DIARY FOR APRIL.

1. SUN... *Easter Day.*
2. Mon... County Ct. and Surrogate Ct. Term commences.
7. Satur. County Court and Surrogate Court Term ends.
8. SUN... *Low Sunday.*
9. Mon... York and Peel Spring Assizes.
15 SUN... *2nd Sunday after Easter.*
22. SUN... *3rd Sunday after Easter.*
23. Mon... *St. George.*
29. SUN... *4th Sunday after Easter.*
30. Mon... Last day for comp. Asses. Rolls. Last day for [Non-res. to give lists of their lands.

The Local Courts'

AND

MUNICIPAL GAZETTE.

APRIL, 1866.

SCHOOL SECTION AUDITORS.

A correspondent, whose letter we publish in another place, asks us whether he, having been elected auditor by the ratepayers of his school section, can claim payment for his services as such auditor?

To answer this question, we must turn to the Common School Law. But this, it will be noticed, does not provide for the payment of rural school section auditors, any more than for the payment of rural school section trustees. The act does provide for the payment of arbitrators, the reason apparently being, that these arbitrators chiefly refer to disputes between individuals, with which the general public has only a remote interest.

The case of the rural sections accounts is different, for the correctness of the accounts is a matter of general interest to each ratepayer in a small rural community; they are in fact auditing their own accounts. Formerly, the accounts were only audited (when a dispute arose in regard to them) by persons specially selected at the annual meeting; but the difficulties experienced in an impromptu audit of this kind were so many, that the law was amended. Trustees and the annual meeting are, therefore, now required to appoint school auditors at the preceding annual meeting. For the same reason the powers and duties of the Auditors are defined and fixed by law, and the whole proceedings have been greatly simplified. As the audit was intended merely to afford a guarantee to the ratepayers of the correctness of the school accounts, it was thought inadvisable, unnecessarily to add to the expenses of the school section for such an audit, when the labour performed was often a mere matter of form, and the auditors themselves were as much interested in the correctness of the accounts as any of the ratepayers. The whole scope of the act would seem to shew, that their position is an honorary one, and that it was not the intention of the Legislature that their services, which cost but little labour and in most cases are merely nominal, should be paid for.

ATTACHING AND NON-ATTACHING CREDITORS.

The letter of our correspondent, L., which will be found in its proper place, raises some difficult questions—namely, the relative priority of attaching and non-attaching creditors of a debtor. We have been permitted by Mr. O'Brien to copy from advance sheets of his work on Division Courts, now almost ready for issue, some of his observations on the sections of the Act which affect the question. In speaking on this subject, he says, in a note to section 204 of the Division Courts Act.

"There can be no question but that an execution issued on a judgment obtained in the ordinary manner, and placed in the bailiff's hands, before an attachment from a Division Court, and necessarily, therefore, before an execution to be obtained in such attachment suit, has the priority.

And, further than this, it seems to be the more general opinion, and that acted upon by the majority of the County judges, that, although the debtor's goods are seized under an attachment, they are nevertheless liable to the execution of any creditor who may obtain a judgment, and deliver the execution issued thereupon to the bailiff before judgment is obtained and execution issued by the attaching creditor. The case principally relied on in support of this view is that of *Francis* v. *Brown*, 11 U. C. Q. B. 588; 1 U. C. L. J. 225, in which the above rule was laid down, but with this difference—that there, the execution of the non-attaching creditor was issued from a Superior Court.

"If such be the rule respecting executions from Superior Court, there would seem to be no reason, particularly looking at the broad ground taken in the judgment in *Francis* v. *Brown*, why it should not likewise be applicable to executions from Division Courts.

"Proceedings by attachment are either to compel the appearance of, or rather to effect service upon a defendant, or to obtain security to the plaintiff for his claim; in neither case, it is

argued, would it be reasonable, that by taking a step for such a purpose a creditor should obtain a priority over another creditor who commenced proceedings before him, such proceedings being finally carried to judgment and execution."

Again, after referring to the argument against this view on account of the apparent hardships arising therefrom, he continues:

"It is also objected that there is a much stronger reason than the supposed equities of the case for thinking that attaching creditors have priority, and that the principle to be applied is that the goods when once attached and handed over to the Clerk are in the custody of the law and are not therefore liable to seizure under execution. It is contended that there is nothing in the act to interfere with this principle, in fact that sections 199, 204 & 211 all uphold it. Sec. 199 only authorizes the bailiff to seize sufficient goods to cover the debt and costs mentioned in the warrant delivered to him in a particular suit, and not all the goods of the debtor, as in the Superior Courts, expressly for the security of all his creditors. If the principle referred to does not govern where is the sense of enacting, as an apparent exception to the general rule, that property seized under an attachment may be seized or sold under an execution to be issued in such attachment suit. But this section says nothing about *any other* execution. The rights of a judgment creditor who has commenced his suit and served his summons personally upon the defendant before the seizure of any of his property under an attachment are referred to sec. 211, and it is provided that his suit shall proceed as if no attachment had issued, and that he shall have execution forthwith on his judgment. If it was intended that other creditors should be able to acquire an advantage by obtaining judgment on a personal service after the seizure of property under an attachment, it would have been provided for."

Our opinion inclines to the former view; but whilst agreeing with Mr. O'Brien that "the matter is one of considerable difficulty," upon which "the Legislature has carefully abstained from throwing any unnecessary light," we think that the manner which the bailiff in the case brought before us made or attempted to make the seizure is deserving of rebuke. Committing a breach of the peace in the execution of even a rightful act is most improper.

THE BRITISH QUARTERLY REVIEWS.

As will be seen from an advertisment of Messrs. Leonard, Scott & Co., the enterprising publishers of the above on this continent, a change (rendered necessary to save themselves from loss) has been made in the list of prices of the Reviews and *Blackwood's Magazine*. But they still remain (if we except the mass of trash that floods the country) the cheapest, as they certainly are the best reading matter in the shape of general literature that we can obtain, possessing the attractions of ephemeral reading as well as the more solid benefits to be obtained from mature thought and close reasoning; and their value is enhanced by the fact that each Review represents one of the leading, distinct and antagonistic parties either in politics, philosophy or religion, into which the English nation may, as a mass, be divided.

We heartily recommend those of our readers who desire to keep themselves "posted" in the premises" to subscribe for these Reviews and *Blackwood*, and when three or four or five persons club together, the expense to each individual is reduced to a mere nothing.

SELECTIONS.

