 57 he is asked:—

"Was there not a discussion in the City Council upon the legality of these debentures, in which reference was made to there being high legal opinions against the validity of the bye-law for the issue of the debentures, which discussions were made public?

A.—Yes; I believe such discussions took place, and were made public.

"Q.—Is it not true, that with such doubts upon the legality of these debentures, it would have been hardly possible for you or

Mr. Bowes to have disposed of them without having them legalised; and did not Mr. Bowes come to Quebec as Mayor, at the desire, or at all events, with the sanction of the City Council, to get an Act passed legalizing them?

"A.—I consider that, under the circumstances, it was necessary that the debentures should be legalised. I would never have engaged in the transaction, had I not been perfectly satisfied that the Corporation of the City of Toronto would be incapable of so gross an act of fraud, as to have omitted taking the proper steps to have the said debentures legalised. I am aware that Mr. Bowes, when in Quebec, interested himself about the passing of the bill, and I have no doubt that he had the sanction of the City Council in so doing; but I believe that he had other business for the City, which more especially required his personal attendance at Quebec. I refer particularly to the Toronto Esplanade."

In page 59 he is asked:—

"What was the exact profit made by you and Mr. Bowes upon the purchase of the £50,000 of debentures from the contractors? And produce the account.

"A.—I have no account to produce, the result of the operation was that I drew a bill of exchange on Messrs. Glyn, Mills & Co., *for the balance at my credit with them, the proceeds of which* amounted to £8,237 8s. 6d. currency, one-half of which I paid to Mr. Bowes, as already stated.

"Q.—Is that not the profit upon the sale by you of the £100,000 issued by the City of Toronto, under the Toronto Loan Act?

"A.—I consider that there was a loss on the sale of the £100,000, no portion of such loan having realized par, whereas the City was paid par.

"Q.—Had you taken £50,000 only of debentures issued under the Toronto Loan Act in payment of the debentures which you purchased from the contractors, what then would have been your profit upon the purchase of debentures by you and Mr. Bowes?

"A.—Had I received sterling debentures in exchange for the amount of the debentures which were purchased from the contractors by Mr. Bowes and myself, our profit would have been *enhanced by the amount of the loss sustained on the debentures* for which we gave par to the City; but as we should not have received sterling debentures at all, unless we had purchased from the city at par, our profit would have depended on the price at which we could have sold our currency debentures in Canada; and as there was a rapid advance in the value of such debentures, my belief now is, founded on information received from the brokers in Montreal with whom I correspond, and from other sources of information, that our profit would probably have been greater had we never interfered with the purchase of the new city loan of £50,000."

Their Lordships do not see any reason for not trusting Mr. Hincks as a witness.

Mr. Cotton more than once mentioned in Mr. Hincks' evidence, being examined in the cause as a witness against the appellant, and cross-examined for him, desposed thus:—

"I know Mr. Bowes, also Mr. Hincks. Mr. Bowes mentioned to me that debentures were to be issued to the directors of the Northern Road, and that a speculation could be made in them. I think this was in February, 1852. Mr. Bowes proposed that we should purchase the debentures on joint account This was before any issue. Conversation took place from time to time to the effect, that when issued we should make the purchase. It was suggested that Mr. Hinks should be employed to negotiate them. I think the proposition came from Mr. Bowes, but am not sure. I had a conversation with Mr. Bowes in reference to a proposition from the contractors, or a negotiation with them: we partly agreed that the debentures should be purchased from the contractors on joint account, at 20 per cent. discount. Mr. Bowes was the *medium of communication. There was no definite amount fixed* between Bowes and myself at first. I left that to Bowes. I had communication with Mr. Hincks before the final arrangement with Mr. Bowes. I cannot tell when my first conversation with Mr. Hincks was. It was verbal, and may have been a month or six weeks before the first debenture was deposited. My first interview was at Quebec. I had a conversation with Mr. Bowes previous to my first communication with Mr. Hincks relating to our purchase of the debentures, I cannot distinctly state its purport. Mr. Bowes said he had already communicated with Mr. Hincks. When I first spoke to Mr. Hinks, he had acknowledge of the matter, or appeared to have. I will not be positive that I had more than two interviews with Mr. Hinks. I may have had. The last one was immediately preceding the first issue of debentures. I informed Mr. Bowes on my return of my conversations with Mr. Hincks.

"I had conversations with Mr. Bowes as to the illegality of the by-law of the 28th June. We proposed to get over the difficulty by having the debt of £100,000 consolidated; and that by changing them into sterling they would be more valuable. This was some time in the beginning of June. I can't be certain. I can't be positive whether I stated this to Mr. Hincks. I never applied to Mr. Hincks for the purpose of having an act passed. It was said by Mr. Bowes that Mr. Hincks' name would have the effect of getting a better price for the debentures than any other person, and that it would be necessary to give him an interest in the debentures, as it would be necessary to have his assistance to procure an act to consolidate them. I saw the letter from the contractors of the 30th June. I think this was a day or two after its date. Mr. Bowes showed it to me in his own office. Mr. Bowes told me *some time prior to the date of that letter that he would propose* the offer of the contractors to the finance committee. He said, at the same time, that they could not accept it, because they were not in a position to raise the money to buy them. He said that he would make the proposition in order that they might not find fault with him hereafter. This was the only reason that I recollected. I on one occasion took a letter from Mr. Bowes to Mr. Hincks. Mr. Hincks is resident at Quebec. I read that letter. It was written by Mr. Bowes. It had reference to the purchase of debentures. I conversed with Mr. Bowes on the subject matter of the letter; my conversation was with reference to the mode of raising the money for the purchase of the debentures. The letter had reference to the same subject. It was delivered to me open. I sealed it in Mr. Bowes' office. Mr Bowes directed it to be delievered to Mr. Hincks. My communications were with Mr. Bowes *alone. The name of the firm was never mentioned. I under*stood that his interest was individual.

"*Cross-examined.*—I do not think I was one of the first to originate the charge against Mr. Bowes. I never did speak of it. I was in Quebec in December, 1852, and when I came up here there were placards about charging Mr. Bowes with chiseling the city out of £10,000. I was no party to them, or any other placards on the subject. I have stated some parts of my evidence, but I don't recollect what part. I did state that Mr. Bowes and I were to purchase on joint accounts. I mentioned it to Mr. Meudell and others, but I can't say to whom. I did not state that I could give evidence before the Committee of Council. I do not know how my evidence became known. I was called on to give evidence before the Committee of Council. I can't say how I became to be so called on. If I did not state before that I was chiseled outof my share, I state it now. I took great umbrage at my being so chiseled, but I stated nothing about it. I may have stated that I carried a letter from Bowes to Hincks.

"The loss of the Guelph contract was not the cause of my umbrage. It was one amongst many others. I brought an action of slander against Mr. Bowes, but that action had no reference to the loss of the contract. I have a strong feeling against Bowes. I can't tell exactly the period of my first interview with Bowes about the debentures, but I think it was six months prior to the 30th June. I am certain it was three months prior to that date. I cannot tell when we agreed to purchase on joint account. I can't tell how long prior to the 30th June that was. I have not the slightest idea. It was definitely agreed that Bowes and I should purchase on joint account, and that we should get Mr. Hincks' assistance. Mr. Bowes told me *he had written to Dunn* and Wilson, and shewed me the letter. We had agreed to buy them, if, as the work went along, we should think it prudent. I never spoke to the contractors on the subject. I saw the contractors at Bowes' office about the day the letter of the 30th June was written. It was thought better that I should not speak to the contractors. It was thought better to leave the matter in Bowes' hands. I did not think it wrong then that the Mayor should make the purchase. The object of applying to the finance com-

mittee was to avoid any blame being attached to Bowes' thereafter. I was then in negotiation with the contractors of the Northern Road about some other matters, and it was thought better not to meddle in this.

"It was finally agreed that Bowes and I should purchase when we learned that the contractors would sell at 20 per cent. discount. This was a month prior to the 30th June. This was after I had seen Mr. Hincks. When I saw Mr. Hincks, Bowes and I were the only parties interested. I do not know how far I stated this to Mr. Hincks, but so far as I know, Mr. Hincks had no reason of any kind to form any other opinion than that Mr. Bowes and myself were exclusively interested.

"After the contractors agreed to take 80 cents. on the dollar, Mr. Bowes requested me to take a letter to Quebec, to get Mr. Hincks to give directions to the Bank to advance money for me and Mr. Bowes, on the debentures being deposited in the bank. I delivered the letter to Mr. Hincks. He read it, and told me that he would telegraph and write to Mr. Ridout to make the matter all right.

"It was understood that Mr. Hincks was to have a share for negotiating the debentures, the nett proceeds after that were to be divided between Bowes and myself. I made no arrangement with Mr. Hincks. Mr. Bowes did that. I don't know when the arrangement was made with Mr. Hincks. I don't know that any such arrangement was ever made.

"I only heard it from Bowes. He never stated to me the amount to be paid to Hincks.

"There was no arrangement as to raising the funds other than I have stated. When I returned, I told Mr. Bowes that Mr. Hincks said it was all right.

"I can't say when I had the conversation with Mr. Bowes as to the illegality of the bye-law of the 28th of June. We had several conversations before and after the 28th June. Our arrangement for an application to consolidate the debt was previous to the 28th June. I don't recollect that our arrangement on the subject was communicated to Mr Hincks. My first conversation with Mr. Hincks was a casual one relating to the probability of the purchase of the debentures. That was the whole purport of our conversation. I don't recollect distinctly what did pass. There was nothing of moment. My second interview was on the subject of Bowes' letter about raising the money. He said that it would be all ready. I always talked as if Bowes and myself were the purchasers. I may have had conversations since, but I do not recollect when or where. I understood that the offer was to be made to the finance committee. I remember the purport of my conversation, but I cannot tell the date. It was before the letter of the 30th June came from the contractors, but I can't say how long. When Mr. Bowes wrote to Quebec by me we did not discuss the terms. The draft of the letter was written when I came to the office. I have not yet discovered that I was not a purchaser. I have not yet discovered that I am not to have my share. I never knew that Mr. Bowes intended to deprive me of my interest until I heard his evidence. I had reason to think so from his acts, but never knew it till I heard his evidence. I thought from the hostile course he was pursuing towards me that he would try to cheat me. I did not make any claim because I was waiting for the result of this suit. I do not know when the bill was filed. I believe that Mr. Bowes has received the money, but being on bad terms, and finding now a clamour in town about it, I do not see fit to make an application to him. I was not a party to posting placards about the matter against Mr. Bowes. I never did say to any person that I could have been a witness for the city against Bowes. There was a definitive agreement that the debentures should be purchased by Mr. Bowes and myself.

"*Re-examined.*—Prior to the letter of the 30th June I had no communication with Mr. Hincks as to raising the money: but Mr. Bowes informed me that he had made such arrangements three weeks or a month prior to my taking the letter to Quebec. A few days previous to my going to Quebec, Mr. Bowes told me that the engineer had given his certificate, and that he would delay the issue of the debentures till Mr. Hincks' letter to the bank should arrive. When we first talked of purchasing the debentures, Mr. Bowes told me that he had written to Wilson and Dunn, and that Dunn had offered to negotiate the debentures on good terms: in fact not to charge anything for the business. Mr. Bowes shewed me a letter from Mr. Wilson or Mr. Dunn, I won't be sure which. The application to Dunn and Wilson was for our mutual benefit in the negotiation of the debentures. It was not agreed between Bowes and myself what share Mr. Hincks should have. My impression and I think Mr. Bowes' too, was, to give Mr. Hincks whatever he would demand for the job. Some time previous I had conversation with Mr. Hincks as to the negotiation of some debentures in England. Nothing was done, it was merely a matter contemplated. We contemplated having Mr. Hincks' assistance from the first. We could not have raised the necessary amount ourselves. I would not have entered into the arrangement for a purchaser if I had not had assistance from some person. We never contemplated raising the funds ourselves. I had a letter from Mr. Hincks as to the negotiation of previous debentures belonging to myself. They were municipal. I cannot say of what municipality. He offered to negotiate them at one per cent. I shewed the letter to Mr. Bowes. Mr. Hincks said the debentures were worth 95 par. payable in London; at least he proposed that as a limit.

"*Per Cur.*—It was definitely arranged that Mr. Bowes and myself should purchase the debentures on joint account; it was before this that the application was made to Mr. Dunn and Mr. Wilson; about a month or two before this. I have a clear recollection of seeing Mr. Dunn's or Mr. Wilson's answer, but I cannot say which, and I may have seen both. This was before the arrangement was concluded, perhaps a month previous. I cannot say whether I saw the letters, or heard their contents from Mr. Bowes. I had not arranged with Mr. Bowes what Mr. Hincks was to receive for his assistance. We have had communication about it, and it was supposed that Mr. Hincks might require a third or one-half. When I left Toronto with the letter, I had the full belief that I was to have half of what Mr. Bowes received, and remained under that impression.

(To be concluded in our next.)

SHORT NOTES OF DECIDED CASES.

By C. ROBINSON, Esq., *Barrister-at-Law, Reporter to the Court.*

QUEEN'S BENCH,

Hilary Term, 1858.

IN FLEMING v. MCNAUGHTEN, a debtor had mortgaged his personal property, including the stock on his farm, his tools, household furniture, crops in the ground, &c., and specifying articles of the most minute and trifling character, all to secure a debt very small in proportion to the value of the goods, and made payable at the expiration of a year. No evidence of value was given, and the bona fides of the debt was admitted, but it was contended at Nisi Prius, and held by the Court upon motion for a new trial, that it should have been left to the Jury to say whether these circumstances were not sufficient to shew that the assignment was made not merely to secure the assignee, but for the purposes of the debtor, so far as regarded the whole or a large portion of the goods, and to shield his property from other creditors.