THE OFFICE OF CORONER.

Of the many institutions which may be termed the inheritance of an Englishman, there are few which, for antiquity or usefulness, can be compared to the office of coroner.

Elected, for the most part, by the people, he becomes the guardian of the poor, the unprotected, and the friendless, and is free from that influence which is inseparable from a Court nominee. And yet, strange as it may seem, the real value and importance of the office of coroner is not sufficiently estimated by the public, for want of measuring its advantages not only by what it does, but what it *prevents*.

Until the twenty-fifth year of King George II., the coroner did not receive any remuneration beyond a sum of 12s. 4d., taken, upon view of the body slain, of the goods and chattels of him that was the slayer or murderer (if he had any); but by statute passed in that year, cap. 29, a fee of 20s. was the remuneration fixed for each inquest, in addition to 9d. a mile for his travelling expenses. Looking at the difference of the value of money at that time to what it is at the present, the remuneration to the coroner was much greater than it is now. It was by this same statute that the duty was imposed on coroners of holding an inquest in every case of a death happening in a prison, in order that the public may, through

the investigation, be satisfied that the death has not been in any way accelerated by the treatment the prisoner has undergone whilst in prison. That such a provision was necessary, any one who is at all acquainted with the sickening details which fired the heroism of a Howard, and led him to a life of self-sacrifice, in order to expose the cruelty and tyranny which never met the light of day, will readily acknowledge; and to read the accounts of the considerate care and attention now paid "to the prisoner and the captive," and contrast them with the past. makes the past appear a fable or the illusory dream of an overheated imagination. But is it really so? Is it not rather that the self-denial of a Howard has borne its fruit, and the coroner is now called upon to be the watchful guardian of the public—*to prevent* a relapse into the oppression of the past? We have said that the benefits of the office of coroner are to be measured not only by what it does, but by what it prevents. We take the case of the destitute and friendless prisoner. At the first sight it would seem an almost unnecessary duty that a coroner and jury should be empannelled to make an inquiry where no inquiry is sought or desired; in order to show its value let the converse be assumed—that there were no inquiry—would the care, the vigilance, and the attention which is now paid to the prisoner be the result? Would not the natural effect be produced of indifference and unconcern on the part of the governor, and relentless cruelty be exercised by the unscrupulous and irresponsible warder? But the very fact that there will be an inquest, conducted not by the nominee of the Government or the magistrates who have the control of the gaols, but by an independent officer and by a jury uninfluenced by any consideration but that of arriving at the truth, imparts a value to the inquiry in its *preventive* charac ter which keeps every officer, from the governor, the medical officer, and the meanest official, to the faithful discharge of his allotted duty.

It may not be unimportant to inquire how far a similar inquiry would be beneficial in every case of death happening in religious houses. Rightly or wrongly, there are not wanting many who think that undue restraint is imposed on females who in early life have pledged themselves to perpetual vows from which they would be gladly released. If undue restraint is not imposed, then there is no reason why the greatest candor should not be displayed, and every opportunity afforded to convince the public of the groundlessness of suggestion; but, on the other hand, if it does exist, the public, through their officer, should require the fullest inquiry into all the circumstances of their treatment whilst an inmate of such an establishment.

But not only to the prisoner and the captive does the office of coroner act as a preventive, but the poor and the outcast—the Lazarus, who is laid at the gate of some hard-hearted relieving officer, whose eyes are closed to pity, and whose ears are shut against the tale of sorrow; this man is *compelled* to observe and to listen to the tale of woe, lest, should death terminate his sorrows and sufferings, a day of exposure should be at hand to unveil, through the medium of the coroner's court, the obduracy and cruelty which familiarity with such scenes is apt to generate. And if, again, an irresponsible body of guardians should, through a too niggard parsimony, withhold from the poor the requirements of sickness, the coroner's office is ready to expose the meanness which misapplies the public trust, and thus, by the public odium which it produces, *prevents* the recurrence of a similar fatality.

Instances might be multiplied without end in which the coroner has stood as the guardian of the poor and the friendless, and, by timely exposure, *prevented* many a death. Who shall say how many a life has been spared which would otherwise have been a victim to the torture of the lash by the army flogging, against which the late Mr. Wakley battled so courageously, the whole influence of the Horse Guards? And how frequently does the exposure arising from the coroner's inquiry bring to light cases where the overtaxed milliner's apprentice, and other similar sufferers, have sunk from exhaustion into the grave, and where the inquiry of the coroner has brought into the light of day, many a case which, but for that inquiry, would have been unnoticed and disregarded, but which, being exposed, has proved a beacon to warn the public of the ruin which awaits the sons and daughters of toil, and thus *prevented* others from falling a prey to a similar fatality.

Another feature of the coroner's court which in recent times has been of most manifest utility to the public, is inquiry into the cause of death in cases of preventive disease. The inquiries before Mr. Humphreys, into the state of some of the dwelling houses in Bethnal Green, have led to important improvements in that district; whilst generally, in cases where preventible diseases, as typhus and cholera, prevail, the coroner has the right of holding an inquiry, and directing public attention to means for removing the causes of such diseases.

If then, the office of coroner is capable of and does in reality effect such beneficial results to the public, it follows that the public have a duty towards it: namely, of maintaining its independence and usefulness. But we reserve this subject for a future number.—*Journal of Social Science.*

COLONIAL CULPRITS AND EXTRADITION STATUTES.

When the many forensic contests arising out of the Roupell forgeries were before the courts, the counsel against the ex-M. P. and his family made the most of the improbabilities and singularities of the story. It was

said that the blind confidence of the father, the almost fatuous trust of the mother, the cool, determined, precocious villainy of the son as told by himself, with every point and circumstance, in the witness box, were of themselves sufficiently extraordinary; but the one great fact, the stay and stronghold of the defendant's case, the text at which Mr. Bovill pounded away with the persistency and tenacity of a puritan preacher who turned his hour-glass four times in the course of a sermon, was the marvellous allegation that a man used to an inordinate degree of luxury, accustomed to the indulgences and elegances of refined society, one who had sat for an important borough, headed a large volunteer corps, been the ostensible owner of hundreds of houses, the possessor of a fortune approaching half a million, should, without some sinister motive, some hidden purpose, some design to save for his family the fortune he had dissipated himself, have come forward to confess a crime whose inevitable consequence would be to subject him to a protracted, or as it actually happened, a life-long period of penal servitude. There is no doubt that these considerations greatly helped the counsel, and that they weighed much with the jury, nor do we by any means say that they were unfairly pressed by the one, or unduly estimated by the other. But without questioning the accuracy of those Chelmsford jurymen who stood out for the purchasers of the Roupell property or denying that the compromise ultimately arrived at was a fair and reasonable one, we cannnot help thinking that if the case were to be tried next week, the family would go into court with a much better chance of winning than on the previous occasion. We have had an illustration of the power of conscience over flagrant offenders, more wonderful in its way than that furnished by William Roupell, and though it has not as yet led to sensation trials or to melo-dramatic incidents, the plain unvarnished story may well serve "to point a moral or adorn a tale."