The same objection appeared to the assignment in BALKWELL v. BEDDOME. There the assignor being indebted in a large amount as indorsee for others, and in a small sum, not exceeding £150, on his own account, assigned all his property, real and personal, including land sworn to be worth about £1500, in trust to pay, first the sums owing himself, and specified in a schedule, and next the other creditors who should come into the assignment. A verdict was found for the plaintiff, but the Court thought the circumstances gave such strong ground to suspect that the few direct claims of small account had been made a pretence for tying up the debtor's whole property, and putting it out of the reach of the largest class of his creditors, that it was desirable to have the opinion of another jury, and a new trial was granted, with costs to abide the event. In this case it was also held that the assignment, executed before the passing of 20 Vic., cap. 3, was not

avoided by a delay of eight days in registering it, and that the affidavit of bona fides made by one of the assignees was a sufficient compliance with the Acts.

In Hall v. McKinnon, a question arose upon the provision of the C. L. P. A., sec. 224, requiring notice of title to be given by defendant in ejectment. The defendant in this case, besides denying the plaintiff's title, claimed title in himself under a lease, and at the trial desired to shew that he had been in adverse possession of the land for twenty years. The Chief Justice of the Common Pleas considered that it was not competent for him to give such evidence, the effect of which would be to establish a title in himself different from that set-up in his notice. The case came up in Term, but was decided against the plaintiff on another ground, so that it became unnecessary to determine this point. The Chief Justice, however, expressed his opinion that the defendant was at liberty to set up his possession, in order to defeat or deny the plaintiff's title by shewing that he had lost it by allowing himself to be dispossessed for twenty years. *Burns, J.*, thought that the point might admit of question.

In Coltman v. Brown it was held that in these notices of title it is insufficient to state how the party claims, as by conveyance, descent, &c., and from whom, without going back to the origin of the title and tracing it from the title. See also Canada Company v. Weir, 7 C. & P, 341, and Grace v. Whitehead, V. C. K. 50, the only cases yet reported upon the construction of this enactment.

On appeal from the County Court of Oxford the obligations of Railway Companies with regard to fences under the 14 & 15 Vic., cap. 57, sec. 13, were fully considered. The plaintiff in his declaration, charged that the defendants constructed their Railway across his lands, separating one portion from another, and that it thereupon became their duty to erect and maintain fences and farm crossings, as required by sub s. 1 of the clause referred to, yet that they neglected to do so, whereby he had been deprived of the use of his land, and his crops injured by cattle getting in &c. It was held, reversing the judgment of the Court below, given in favor of the plaintiff on demurrer, that the declaration shewed no cause of action, that sub ss. 1 and 2 of sec. 13, must be taken as distinct provisions, having in view different objects, the first to compel the Company to fence in *their Railway track*, to keep cattle from getting upon it and being injured while the trains were running; the second to oblige them to separate not only their track, but any other lands which they might take, for stations, &c., from the adjacent lands of private proprietors, so that the latter might not be exposed to trespasses by cattle coming in from the lands of the Company. For injuries to cattle upon the track they would be liable under the first sub-section, as soon as they had begun to run their trains, the intention being to prevent the Railway from being used without these precautions; but under the second sub-section no liability could attach until six months after the land had been taken, and a request made by the proprietor to fence. In this case the injury complained of was within the latter provision, and as it was not averred that the six months had elapsed, nor that any request had been made, the declaration was held insufficient. —*Elliott* v. *The Buffalo and Lake Huron R. W. Co.*

In Harrison and the Town Council of Owen Sound, the Town Council had passed two By-laws, one to "license and regulate Inns," the other for regulating the duties of tavern Inspectors. By the first it was provided that each person obtaining an Inn license should pay £10, *over and above the Imperial duty of* £2 5s; and the second by-law directed that the Inspector should be entitled to receive certain fees from each applicant for making his inspection and granting a certificate. Neither of these By-laws was submitted to the electors, and it was contended that this was requisite under the fourth clause of 16 Vic., ch. 184, because, *including the Imperial duty*, they imposed for each license a greater sum than £10. That clause enacts that no By-law "made under the authority of this Act, which shall require the payment of a greater sum than £10 per annum for any license, shall have force or effect unless adopted and approved of by the electors in the manner directed. It was held however that both By-laws were good; that the £10 was to be considered as exclusive of the Imperial duty; and that the second By-law was not within the Act, the sums given by it being merely fees for services rendered, not a duty charged for the license.

In this case on the first day of the election no votes were tendered for more than hour, but afterwards on the same day the voting again commenced, and was continued until the time for closing the poll. The Returning Officer then declared the election closed, and refused to open the poll the second day, alleging as his reason that more than an hour had elapsed during the first day without receiving a vote. The learned Judge of the County Court held that the construction put upon the Statute (12 Vic., cap. 81, sec. 159) by the Returning Officer was wrong, and the election illegal, and on appeal to the Court of Queen's Bench this decision was confirmed. The meaning of the clause is that the poll shall be kept open until four o'clock on the first day, and may then be closed if no voter shall come up for an hour after the last vote has been given, *and* if the Returning Officer shall see that all the electors have had a fair opportunity of being polled. *Regina et rel; Greely* v. *Gilbert, Township Councillor for Mosquito Bay Ward in Sopi. asbury, and Salisbury Returning Officer.*

In Sinclair v. Ronson, the promissory note sued upon was payable at a bank. The plaintiff, an indorsee, took it up there on the last day of grace, and at five o'clock on the same day sued out a *capias*, and arrested defendant, the maker. It was held that the note became payable at three o'clock, and he was therefore not too soon; and it would seem from the judgment that under 14 & 15 Vic., ch. 94, sec. 1, the same law applies where the note is payable generally, not at a bank.

In Hatton v. The Beacon Insurance Company, one of the conditions in the Policy upon which the plaintiffs sued was, that in case of any assurance with any other office, notice should be given to the defendants, and such insurance indorsed on the policy granted by them. The plaintiff had so far insured with another Company, that he had paid the premium to their agent, and procured from him what is commonly called an interim receipt. The question was whether this constituted an insurance within the meaning of the condition, and it was held that it did.

CORRESPONDENCE.

To the Editors of the Law Journal.

Gentlemen,—May I request your answer to the following:

1. Suppose a man gives a chattel mortgage for four months, and at the expiration of that time does not take the property nor renew the mortgage, can the property be taken then in execution?

2. Also is it legal for a man to give goods and chattels to the amount by valuation $300, to secure a debt of $100, to the damage of execution creditors,—if not, what steps should a bailiff take to make execution?

3. Also if four judgments are obtained against a man in one day, all to be paid forthwith on a certain day,—and execution issues, but only half the debt and costs made, how is the money to be divided, whether equal according to claim or according to the number that the suit bears on the procedure book? Your answer to the above will oblige a subscriber,

James F. Elliot,
Clerk, Division Court, Warwick.

[1st. It is the generally received opinion that a mortgage is good for one year, as against creditors if bona fide filed as the law directs, although the time for payment expires within

the year and the mortgagee neither takes possession, nor sells. But the point is not free from doubt. The continued possession is not consistent with terms of mortgage.

2nd. A mortgage such as you describe is good. The bailiff has no right to seize the goods without paying the amount of the mortgage. If however, the value of the goods mortgaged greatly succeed the sum for which they are given as security this is some evidence of fraud to be tried by a jury.

3rd. The first execution placed in the Sheriff's hands must be satisfied, then the second, &c., although all placed in the Sheriff's hands on the same day. There is no rateable division of proceeds among execution creditors; but if instructions given were at same time for issue of all the executions, the Clerk should hand them to Bailiff according to number in procedure book.—EDS. *L. J.*]

To the Editors of the Law Journal, Toronto.

PORT ALBRET.

GENTLEMEN:—I submit a few questions, which I will thank you to answer through the Journal.

I am Gentlemen, yours truly,

J. COOKE.

Clerk of 6 *D. C., Huron & Bruce.*

1. Has a Municipal Council authority to collect the total amount of Special School Tax from the resident rate-payers in the first place, and afterwards in proportion from Non Residents?

2. Can a Municipal Council pass a resolution to allow each Councillor payment for letting out passing jobs?

3. If a Resident Rate-payer holds separate parcels of land in the Township in which he resides, should the commutation for Statute Labour be charged upon each separate parcel, or upon the aggregate only?

4. Is the Clerk of a Division Court obliged to issue Writ of Execution, when the time granted by the Court shall have expired, without special orders from the Judgment creditor? Can the Clerk refuse to issue the writ unless he receives the necessary costs?

5. Is there any work published in a *separate* form relative to the duties of Clerks of Division Courts?

Is there a work called "De Lolme on the Constitution,' and what is its cost?

[We must request correspondents to ask of us only such questions as are of general importance, and not to prevent us with an *omnium gatherum* such as the foregoing.

We shall on this occasion do what is desired of us without in the slightest degree intending to create a precedent.

1. We do not clearly comprehend this question. If the *total* amount of the School tax be collected from residents we can not see by what means *afterwards a proportion of it* can be collected from non-residents. For the general information of our correspondent, we would state that it is one thing to impose a rate and it is another to enact it—that a by-law imposing a rate for School purposes ought to embrace all rated rated property whether real or pesonal—whether belonging to residents or non-residents; and that a by-law imposing a rate on the property of residents only or of non-residents only is bad. (In re de la Haye v. the Gore of Toronto, 2 U. C. C. P., 317.) With respect to the collection of a rate legally imposed, the proportion due by residents in respect of their property may be first collected and afterwards the remaining portion due by non-residents in respect of their property. (13 & 14 Vic., cap. 48, sec. 11, sub sec. 1, 11, and 16 Vic., cap. 185, sec. 22.)

2. Certainly not.

3 The commutation is to be charged against *each* separate lot according to its assessed value. The owner has no right to claim to have his lots valued according to their aggregate value. (16 Vic., cap. 182, sec. 38. Canada Co., v. Howard 9 U. C. Q. B., 654.)

4. He is not obliged to issue execution without order from judgment creditor. This order may be general given when suit is entered or special and given at any time after suit commenced. The Clerk may refuse to issue the execution until paid the fees thereof in the first instance by the plaintiff. (D.C. Act, sec. 14.)

5. There is no such work yet published in separate form.

6. There is a work called De Lolme on the English Constitution, but copies of it are not easily obtained. Our copy is London, 1810, and cost two guineas.—EDS. L. J.]

To the Editors of the Law Journal.

Beamsville, 2nd March, 1858.

GENTLEMEN,—Allow me to trouble you again in regard to the Statute 20 Vic. cap. 69. Does the Statute require a By-Law passed for closing up and conveying an original allowance in lieu of an old travelled road, after being surveyed and reported upon by the Surveyor as sufficient for public use, to be submitted to the County Council to pass a By-Law to confirm the same.

If you could give an answer to the foregoing in your next issue you would oblige the Municipal Council of the Township of Clinton. Yours truly,

ROWLEY KILBORN,

Township Clerk.

[The Statute 20 Vic. cap. 69, is not free from ambiguity. It is intitled "An Act to provide for the *disposal* of road allowances, &c.," and recites that it is necessary "to provide more fully *for the stopping up and sale* of original road allowances, &c." After repealing so much of section 187 of 12 Vic. cap. 81, as amended by section 32 of 16 Vic. cap. 181, as prevents *Township* Municipalities from passing By-Laws "for stopping up original allowances for roads," or "from selling and conveying any original allowance for road," it authorizes a Township Municipality "from time to time to make a By-Law or By-Laws *for the stopping up and sale* of any original allowance for road or any part thereof within such Township, and thereby to determine and declare the *terms* upon which such original allowance for road shall be *sold and conveyed*, &c. Provided that *such* By-Law or By-Laws, before they have any

force, shall be confirmed by a By-Law of the County Council, &c." (sec. 1.)

Had the Act stopped here the only power conferred would have been to "stop up" and "sell," which apparently is all that the preamble contemplates. But upon reading further we find that by sec. 5, it is provided that "in all cases where a public road has been opened, or where a new road shall be opened in lieu of an original road allowance, and for which no compensation is or shall be paid the Municipal Council of the Township *or* County in their respective jurisdictions shall have power. * * * upon the report in writing of the Township *or* County Surveyor, or of a Deputy Provincial Land Surveyor, that such new road allowance or travelled road is sufficient for the purposes of a public road or highway *to convey such original road allowance to the party or parties through whose land or lands the same shall have run or shall run in lieu of such new road.*"

This is a power not contemplated by the preamble, and a description of By-Law is required to carry it into effect not embraced within sec. 2 of the Act; and yet it would appear that *such* By-Laws as are embraced in sec. 2, and such only require the confirmation of the County Council. Notwithstanding, when practicable, we recommend that *all* By-Laws passed under the Act 20 Vic. cap. 69, be so submitted and confirmed. Such we are convinced was the intention of the Legislature, though not properly expressed.—*Eds. L. J.*]

To the Editors of the Law Journal.

Sarnia, 1st March, 1858.

GENTLEMEN,—You will oblige me by answering, in your next issue, the following question:—

The C. L. P. A. 1856, sec. 63, says that a defendant who appears in person must, with his appearance, file an address at which papers are to be left, &c,, and that "if such address be not given, the appearance shall not be received" (by the proper officer, of course). Now, suppose that an appearance without an address should be received by the Clerks of any of the Courts, could the plaintiff treat the same as a nullity, and sign judgment for non-appearance?

There is a provision for an "illusory or fictitious address," but none in said section for such a case as I have supposed.