In the summer of 1864, Augustus George Fletcher was cashier in the Melbourne Branch of the Union Bank of Australia. His reputation was, of course, as good, his character as high, the confidence reposed in him as profound as that of the great majority of the men for whom he has proved himself an unworthy colleague. He could not stand the test of repeatedly having within his reach the opportunity of enriching himself with dishonestly acquired gains, and, yielding to the temptation, he abstracted from the bank coffers securities amounting to nearly £10,000. Unwatched, unsuspected, he continued for some time to fill his accustomed post, nor does even his return to England a few months after the robbery appear to have generated a belief of his guilt. During a short stay in this country he turned his booty into cash, and started with the proceeds for the other hemisphere. From New York he went to Buenos Ayres, and from the latter place he only recently returned to London. Those who may at any time be tempted to copy his evil example, should ponder thoughtfully the story of his subsequent adventures.

"Ill got, ill goes," is a proverb which has stood a good deal of handling, but which does not seem likely to wear out in these days of commercial and financiary delinquencies. The £10,000 had got small by degrees and beautifully less, till barely eighteen months after it was stolen, not above one-fifth of it was left in the hands of its guilty possessor. Meanwhile the bank had become aware of the name of their depredator, and Augustus George Fletcher found himself in a foreign land, with occupation gone, with character blasted, with hopes destroyed. Still, he was better off than most of his order. He had £2,000 or thereabouts in his pocket, and he was in a country to which no police officer could penetrate, and from which no extradition treaty could fetch him back. He might have invested his money in foreign stocks, or employed it in some branch of commerce, or failing either of these expedients for husbanding or increasing it, he might have lived upon it carefully or recklessly while it lasted, and when the worst came to the worst, he could have earned his living and kept his freedom as a day laborer. But he did neither of these things. Tired of dissipation, worn out with excitement, stung by remorse, he communicated his crime to the British authorities at Buenos Ayres, and acting on their recommendation he took passage home, and landed with the intention of surrendering himself to offended justice.

It must be confessed that if Fletcher is out of prison, it is not for any want of effort to get into it. On the first Friday in January, he went to the bank in Old Broad Street, and presented himself just before the close of business hours, as his employers' self-confessed plunderer. But the bank officials seem to have been completely dumbfoundered by the appearance of so queer a customer. They had never had to open an account or honor a a draft of this nature, in all their long experience. The secretary called in the solicitor, and the two, after a conference, decided to make no charge against the defaulter. The would-be prisoner left the bank, sought the help of the first policeman he met, poured his confession into his ear, and was promptly taken off to the nearest station-house. Thus far, therefore, he had succeeded, but his success was of short duration. He met with a fresh disappointment next morning when he was taken before the presiding alderman at the Mansion House. His confession was heard, the charge against him entered, but himself was discharged on his own recognizances, the magistrate and his adviser being of opinion that there was no jurisdiction to detain him. Some weeks have passed since Fletcher's release, and so far as we know, he is still at large in London in possession of property he is anxious to give up, and of personal liberty

which he is solicitous to surrender. This anomaly arises from the wording of the "Colonial Extradition Act," by which the issue of a colonial warrant is a condition precedent to any criminal process here. Just as demands for the extradition of escaping felons from France or England, must be made in virtue of warrants issued by persons having lawful authority in the country from which the felon has escaped, so must our colonial runaways be taken back in due form, with proper process, bound with legal fetters, and shut up in a statutable goal. The idea of having to deal with a prisoner who, having got clear off with his booty, had come from the end of the earth to surrender himself and it to justice, never seems to have entered the heads of the eminently practical people who drew the Act of Parliament, and hence Augustus George Fletcher finds himself not only a free man, but a comparatively rich one, in spite of himself. The police cannot arrest him, the magistrate cannot detain him, the representatives of the customer whose property he purloined will have nothing to do with him, lest they should prejudice their remedies against the bank; the bank cannot give him into custody because there is no jurisdiction, and they cannot receive the money he is anxious to surrender, lest they should condone his offence, and put themselves in a false position. Altogether, it is a very pretty and a very singular difficulty, the like of which we do not remember to have heard before.

We must own, however, we cannot very clearly see our way to a remedy. It would never do to receive every confession that might be made here by persons professing to have done something wrong at the Antipodes. We are afraid the only result would be that the police courts would be inundated by a grand influx of the rogues and rapscallions, the waifs and strays, the odds and ends of society; the black sheep of every flock, the ne'er-do-weels of every family, the *mauvais sujets* of every circle—all ready and willing to confess sins they never committed, if that were the only requisite for getting to the land of golden dreams and ill-defined purposes, where old acquaintanceships might, perchance be shaken off; where new and better lives might, perchance, be begun. With some such promises and purposes as these would they cheat their consciences and school their minds to the perpetration of what they would consider a pious fraud. The mother country and the colony, between them, would have to bear the burden of the deportation of this undesirable class of emigrants, and the colony especially would have little reason to congratulate itself upon its bargain. There seems nothing for it but to adhere to existing rules, and maintain existing statutes. The *primâ facie* grounds for accusing a man of felony must be established in the country which claims him, and the funtions of our magistrates ought still to be limited to satisfying themselves that the warrant on which the arrest is made satisfies the requirements of reasonable caution against the colorable violation of the right of asylum. It is, however, rather singular that almost at the same moment our attention should be called, in two quarters, to the working of our extradition laws. The lack of a formal preliminary has for the time prevented the operation of the Colonial Act, and the French Emperor's impatience of magisterial anxiety to prevent an agency for the punishment of criminals being turned into an instrument for the redemption of political offenders, has led him to give notice of his intention to put an end to the convention on which the statute rests. We regret that his Imperial Majesty should have taken umbrage at precautions which he must feel are not altogether unneeded, or have waxed impatient because constitutional usages cannot always be conformed to the wishes, even of wholesome despotism. He has accused us of being needlessly particular about forms, and of requiring an impossible amount of proof before surrendering escaping French felons. The proceedings in Fletcher's case may perhaps satisfy him that such punctiliousness is not exceptional; that even when the interests of our own colonists might apparently sanction relaxation of established rules, we say with Portia, that "it must not be, lest many an error, by the same example, should rush into the state." We trust that the history of Fletcher's surrender and release may satisfy the Emperor that our scrupulosity, if extreme, is at least even-handed, and that calm reflection will induce him to withdraw alike the notice to end the extradition convention, and the unfounded aspersions upon our mode of administering justice with which that notice was accompanied.—*Bankers' Magazine*

UNANIMITY IN JURIES.