I am, gentlemen,

Yours respectfully,

SIGMA.

[*Our correspondent is referred to Jones* v. *Grier*, 3 U. C. L. J. 91, decided by Hagarty, J., in Chambers.—*Eds. L. J.*]

MONTHLY REPERTORY.

COMMON LAW.

EX. THE NATIONAL ASSURANCE AND INVESTMENT COMPANY, v. BEST.

Sheriff—Execution—Ca sa—Notice of Countermand—Damages for breach of covenant to keep policy alive.

The plaintiffs having obtained a judgment against the defendant, issued a *ca. sa.* directed to the Sheriff of Middlesex, upon which a warrant was issued to one of his officers; but before the writ had been executed the attorneys of the plaintiffs sent an order countermanding the execution of the writ to the officer of the Sheriff to whom the warrant was addressed, and the writ was in consequence returned *non est inventus*. Subsequently the defendant was taken in execution at the suit of another creditor, under a *ca sa*, also directed to the Sheriff of Middlesex, but executed by another officer. The defendant the same day upon which he was taken satisfied that debt, but the officer detained him till enquiries should be made as to whether there were any other writs, and finding in the office of the Sheriff the writ returned *non est inventus*, he detained him that night and next day, made enquiry of the officer to whom the warrant had been addressed, as to whether the defendant should be detained, and that officer produced the note of countermand; but it appeared that although signed in the name of the plaintiffs' attorneys, it had in fact been written and signed by a Clerk, the officer hesitated to act upon it, and detained the defendant until a formal intimation had been procured from the plaintiffs attorneys, that the notice had been written by their direction, and the defendant was thereupon set at liberty.

Held, that upon these facts the defendant had never been arrested or detained under the *ca sa*, at the suit of the plaintiffs, and that the judgment debt was therefore subsisting.

In an action on a covenant to pay the premiums on a policy, effected on the life of a third party, which had been deposited with the Assurance Company with whom the policy was effected as a security and three years had elapsed before action, since any premiums had been paid. *Held*, that the premiums did not afford the criterion of damage; that the only damage was the loss of the security; and that as it did not appear that had been productive of any real loss, the damages should only be nominal. *Semble*, that if a creditor to keep such security on foot, has been obliged to pay the premiums or to affect a new policy, the damages would be substantial.

EX. BOLTON v. JONES ET AL. *November* 25.

Contract—Adoption of Contract by Stranger—Right to sue.

The defendants addressed a written order for goods to B.; B's foreman, the plaintiff, who had that very day succeeded B. in his business, supplied the goods without making any intimation of the change. At the time the order was given B. was indebted to the defendants on a balance of accounts.

Held that the plaintiff was not entitled to maintain an action in his own name for the price of the goods.

EX. COLLINS v. WRIGHT ET AL. (*Executors*).

Principal and Agent—Contract on the part of agent that he has authority implied—Liability of agent when acting bona fide—Warranty—Damages—Costs of Chancery suit.

A party who *bona fide* makes a contract as agent in the name of a principal impliedly contracts with the other contracting party that he has authority from the alleged principal to make the contract, and if it turns out that he has not this authority, is liable in an action on the implied contract. So held by the majority of the Judges affirming the judgment of the Queen's Bench; and also that in such action, the costs of an unsuccessful Chancery suit for specific performance against the alleged principal, instituted without notice to the agent, but in reliance on his representation of authority are recoverable as damages.

Held by COCKBURN, J., differing from the other Judges, that an implied contract on the part of an agent acting as described is unknown to our law.

C. C. R. REGINA v. LIGHT. *November* 14.

Assault—Policeman in discharge of his duty—Evidence.

Where a policeman saw a man who was drunk assault his wife, and within twenty minutes after took him into custody: *Held*, that the policeman was justified in so doing, notwithstanding the man had left the spot where his wife was saying he should "leave her altogether."

C. P. CARPENTER *v.* PARKER. *November* 12, 13.

Eviction what amounts to—Molestation and disturbance - Amendment.

Land is mortgaged, and is subsequently let to a tenant who is not aware of the mortgage until he receives notice of it from the mortgagee. The tenant being advised that he cannot resist the mortgagee's claim, goes out and allows the mortgagee to take possession. This amounts to an eviction.

Per WILLIAMS, J.—At all events it is a molestation and disturbance.

EX. DAVIS *v.* UNDERWOOD. *November* 20.

Landlord and tenant—Covenant to repair—Measure of damages.

The measure of damages in an action for breach of covenant to repair, is the sum necessary to put the premises in repair, notwithstanding before action the reversion of the plaintiff has been extinguished by an entry of the superior landlord.

C. C. R. REGINA *v.* THOMAS CLOSS. *November* 14, 30.

Forgery—Cheat at Common Law — False token or mark — Passing off a copy as an original picture by painting artist's name in the corner.

Forgery must be of some document or writing, therefore the painting an artist's name in the corner of a picture, with the intention to pass it off as the original production of that artist is not a forgery.

If a person in the way of his trade or business put or suffer to be put a false mark or token upon any article, so as to pass off as genuine that which is spurious, if such article be sold by such false token or mark, the person so selling may be indicted for a cheat at Common Law, but the indictment must allege that the article was passed off by means of such false token or mark.

Where an indictment alleged that the prisoner being a picture dealer, knowingly kept in his shop a picture whereon the name of an artist was falsely and fraudently painted with intent to pass the picture off as the original work of the artist whose name was so painted, and that he sold the same to H. F. with intent to defraud and did thereby defraud him, but without stating that the picture was passed off by means of the artist's name being so falsely painted.

Held that such painting of the artist's name was putting a false token on the picture, and that the selling *by means thereof* would be a cheat at common law, but that the want of such last averment was fatal.

REVIEW OF BOOKS.

THE LOWER CANADA JURIST. John Lovell, Montreal. $4 per annum.

The number for February and March of this useful publication is received. It contains the remainder of *Wilcox* v. *Wilcox* noticed in our issue for February. The judgment of Mr. Justice Aylwin is, as we expected, very able. The learned Judge appears to have made use of all the powers of his mind in the determination of the legal questions involved, and, though in the minority, his judgment deserves the greatest respect. The Court, consisting of Sir L. H. Lafontaine, and Justices Duval and Caron, decided that before the British Act 6 Geo. IV. cap. 57, commonly called the Lower Canada Tenures Act, became the law of Lower Canada, the customary dower of the custom of Paris was claimable on lands in Lower Canada held in free and common soccage. From this judgment Mr. Justice Alwyn dissented. The majority of the Court was of opinion that the laws of Lower Canada, at the time of the conquest, *i. e.*, the French laws so far as relates to real estate, were not changed either by the conquest, or by anything which transpired between the conquest and the passing of the Imperial Act of George the Fourth. Mr. Justice Alwyn, on the contrary, has given it as his opinion that the laws of England were introduced at the time of the conquest, and that their introduction has been recognised in ordinances of the Province of Quebec, in statutes of Lower Canada, and of Canada passed since the conquest. It is not a little remarkable that whenever this vexed question presents itself for adjudication in a Court of Justice composed of Judges of French and British origin, that the former take one side, and the latter the other.

The case under consideration is well reported. In a note the editors state that "for the arrangement, and for many of the materials forming the appendix to the case they are under obligations to the President of the Court (Sir L. H. Lafontaine, Bart.,) who has also had the goodness to revise the entire report."

The number before us contains besides an elaborate judgment of Chief Justice Lafontaine on the effect of Statute 16 Vic. cap. 80, intitled "An Act to modify the Usury Laws." This Act, which applies to the whole Province, enacts that no contract to be made in any part of the Province for the loan or forbearance of money or money's worth, at any rate of interest whatsoever, shall make any party to such contract liable to any loss, forfeiture, penalty, or proceeding, civil or criminal, for usury; but provides that every such contract, and every security for the same, shall be so far void, and so far only as relates to any excess of interest thereby made payable above the rate of six per cent. The Court of Appeals in Lower Canada has decided that any excess of interest above six per cent. is usurious and illegal, and that in any action brought by the creditor for interest the excess may be set off by the debtor as a reduction of the creditor's demand *pro tanto*: (Nye, Appellant, and Malo, Respondent, p. 43.) We do not know of any reported case decided in Upper Canada on the construction of this statute, and in the absence of such the case before us, though not of absolute authority, is not without positive value. An Upper Canadian lawyer while reading it must bear in mind that the mode of procedure in our Courts greatly differs from that adopted in the Courts of Lower Canada.

APPOINTMENTS TO OFFICE, &C.

JUDGES.

DAVID LOCKWOOD FAIRFIELD, Esquire, to be Judge of the Surrogate Court for the County of Prince Edward, in the room of the Honorable Simeon Washburn, deceased.—(Gazetted 9th March, 1858.)

COUNTY ATTORNEYS.

Lambton	JOSEPH FREDERICK DAVIS.
Perth	DANIEL H. LIZARS.
Welland	LORENZO D. RAYMOND.
Wellington	JOHN J. KINGSMILL.
Northumberland and Durham	JOHN D. ARMOUR.
Milton	GILBERT T. BASTEDO.

(Gazetted 6th March, 1858.)

SHERIFFS.

LAWRENCE W. MERCER, Esquire, to be Sheriff of the County of Norfolk, in the place of H. V. A. Rapelje, Esquire resigned.—(Gazetted 13th March, 1858.)

CORONERS.

WILLIAM EGGERT, Esquire, to be an Associate Coroner for the County of Perth.—(Gazetted 6th March, 1858.)

GEORGE C. COTTER, M. D., and WILLIAM HALLOWELL, M. D., Esquires, for the City of Toronto.

ROBERT NICHOLSON, JOHN RAPELJIE and SAMUEL S. SMADES, Esquires, for the County of Welland.

FRANCIS BULL, M. D., BEAUMONT W. DIXIE, M. D., and SAMUEL A. HARVEY, M. D., Esquires, for the United Counties of York and Peel, and JIRA SKINNER, Esquire, M. D., for the County of Brant.—(Gazetted 9th March, 1858.)

THOMAS JOHN GRAFFE, of Mount Forest, Esquire, to be an Associate Coroner, for the Counties of Wellington and Grey.—(Gazetted 13th March, 1858.)

RYERSON RUTTLEDGE, Esquire, to be an Associate Coroner for the United Counties of Huron and Bruce.

JOHN MAHAFFY, Esquire, M. D., to be an Associate Coroner for the United Counties of York and Peel.—(Gazetted 27th March, 1858.)

NOTARIES PUBLIC.

HENRY FREDERICK DUCK, of Chatham, Esquire, Attorney at Law.—(Gazetted 6th March, 1858.)

JAMES ALEXANDER CARROLL, of Stratford, Esquire, Attorney at Law, and THOMAS ROBSON BUCKHAM, of Orangeville, Gentleman.—(Gazetted 9th March, 1858.)

CHARLES E. ANDERSON, of Port Credit, Esquire.—(Gazetted 13th March, 1858.)

WILLIAM HENRY STEVENSON, of Port Rowan, Gentleman.—(Gazetted 27th March, 1858.)

CROWN LAND DEPARTMENT.

Toronto, 21st Oct. 1857.

NOTICE is hereby given that the Lands in the Township of Barrie in the County of Frontenac, U.C., will be open for Sale on and after the 17th of next month, on application to the Resident Agent, Allan McPherson, Esq., at Kingston.

For list of Lots, and the conditions of Sale, see the Canada Gazette, or apply to Mr. McPherson.

ANDREW RUSSELL,
Asst. Commissioner.

11—6 in.

CROWN LAND DEPARTMENT.

Toronto, Oct. 13th, 1857.

NOTICE is hereby given that the Lands in the Township of Rolph in the County of Renfrew, U. C., will be open for sale on and after the 11th next month, on application to the Resident Agent, William Harris, Esq., at Admaston near Renfrew.

For list of Lots, and the conditions of Sale, see the Canada Gazette, or apply to Mr. Harris.

ANDREW RUSSELL,
Asst. Commissioner.

11—6 in.

INSPECTOR GENERAL'S OFFICE.

Customs Department,
Toronto, October 30, 1857.

NOTICE IS HEREBY GIVEN, That His Excellency the Administrator of the Government in Council has been pleased, under the authority vested in him, to direct an order that, in lieu of the Tolls now charged on the passage of the following articles through the Ottawa Canals, the Tolls hereinafter stated shall be hereafter collected, viz:

Iron Ore, passing through all or any portion of the Ottawa Canals, to be charged with a toll of *Three Pence* per ton, which being paid shall pass the same free through the Welland Canal.

Rail-Road Iron, to be charged *One Shilling* per ton, including Lachine Section, St. Ann's Lock and Ordinance Canals, and having paid such toll, to be entitled to pass free through the Welland Canal, and it having previously paid tolls through the Chambly Canal, such last mentioned tolls to be refunded at the Canal Office at Montreal.

The toll on Barrel Staves to be *Eight Pence* on the Ordnance Canals, and *Four Pence* on the St. Ann's Lock and Lachine Section, making the total toll per thousand, to and from Kingston and Montreal, the same as by the St. Lawrence route, viz: *One Shilling* per thousand.

By command,
R. S. M. BOUCHETTE
Commissioner of Customs.

NOTICE.

WHEREAS Twenty-five Persons, and more have organized and formed themselves into a Horticultural Society for the Village of Fergus, in the County of Wellington in Upper Canada, by signing a declaration in the form of Schedule A, annexed to the Act 20 Vic., cap. 32, and have subscribe a sum exceeding Ten Pounds to the funds thereof, in compliance with the 48th Section of said Act, and have sent a Duplicate of said declaration, written and signed as by law required, to the Minister of Agriculture.