The propriety of requiring unanimity in a jury is problematical only with those who do not carefully observe the distinction between criminal and civil trials. There *is* a reason for enforcing unanimity in criminal cases; it may not be a sufficient reason, and we much question its policy, but it is tangible and sensible. It rests upon the principle that no man ought to be pronounced guilty of crime upon any evidence short of that which will carry conviction to the minds of a dozen men of common sense. But the logical conclusion from this principle is, not that we should enforce unanimity by punishment, but that, if the jury do not agree, the prosecution fails to have proved the case to the conviction of twelve minds, and that then the prisoner is entitled to an acquittal. Such a conclusion would be very inconvenient, and in fact the principle on which it leans is faulty. Our law carries regard for personal liberty to an absurd extreme when it affixes to the evidence of crime such a condition that it shall convince twelve men, and we endeavor to escape from the absurdity in a truly English fashion; in-

stead of amending the false foundation, we cobble the superstructure, and enforce a nominal uniformity of twelve, when common sense would dictate, either the abolition of unanimity, or the reduction of the jury to such a number as would make real unanimity more easy of attainment.

We have been surprised to see a Canadian judge reviving the obsolete endeavor to compel a pretended unanimity in a jury by a species of moral torture. Some persons were indicted at Montreal for an attempt to kidnap one Mr. Sanders. The trial was very protracted, and on the 20th October the jury retired to consider their verdict. It was soon apparent to themselves that they were not likely to agree, and they sent to the Judge to say so, and held frequent conferences with him, hoping that he might convince the doubting. The day passed, the night came, and again morning; but no unanimity. The Judge then directed that the jury should be treated with food and fire. Day after day passed, and still no verdict. At length, on the 30th October, after being locked up ten days and nights, and all this moral torture failing to force them to violate their oaths and give a verdict contrary to their convictions, they were discharged, and the prisoners were remanded for another trial at the next sessions.

It would be impossible to find a stronger proof than this of the defects of the jury system as at present practised. It must be assumed that the difference of opinion was conscientious. Say that seven were for a conviction and five for an acquittal, or whatever might have been the actual proportions. Let us see what it was that the Judge sought to effect by torturing them. That might produce unanimity of verdict, but not unanimity of opinion. No man is master of his convictions. What the Judge wanted to effect by the punishment he inflicted was, that some of them should give a verdict contrary to their convictions, which means, that they should commit perjury. But say that the difference was not real, that it was obstinacy or partiality, and not conscience; can it be just to punish the just men of the twelve equally with the unjust? Look at the question in any light, there are overwhelming arguments against the requisition of unanimity of juries in criminal cases, save upon the one principle, that no man should be convicted of crime unless the evidence suffices to convince twelve other men chosen by lot. But, according to this principle, if the jury is divided in opinion, the prisoner would be entitled to an acquittal; and moreover, it raises the further question, whether twelve is the precise number whose simultaneous judgment is desirable, or if the ends of justice might not be better accomplished by the unanimity of a lesser number? —*Law Times.*

Sir C. O'Loghlen's Bill to amend the law relating to juries in criminal cases, proposes to give power to the judge to allow food and refreshment to the jury while considering their verdict; to discharge the jury if they cannot agree to a verdict within a reasonable time; to authorise the beginning of the trial again if a juror be taken ill; and to sanction a verdict being taken or a juror discharged on a Sunday. The judge is to be empowered, if he think fit, to discharge the jury on account of the sudden illness of a juror, or a witness, or the accused, and that when a jury has been discharged the accused may be tried again.—*Law Times.*

CATTLE PLAGUE LEGISLATION.

The Cattle Plague Bill (No. 1) has become law. It is but a fragment of the original Bill, the omitted parts of it being transferred to Mr. Hunt's supplementary scheme. Its outline may be stated in few words. It confirms all the questionable Orders of the Privy Council, and the still more questionable Orders made by the quarter sessions in pursuance of them, and continues them until altered or revoked. It constitutes as the local authorities, in counties, the general or quarter sessions; in the metropolis, the Board of Works; in boroughs, the town councils. The local authorities are empowered to form committees of their own members, or others, and delegate to them all the powers of the Act, except the making of a rate. They are to appoint inspectors and such other officers as may be necessary, with such payment by salary or otherwise as they may think fit, which officers are authorised by the Act to enter all premises where they have reasonable grounds for supposing that cattle are diseased.

It is then made *compulsory* upon the local authority to cause all diseased animals to be slaughtered and buried, and the sheds etc., in which they were to be purified, and their dung etc., to be destroyed. And *at their discretion* they may direct the slaughter of cattle that have been herded with diseased animals.

The local authority is to cause cattle so slaughtered to be valued, and to pay to the owner, in the cases of diseased cattle, compensation not exceeding £20, and not exceeding one-half the value; and for cattle slaughtered not being then diseased, a sum not exceeding £25, and not exceeding three-fourths of the value of such cattle.

The exceptions from the provisions of this Act, and the further regulations relating to the removal of cattle, and the Orders to be made by the local authorities, will be contained in the Bill introduced by Mr. Hunt.—*Law Times.*

But what shall we say to America, who permits a conspiracy against a friendly country to be openly organised, soldiers enlisted, funds collected, and the forms of a government to be conducted, in its principal city? What would she have said if we had so done? The lives and property of British subjects are imperilled by an organised party in another

country, sanctioned by its Government. This is, indeed, another specimen of Democracy in practice. It will certainly not tend to reconcile Englishmen to the prospect before them of a Democracy at home. England, once a lion, has become a spaniel. Whether it be a slap in the face from Prussia, or a kick behind from America, John Bull grins and bears it.—*Law Times.*

MAGISTRATES, MUNICIPAL, INSOLVENCY, & SCHOOL LAW.

NOTES OF NEW DECISIONS AND LEADING CASES.

MUNICIPAL CORPORATIONS—LIABILITY FOR INJURY CAUSED IN REPAIRING HIGHWAY—BY-LAW.—Plaintiff sued defendants for wrongfully cutting a ditch in the highway, and thereby overflowing his land. Defendants pleaded that they necessarily made such ditch in order to repair the highway, doing as little damage as might be, and no more than with due care was necessary for the purpose: which were the grievances complained of.

Held, that the plea was bad, for it alleged a necessity to cut the ditch, but not that the overflow of the plaintiff's land was inevitable.

Semble, that it was bad also for not admitting any damage.

Quære, as to the validity of such a defence if properly pleaded.

Held, also, that no by-law was necessary to authorise the repair of the highway.

Held, also, following the previous decisions in this court, that the defendants were not entitled to notice of action.—*Perdue* v. *The Corporation of the Township of Chinguacousy*, 25 U. C. Q. B. 61.

SALE FOR TAXES—FIXTURES—ESTOPPEL.—Two mill stones were seized and sold for taxes, the tenant of the mill, who was assessed as occupant, being present at the sale and making no objection. In replevin by the owner of the mill against the purchaser, *Held*, (affirming the judgment of the County Court) that the tenant's acquiescence was immaterial; for his possession, when proved to be merely as occupant, was no proof of property, and the plaintiff therefore was not prevented from disputing the sale, which was clearly illegal, the stones being part of the mill.—*Grimshawe* v. *Burnham*, 25 U. C. Q. B. 147.

WILD LAND TAXES—MODE OF ASSESSING.—It is the duty of the assessors to assess village lots, the property of non-residents, separately, placing opposite to each the value and amount of assessment. Where, therefore, the assessor, had included three village lots in one assessment, two of which only belonged to one person, the sale was set aside; but without costs, as the purchasers—the defendants in the suit—had not anything to do with the irregular proceedings which formed the ground for setting aside the sale.—*Black* v. *Harrington*, 12 U. C. Chan R. 175.

SALE OF LAND FOR TAXES.—Where a sale of land for wild land taxes was effected, and the taxes assessed included one year's assessment which had been paid; the sale was set aside, notwithstanding the fact that the number of years for which the assessment was in arrear was greater than was required to render them liable to sale.—*Irwin* v. *Harrington*, 12 U. C. Chan. R. 179.

SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

NOTES OF NEW DECISIONS AND LEADING CASES.

HUSBAND AND WIFE—C. S. U. CH. 73—LEASE BY WIFE.—Land which had been conveyed to a married woman was leased by her alone to the grantor for his life, and the defendant having cut timber upon it she and her husband sued for injury to *their* reversion.

Held, that they could not recover, for the husband was a necessary party to the lease:—that the Consol. Stat. U. C. ch. 73 recognizes his estate in her land during coverture, and has made no change in the *conveyance* by married women of their real estate; and even if the lease could have any operation as between the parties to it, it could not establish the plaintiffs' reversion as against a stranger.—*Emrick* v. *Sullivan*, 25 U. C. Q. B. 105.

INSURANCE—CONDITION REQUIRING A PARTICULAR ACCOUNT OF THE LOSS—NON-COMPLIANCE WITH.—By the condition of the policy sued upon, persons insured were bound, within thirty days after a loss, "to deliver in a particular account of such loss or damage, signed by their own hand, and verified by their oath or affirmation and by their books of account and other proper vouchers."

The plaintiff sent in his affidavit, stating generally the value of the goods saved and destroyed; a certificate of the Reeve, as the nearest magistrate, as to his inquiry into and belief with regard to the fire being accidental; and of two merchants; and a book containing a statement of the goods lost, made up partly

from invoices and partly from recollection, but not verified by his account books or other vouchers, which he had but did not produce, nor by his affidavit.

Held, clearly no compliance with the condition.—*Greaves* v. *The Niagara District M. F. I. Co.*, 25 U. C. Q. B. 127.

RAILWAY COMPANY—FENCES—C. S. C. CH. 66, SEC. 13.—The obligation of a railway company, under section 13 of "The Railway Act," to maintain fences on each side of their track involves the duty of a continuous watchful inspection, and they must take notice of its state at all times.

Held, therefore, in an action by an adjoining proprietor, for injury to his horses getting upon the track through defect of fences, that it was a misdirection to tell the jury, that if the fences became out of repair, and before the plaintiff notified the defendants, or before a reasonable time for the defendants to repair it had elapsed, the horses got through, the defendants would not be liable.

Quære, as to the liability if the fence, being sufficient, had been prostrated by an extraordinary tempest and repaired without unnecessary delay.—*Studer* v. *The Buffalo and Lake Huron Railway Co.*, 25 U. C. Q. B. 160.

RAILWAY COMPANY—DAMAGE BY FIRE FROM LOCOMOTIVE—NEGLIGENCE.—However clear the rule of law may be, that a party may kindle, or finding it kindled, may permit fire to burn on his own land, that right is restricted to the condition that his neighbour is not injured thereby; and if it is likely by spreading to injure him, he is bound to put it out, or exert himself so to do; otherwise, he will be liable for any damage sustained.

In this case, whilst a locomotive of defendants was passing over their railway track, some coals of fire dropped therefrom upon the track, and spread into the plaintiff's land. The evidence shewed that defendant's trackmen, though they exerted themselves in saving defendant's fence, made no exertions to extinguish the fire or prevent it from extending to plaintiff's premises, which were in consequence considerably damaged.

Held, that defendants were liable.

Held, also, that the authority of *Vaughan* v. *Taff Vale R. Co.* 5 H. & N. 679, that where there is no negligence either in the construction or the management of the locomotive of a railway company, the company are not liable for an injury resulting from the mere emission of fire therefrom into the adjoining lands.—*Ball* v. *Grand Trunk R. Co.* 16 U. C. Q. B. 252.

INSURANCE.—Where a fire policy provided that the same should be void if a new policy was effected without the consent of the Insurance Company, and an assignment was subsequently made of the policy to a mortgagee of the property with concurrence of the Company, after which the mortgagor effected another insurance without the consent required the policy: *Held*, on the premises being burnt down, that the policy was not void in equity as respected the mortgagee. [SPRAGGE, V. C., dissenting.] *Held*, also, that on paying the amount of the debt the company was entitled to an assignment of the mortgage.—*Burton* v. *Gore District M. F. I. Co.*, 12 U. C. Chan. 156.