Therefore I, the Minister of Agriculture, hereby give notice of the formation of the said Society, as "The Fergus Horticultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agr.

Bureau of Agriculture and Statistics.
Toronto, dated this 8th day of Feb., 1858.

NOTICE.

PROVINCIAL SECRETARY'S OFFICE,
14th January, 1858.

TO MASTERS OR OWNERS OF STEAM VESSELS.

NOTICE IS HEREBY GIVEN, That on and after the opening of Navigation in the Spring of the present year, a strict compliance with the requirements of the several Acts relating to the inspection of Steam Vessels will be insisted on, and all penalties for any infraction thereof rigidly enforced. By Command,

E. A. MEREDITH,
Asst. Secretary.

NOTICE.

WHEREAS Twenty-five persons, and more, have organized and formed themselves into a Horticultural Society for the Town and Township of Niagara, in Upper Canada, by signing a declaration in the form of Schedule A, annexed to the Act 20 Vic. cap. 32, and have subscribed a sum exceeding Ten Pounds, to the Funds thereof, in compliance with the 48th Section of the said Act, and have sent a Duplicate of said declaration written and signed as by law required to the Minister of Agriculture.

Therefore I, the Minister of Agriculture, hereby give notice of the said Society as "The Niagara Horticultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agr.

Bureau of Agriculture & Statistics,
Toronto, dated this 18th day of January, 1858.

NOTICE.

WHEREAS Twenty-five persons, and more, have organized and formed themselves into a Horticultural Society for the City of Hamilton, in Upper Canada, by signing a declaration in the form of Schedule A, annexed to the Act 20 Vic. cap. 32, and have subscribed a sum exceeding Ten Pounds to the Funds thereof, in compliance with the 48th Section of said Act, and have sent a Duplicate of said declaration written and signed as by law required to the Minister of Agriculture.

Therefore I, the Minister of Agriculture, hereby give notice of the formation of of the said Society as "The Hamilton Horticultural Society," in accordance with the provisions of the said Act. P. M. VANKOUGHNET,
Minister of Agr.

Bureau of Agriculture and Statistics,
Toronto, dated this 18th day of January, 1858.

NOTICE.

WHEREAS Twenty-five persons, and more, have organized and formed themselves into a Horticultural Society for the City of Kingston, in Upper Canada, by signing a declaration in the form of Schedule A, annexed to the Act 20 Vic. cap. 32, and have subscribed a sum exceeding Ten Pounds to the Funds thereof in compliance with the 48th Section of said Act, and have sent a Duplicate of said declaration written and signed as by law required to the Minister of Agriculture:

Therefore, I, the Minister of Agriculture, hereby give notice of the said Society as "The City of Kingston Agricultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agr.

Bureau of Agriculture & Statistics.
27th January: 1858.

NOTICE.

WHEREAS Twenty-five persons, and more, have organized and formed themselves into a Horticultural Society for the Village of Elora, in the County of Wellington, in Upper Canada, by signing a declaration in the form of Schedule A annexed to the Act 20 Vict. cap. 32, and have subscribed a sum exceeding Ten pounds to the funds thereof, in compliance with the 48th Section of the said Act, and have sent a Duplicate of said declaration written and signed as by law required to the minister of Agriculture;

Therefore, I, the Minister of Agriculture, hereby give notice of the formation of the said Society as the "Elora Horticultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agriculture, &c.

Bureau of Agriculture & Statistics,
Toronto, 10th March, 1858.

WHEREAS Twenty-five persons, and more, have organized and formed themselves into a Horticultural Society for the Parishes of St. Joachim, Ste. Anne and St Fereol, in the County of Montmorency, in Lower Canada, by signing a declaration in the form of Schedule A annexed to the Act 20 Vict. Cap. 32, and have subscribed a sum of not less than Ten pounds to the Funds thereof, in compliance with the 48th Section of the said Act, and have sent a Duplicate of said declaration written and signed as by law required to the Minister of Agriculture;

Therefore, I, the Minister of Agriculture, hereby give notice of the formation of the said Society as "The St. Joachim Horticultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agriculture, &c.

Bureau of Agriculture & Statistics,
Toronto, 9th March, 1858.

OPINIONS OF THE PRESS.

This is a very useful monthly, containing reports of important law causes and general information connected with the administration of justice in Upper Canada. Although more particularly intended for the profession, yet every man of business may learn much from it that may be of real advantage to him. It has hitherto been published in Barrie, but will henceforth be in Toronto. We rejoice to see that Robert A. Harrison, Esq. B C L., is to be connected with the journal. He is a young gentleman that has already highly distinguished himself in his profession, and with literary talents of no ordinary kind, he will prove to be of great advantage to the Law Journal.—*Brampton Times.*

We are pleased to notice that this able monthly is, for the future, to be edited and published in Toronto, and that Robert A. Harrison, Esq., B.C.L., is become a joint Editor. His accession to the editorial staff must prove to the profession to whom he is now so well known as the author of so many works in general use, no small gain. With Mr. Harrison is associated W. D. Ardagh, Esq., who has for some time been favorably known as an Editor of the *Journal* Notwithstanding the public caution of the *Journal* in Barrie, it has under the management of the Hon. James Patton acquired a very wide and extended circulation. Now that it is to be published in Toronto, it is reasonable to expect that its circulation will be increased. It is a paper which should be in the hands of every Judge, Lawyer, Coroner, Magistrate, Clerk, and Bailiff in Upper Canada. We hope, however, that the conductors will see fit to widen the list of their exchanges and so increase the circle of their usefulness.

It is a great mistake to suppose that Judges, Lawyers, Division Court Clerks, or Bailiffs are the sole persons interested in the administration of justice. The public at large have a deep interest in, and feel a lively sympathy with the sentiments of a writer who propounds measures of law reform calculated to advance the public good. No discussion however well attended upon subjects of legal interest, can be satisfactorily carried on by the lay press.

The public require to be informed not only as to the existence of an abuse which needs a remedy, but as to the nature of the remedy required. For such information the more proper and more prudent course is to turn to the columns of a newspaper conducted by men whose whole lives and training peculiarly befit them for the expression of sound views. The number of the *Journal* before us which is that for August is replete with legal lore The Editorial Department bears marked evidence of knowledge and ability.—*Toronto Times.*

Upper Canada Law Journal, edited by Messrs. Ardagh and Harrison. The office of publication of the above excellent journal has been removed to Toronto The *Journal* contains a variety of legal decisions and information interesting to solicitors, conveyancers, insurance agents, division court clerks and municipal officers, which cannot be obtained elsewhere. —*Stratford Examiner.*

We subjoin an article from the *Law Journal*, a legal periodical—indeed the only one published in Uppper Canada—shewing the immense progress of the Division Courts.