EQUITABLE ASSIGNMENT OF DEBT.—Where a person having a demand against another, gave to a creditor of his own an order on his debtor for a portion of his demand, notice of which was duly given to the debtor, but this order the debtor did not accept.

Held, notwithstanding, that the order and notice formed a good equitable assignment of the portion of the claim which it covered.—*Farquhar* v. *The City of Toronto*, 12 U. C. Chan. R. 186.

DEEDS—INTEREST.—An instrument under seal may be varied in equity by an agreement, for valuable consideration.

A written promise by a mortgagor, after default, to allow more than the six per cent interest reserved by the mortgage, was held to be binding on the authority of *Alliance Bank* v. *Brown*, 10 Jur. N. S. 1121; though there did not appear by the writing to have been any consideration of forbearance or otherwise for such promise.—*Brown* v. *Deacon*, 12 U. C. Chan. R. 198.

UPPER CANADA REPORTS.

QUEEN'S BENCH.

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

CLISSOLD V. MACHELL AND MOSELY.

Action against Magistrate—Separate damages against each—Exemplary damages.

In an action against two justices for one act of imprisonment, charged in one count as a trespass and in another as done maliciously, the jury found $800 against one defendant and $400 against the other. *Semble*, that the damages could not be thus severed; but *Held*, no ground for a new trial, as the finding might be treated as a verdict for $800 against one defendant, the other being let go free by the plaintiff. *Quære*, as to the proper mode of entering the judgment.

One of the defendants having used insulting expressions to the plaintiff during the examination, *Held*, no misdirection to tell the jury that they were at liberty to give exemplary or vindicative damages; and that the verdict was not excessive.

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

Action against the two defendants, justices of the peace. The declaration contained two counts, one for trespass and false imprisonment, the other in case for the same imprisonment, charging that it was done maliciously and without reasonable and probable cause. Plea, not guilty by statute.

The trial took place at Toronto, in October, 1865, before Adam Wilson, J.

It appeared that the plaintiff had obtained two search warrants, to search the premises of one Buckingdale for some yarn, which, as the plaintiff alleged, had been stolen from him. A constable executed both warrants. The plaintiff accompanied him in order to iddentify the yarn, if found, and did not otherwise interfere. The search was made on both occasions and nothing was found.

A day or two after the last search Buckingdale went before the defendant Mosely and charged the plaintiff, William Willis, and William Miller, upon oath, with committing a trespass on his (B.'s) house by entering into the house at an improper time, having been forbid so doing. Defendant Mosely issued a summons calling on these three persons to appear before him, or such other justices as might be at the place named, on the 3rd of February, 1865.

The plaintiff did not attend, but the other two parties did, and evidence in support of the charge was taken. The proceedings were adjourned, and on the 6th of February the plaintiff was present. The other two parties were discharged. Both defendants sat on the case. No witnesses were then examined, though they were present, but the evidence taken at the preceding meeting was read over to the plaintiff. The defendant Machell examined the plaintiff, putting a number of questions to him respecting the taking out the search warrant, and telling him that he (Machell) believed the plaintiff purloined the yarn and had got it, and calling him "scoundrel," "villain," and using threatening language towards him. The proceedings were further adjourned to the 8th of February, and then the plaintiff was convicted and fined $5, with $5 50c. costs, and upon this he was committed and sent to gaol on the 9th, and discharged upon a writ of habeas corpus on the 14th of February.

An appeal was also lodged with the Court of Quarter Sessions, and on the 15th March, 1865, the conviction was quashed with costs. Besides the abusive language used towards the plaintiff, it appeared that the defendant Machell, while sitting in this case, used disparaging language respecting other magistrates, and on their jurisdiction over the plaintiff in this matter being questioned, both the defendants concurred in refusing to consider that point.

The learned judge directed that, as the conviction had been quashed trespass would lie, if the defendants had no jurisdiction or had exceeded it: that the plaintiff complained that there was no jurisdiction, or at least excess, because the plaintiff entered the house of Buckingdale under the authority of the search warrant, and also because the defendants had isued a distress warrant in the first instance, contrary to sec. 59, Con. Stats. Canada ch. 103. The learned judge stated that in his opinion it was not made out that the issuing the warrant to commit in the first instance was wrongful, considering the proof of the plaintiff's poverty; and that the second count could only be sustained on the ground of malice and want of reasonable and probable cause. As to damages, he told the jury they might discriminate between the two defendants, and if they did the plaintiff might elect whether to take the greater amount against one and let the other go.

The jury found for the plaintiff, and assessed the damages as against Machell at $800, and against Mosely at $400, the plaintiff's counsel electing, after some hestitation, to take the verdict in this form.

Anderson obtained a rule calling on the plaintiff to shew cause why there should not be a new trial without costs, on the ground that the verdict was against law and evidence, as there was evidence on the first count that the defendants were acting within their jurisdiction; and on the ground of misdirection, in telling the jury that, though the defendants had jurisdiction to enquire into and adjudge as they did, if the evidence before them had been sufficient, yet the evidence before them ousted them of jurisdiction.

And in telling the jury they might assess several damages against two defendants in a joint action of trespass, and in telling them they ought to give damages *in pœnam*.

And for a miscarriage in the verdict, in finding separate damages; and for excessive damages.

Or why there should not be a new trial *de novo*, on the ground of such miscarriage.

McKenzie, Q. C., shewed cause, citing *Leary* v. *Patrick*, 15 Q. B. 266; *Rodney* v. *Strode*, 3 Mod. 101; *Sabin* v. *Long*, 1 Wils. 30; *Friel* v. *Ferguson*, 15 U. C. C. P. 584.

Anderson, contra, cited *Clark* v. *Newsam*, 1 Ex. 131; *Gregory* v. *Slowman*, 1 E. & B. 360; *Mitchell* v. *Millbank*, 6 T. R. 199; *Cave* v. *Mountain*, 1 M. & G. 262; *Haylock* v. *Sparke*, 1 E. & B. 471; S. C. 22, L. J. M. C. 72; *Ratt* v. *Parkinson*, 20 L. J. M. C. 212.

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

Under the Con. Stats. U. C. ch. 105, sec. 1, (amended by 25 Vic. ch. 22) one justice of the peace has authority to decide in a summary way when a person is charged before him with unlawfully entering into, coming upon, or passing through any land or premises whatsoever, being wholly enclosed, and the property of some other person.

An information was put in evidence laid by Josiah Buckingdale against the plaintiff and two other persons—one of them, as came out afterwards, a constable—not charging that they entered Buckingdale's house *unlawfully*, but that they had committed a trespass by entering the same at an improper time, having been forbid to do so.

The conviction was that the plaintiff did commit a trespass upon the premises of Buckingdale on the 30th January, 1865. Upon this conviction, which was afterwards quashed, the defendants issued a warrant to commit the plaintiff, and he was sent to gaol.

By the 2nd section of chap. 126, Con. Stats. U. C., it is enacted, among other things, that "for any act done under any conviction, or order made, or warrant issued by such justice in any such matter"—that is, a matter of which by law he has not jurisdiction, or in which he has exceeded his jurisdiction—"any person injured thereby may maintain an action against such justice in the same form and in the same case as he might have done before the passing of this act," but by sec. 3 not "until the conviction or order has been quashed."

The first count is in trespass, under the second section, treating the act of the magistrates as without or in excess of their jurisdiction. The second count is founded on the first section of the statute, treating the act as done in the execution of their duty as justices with respect to a matter within their jurisiction.

The evidence shews only one state of facts and one act of imprisonment for which the plaintiff complains, and it will sustain either count, depending on the question whether the defendants had jurisdiction, and if so, whether they acted maliciously and without reasonable or probable cause, or whether they had no jurisdiction, or having jurisdiction acted in excess of it.

It appears to us immaterial to the plaintiff's right of recovery upon which count he enters his judgment *Friel* v. *Ferguson*, 15 U.C.C.P. 584. The general verdict on the two counts creates no legal objection. We think the evidence abundantly sustains the second count, and I incline to the opinion that on the whole facts it might be held that there was jurisdiction *primâ facie* till the facts appeared. Mr. Anderson cited *Haylock* v. *Sparke*, 1 E. & B. 471. In regard to that case, Lord Wensleydale in *McMahon* v. *Lennard*, 6 H. L. Cas. 1012 observed that case was not satisfactorily distinguished from *White* v. *Morris* 11 C. B. 1015 and is not to be preferred to it.

Then as to damages, two points are made: 1st, As to the jury having given several damages; 2nd, As to the direction to the jury that they might give damages *in pœnam*, to teach the defendants not to abuse their position or authority. The question of excessive damages was also raised, but as in our view the verdict cannot be treated as other than a verdict of $800, we cannot say that, after going carefully through the evidence, we have arrived at the conclusion that it is so grossly extravagant as to justify interference on that ground. The plaintiff might of course take the lesser verdict against both defendants.

We have not found any case in which the judgment in *Hill* v. *Goodchild* 5 Burr. 2790 has been doubted or denied. Lord Mansfield states that where a trespass is *jointly* charged upon all the defendants, and the verdict has found them *jointly guilty*, the jury cannot assess *several* damages. His lordship confines the judgment to the particular case, pointing out that the court was not called upon to decide as to cases where the defendants were charged severally, or had severed in their pleading, or were found guilty of *several* parts of the same trespass.

The doubt thrown out in *Gregory* v. *Slowman* upon one of the cases left undecided by Lord Mansfield, the defendants having taken different parts in the transaction, and the defendant Slowman having pleaded a separate defence from the others.

The cases prior to *Hill* v. *Goodchild* are not to be reconciled. For example, in *Lane* v. *Santeloe* 1 Str. 79, Parker, C. J., allowed the jury to give £200 against one defendant and £20 against another; while in *Lowfield* v. *Bancroft* 2 Str. 910, Lord Raymond held the jury could not sever the damges. In *Chapman* v. *House* 2 Str. 1140, Lee, C. J., held the jury might sever, as the defendants had not pleaded jointly. In *Clark* v. *Newsman et al.* 1 Ex. 131 the rule was stated, that the true criterion is the whole injury which the plaintiff has sustained from the *joint act of trespass:* that when the defendants have so conducted themselves as to be liable to be jointly sued, they are responsible for the injury sustained by the common act. And the direction to the jury given by Tindal, C. J., in *Elliot* v. *Allen* 1 C. B. 18, is in accordance with this criterion. He charged, and the court sustained him, that the plaintiff could only recover damages against all the defendants jointly in any joint act of trespass committed or assented to by them all. The principle is further illustrated by the ruling of Patteson, J., in *Walker* v. *Woolcott* 8 C. & P. 352.

As to the last point, the learned judge's notes do not contain a statement of the language he used in directing the jury on the subject of damages, but we gather from the manner in which the plaintiff's counsel argued this part of the case, that he did not substantially differ from the defendants' counsel as to the character of the charge, and we assume the learned judge did tell the jury that they were at liberty to give what are sometimes called exemplary, sometimes even vindictive damages.

That the jury have this right in certain actions of trespass, and that the court will not interfere with them in the exercise of it, appears clear upon authority. I need only refer to the well known case of *Merest* v. *Harvey* 5 Taunt. 442. Nor is it confined to actions of trespass. *Bell* v. *Midland Railway Co.* 10 C. B. N. S. 287 was an action for injury to the plaintiff's reversionary interest, in which Willes, J., says, "If ever there was a case in which the jury were warranted in awarding damages of an exemplary character, this is that case. The defendants have committed a grievous wrong with a high hand, and in plain violation of an act of Parliament, and persisted in it for the purpose of destroying the plaintiff's business and securing gain to themselves," referring to *Emblem* v. *Myers* 6 H. & N. 54. And Byles, J., says, "Where a wrongful act is accompanied by words of contumely and abuse, the jury are warranted in taking that into consideration, and giving retributory damages."

In the case of *Emblem* v. *Myers* 6 H. & N. 54 referred to in the case last cited, the judge directed the jury that if they were of opinion that what was done was done wilfully, with a high hand, for the purpose of trampling on the plaintiff and driving him out of possession, they might find exemplary damages. On motion for a new trial, in which this charge was excepted to as a misdirection, the court sustained the verdict. The observations of the judges on this question are well worthy of attention, and there

is a note to this case in the American edition which will reward an attentive perusal.

We think therefore this rule should be discharged. The plaintiff will have to relieve himself from the difficulty created by the form in which the verdict is taken.

Rule discharged.

HUGHES v. PAKE, NAYLOR, ROUSE AND JOHNSTON.