This periodical which is now published in Toronto, is conducted with much ability and is very useful to all having business in the Superior and Division Courts —*Advance.*

We have received the last three numbers of this able legal serial although from various causes we have laid them on one side. Neglect has not been the cause of this apparent indifference, but the very contrary. We wished for learned leisure to do them justice; and we have been favored with the assistance of a friend, abler than ourselves to give an opinion on the merits of a purely professional Journal. From him we understand that the *Journal* is mainly edited by R. A. Harrison, Esq., B C. L., Barrister-at-law, a gentleman whose name is a sufficient guarantee of its value and ability. He is well known as the joint compiler of Robinson's and Harrison's Digest, a work whose merits are familiarly known to all Canadian lawyers. His more recent work on the "Common Law and County Courts' Procedure Acts" will doubtless add to his professional reputation.

The November number of the *Law Journal* contains some forcible observations on the present unsatisfactory condition of the Law of Dower. The remarks on the liability of Bank Shareholders are also deserving of attention —*Cobourg Star.*

The extensive usefulness of this Journal is not appreciated as generality as were desirable. It is not as many conceive, useful alone to the lawyer and the Student. Men of business, bankers, the community will derive the greatest benefit from the perusal of its pages. In a country such as ours where almost every individual we meet is either a plaintiff or defendant it is a duty which a man owes to himself to learn something of the operation of the laws by which we abide and are governed For this the Law Journal is of incalculable service. To our young men we would especially recommend its careful and attentive study; and we undertake to warrant that after a few months they will obtain more business and legal knowledge than they could otherwise acquire from as many years study of the largest black letter tomes. The Law Journal is presided over by Mr Harrison, of the Attorney General's Department—a gentleman of varied and extensive erudition; and who has thus far given evidence of a high order of ability which must rapidly command for him a foremost position in his profession. We wish the Law Journal every success. —*Catholic Citizen.*

Somewhere it has been said that to know a people thoroughly, it is necessary to study their laws—to ascertain how life and property are protected. This ably conducted Journal tells us how the laws enacted by government are administered in Upper Canada. It tells us—what everybody knows—that law is expensive, and it adds that cheap justice is a curse, the expense of the law being the price of liberty, Both assertions are certainly truisms, yet a litigious and quarrelsome spirit is not invariably the result of that combativeness which belongs to such men as those who, under any circumstances, and at whatever cost, will assert their rights It is not our purpose to review the *Journal*, but to praise it; seeing that praise is deserved. The articles are well written, the reports of cases are interesting, and the general information is such, that the *Journal* ought not only to be read, but studied by the members of the bar, the magistracy, the learned professions generally, and by the merchant.

The *Law Journal* is beautifully printed on excellent paper, and, indeed, equals in its typographical appearance, the legal record published in the metropolis of the United Kingdom. $1 a year is a very inconsiderable sum for so much valuable information as the *Law Journal* contains.—*Port Hope Atlas.*

We have to return our thanks to the conductors (or publishers, we do not know which,) of this valuable publication for the present January number, together with an ample index for, and list of cases reported and cited in the second volume of these reports for the year 1856.

The ability with which this highly important and useful periodical is conducted by W. D. Ardagh and Robert A. Harrison, B. C. L., Esquires, Barristers at Law, reflects the greatest credit upon these gentlemen, and shews that the esteem in which they are held by their professional conferes and the public, is deservedly merited and nothing more than they are entitled to. We have much pleasure in earnestly recommending the members of the bar for this section of the Province to support the Upper Canada Law Journal, by their subscriptions,—taking leave to assure them that it is well worthy of it, and that they will find it a valuable acquisition to their libraries as a legal work of reference and high authority. It is printed and published by Messrs. Maclear, Thomas & Co., of 16 King Street East, Toronto, and the typographical portion is very creditable to that firm.—*Quebec Mercury.*

The Upper Canada Law Journal, and Local Courts Gazette, is a publication of which the legal profession of the Province need not be ashamed. The *Journal* has greatly improved since the removal of the office of publication to Toronto. It is edited with ability by W. D. Ardagh, and R. A. Harrison, B. C. L., Barristers-at Law. The January number, which is the first of the fourth volume, appears in a considerably enlarged form. The fourth volume will contain at least one-third more reading matter than its predecessor. A very important question, "Shall we have a Bankruptcy Law?" is discussed at length in a well written editorial in the January issue, to which we shall refer on a future occasion. "License of Counsel," is an original article which probes barristers in many tender spots. The *Law Journal's* circulation should not be confined entirely to the legal profession —the Merchant, and general business man would find it a very useful work. The price is $4 a year in advance, or $5 otherwise. Now is the time to send in orders.—*Port Hope Guide.*

In its first number of the fourth volume this interesting and valuable publication comes to us highly improved in appearance, with a much wider range of editorial matter than formerly. The *Journal* has entered upon a broader career of utility, grappling with the higher branches of law, and lending the strength of a full, fresh intelligence, to the consideration of some very grave wants in our civil code. The necessity of an equable and efficient "Bankruptcy Law" is discussed in an able article, instinct with astute and profound thought, coupled with much clear, subtle, legal discrimination.

It is the intention of the Proprietors to institute in the pages of the *Journal* a "Magistrate's Manual:"—provided that that body meet the project in the proper spirit, and contribute an adequate subscription list to warrant the undertaking. To prosecute th s contemplation, could not fail to be productive of incalcuable advantage, as well to the community as to the Magistracy. We sincerely hope that this latter body will bestow a generous patronage, where so laudable an effort is made for their advantage.

The *Law Journal* is presided over by W. D Ardagh, and R. A. Harrison, B. C. L., Barristers-at-Law It is a periodical that can proudly compare with any legal publication on this Continent. We wish it every success. —*Catholic Citizen.*

This Journal which is published monthly, appears this week much improved in size, appearance and matter. It was formerly published in Barrie, but has for some numbers back been published in Toronto, and has acquired aid in the editorial staff by the addition of Mr. Harrison, who is well known in the profession from his numerous publications on legal subjects. Under the management of Mr. Ardagh and Mr Harrison, this Journal promises fair to become an important publication, not merely to the legal profession, but to other important classes of the community, as particular attention is given to Municipal affairs, County Courts and Division Courts; Magistrates' duties also receive a considerable share of consideration. It will contain original treatises and essays on law subjects, written expressly for the *Journal*, besides reports from the Superior Courts of Common Law and the Court of Chancery. Proper selections will also be made from English periodicals. To the profession the reports from Chambers of decisions under the Common Law Procedure Acts and the general practice, are of particular interest. These the *Journal* supplies, being formerly reported by Mr. F. Moore Benson, and latterly by Mr. C. E. English, M. A. We would advise all municipal officers, Division Courts officers, Magistrates, and particularly the profession, to patronize this publication, as it cannot be sustained without their aid. The subscription is only $4 a-year in advance.—*Leader.*

The January number of this valuable Journal has come to hand, and is as usual replete with legal decisions, articles on commercial law, &c, &c. We republish from this number, an able article on the subject of a Bankrupt Law for Canada.—*Canadian Merchants' Magazine.*