School Acts—Arbitration between trustees and teacher—C. S. U. C. ch. 126—Evidence of agreement—Form of award.

Held, following *Kennedy* v. *Burness*, 15 U. C. Q. B. 487, that arbitrators between school trustees and a teacher, under the U. C. Common School Act, acting within their jurisdiction, are entitled to protection under Consol. Stat. U. C. ch. 126, as persons fulfilling a public duty; and therefore that trespass would not lie against them and their bailiff for seizing goods to enforce their award under sec. 86.

It was contended that the arbitrators had no jurisdiction, as no contract under the corporate seal, required by 23 Vic. ch. 49, sec. 12. was proved to have been produced before them; but the plaintiff's witness said an agreement was produced which he thought had the seal, and the plaintiff, as a trustee, had named an arbitrator and submitted the matters in dispute. *Held*, that under these circumstances it might be assumed that the arbitrators had before them all that was necessary to give jurisdiction.

Held, also, that the award set out below was sufficient; and that the act, 23 Vic. ch. 49, sec. 9, which directs that no want of form shall invalidate such awards, should receive a liberal construction.

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

Trespass *de bonis asportatis*. Plea, not guilty, per statute. The defendants appeared by different attorneys, and the statutes noted in the margin of the pleas were Consol. Stat. U. C. chaps. 19, 64, 65, and 126; also, 18 Vic. ch. 131, 16 Vic. ch. 180, and 26 Vic. ch. 5.

The case was tried at the last Belleville Assizes, before Draper, C. J. From the evidence it appeared that the plaintiff was a trustee of the Roman Catholic separate school No. 20, in Thurlow, of which school one Ann McGurn was teacher: that she claimed nine and one-half months' salary as being due to her: that the matter being in dispute, McGurn, under sub-section 2 of the 84th section of the U. C. School Act, addressed a notice in writing, dated the 28th of April, 1864, to the trustees of the school section (of which the plaintiff was one) requiring the matter in dispute to be submitted to arbitration, naming in such notice her arbitrator, and notifying the trustees to name one; the defendant Rouse, who was the local superintendent, being the third arbitrator by virtue of the statute: that the trustees, at the instance of the plaintiff, named and duly appointed the defendant Pake the arbitrator on their behalf: that the three arbitrators met on the 2nd of May, and on that day the arbitration was entered upon and concluded, and their award made and signed by the three arbitrators, and on the same day it was handed to the trustees, and they were cautioned they would be liable personally if the amount awarded was not paid within a month. It also appeared in evidence that after the months' notice had expired, the arbitrators caused the three trustees to come before them, and that they, the arbitrators, "gathered from them (the trustees) that they levied no rate, made no money, and paid none:" that the arbitrators, in the beginning of July, issued their warrant, directed to the defendant Johnston as their bailiff, to distrain and seize the goods of the the three trustees, under which warrant Johnston seized and sold the goods of the plaintiff. The chief witness called by the plaintiff was the defendant Rouse, who testified to the facts stated. He also said that an agreement, made between the trustees and the teacher, McGurn, was produced before the arbitrators, and which he thought was under the corporate seal, but on this point he was not sure one way or the other, Patrick Reagon, one of the trustees, was also called by the plaintiff, and he stated in his evidence that he was served with a notice of the award, and that the plaintiff told him he had also been served with a like notice: that the plaintiff was the treasurer of the trustees: that prior to the 19th of May he had collected part of the money from the school section, and that he did not pay over the amount of the award.

At the close of the plaintiff's case, *Diamond*, on the part of the plaintiff Rouse, moved for a nonsuit, on the ground that he was a public officer, acting under the 3rd sub-section of the 84th sec. of the U. C. School Act: that the action should have been case: that there was no allegation or proof of the defendant having acted maliciously or without probable cause, and that he was entitled to the protection of the act to protect trustees and other officers from vexatious actions. *Holden*, for the arbitrators, defendants Pake and Naylor, made the like objections; and *Dougal*, for the defendant Johnston, contended that as bailiff he was entitled to the same protection.

It was agreed, with the consent of the learned Chief Justice, that the defendants should have leave to move to enter a nonsuit on the objections taken, and the question of damages was left to the jury, which they found to be $71.

Diamond, in pursuance of leave reserved, obtained a rule *nisi* to set aside the verdict and to enter a nonsuit as to defendant Rouse, on the ground that the action should have been case, under Consol. Stat. U. C. ch. 126, sec. 1; that it was proved at the trial that Rouse was an officer performing a public duty: that it was not proved he acted maliciously and without reasonable or probable cause, but that he was acting *bonâ fide* in reference to the making of the award and issuing the warrant which formed the subject matter of this action, and that he was consequently protected by ch. 126 above mentioned; and that no cause of action was proved. *C. S. Patterson*, on behalf of the defendants Pake and Naylor, obtained also a rule *nisi* to enter a nonsuit, on the ground that they were arbitrators appointed under the U. C. School Act, and were within the protection of ch. 126, and that trespass would not lie against them. And *Robert A Harrison*, on behalf of defendant Johnston, also obtained a like rule, setting out similar grounds that if the arbitrators were entitled to protection, he, Johnston, was equally so entitled, &c.

The three rules came on for argument together. *Jellett* shewed cause, and *Patterson*, *Harrison*, and *Diamond* supported their respective rules, citing *Kennedy* v. *Burness*, 15 U. C. Q. B. 473; *Sage* v. *Duffy*, 11 U.C.Q.B. 30; *Spry* v. *Mumby*, 11 U. C. C. P. 285, 288; *Waddell* v. *Chisholm*, 9 U. C. C. P. 125; *Davis* v. *Williams*, 13 U.C.C.P. 365; *Helliwell* v. *Taylor*, 16 U. C. Q. B. 279; *Hardwick* v. *Moss*, 7 Jur. N. S. 804; *Bross* v. *Huber*, 15 U. C. Q. B. 625.

The statutes cited are referred to in the judgment.

MORRISON, J.—By the 84th section of "The Upper Canada Common School Act," it is enacted that "in case of any difference between trustees and teacher, in regard to his salary, the sum due to him, or any other matter in dispute between them, the same shall be submitted to arbitration, in which case:

1. Each party shall choose an arbitrator.

2. In case either party in the first instance neglects or refuses to appoint an arbitrator on his behalf, the party requiring the arbitration may, by a notice in writing to be served upon the party so neglecting or refusing, require the last mentioned party, within three days inclusive of the day of the service of such notice, to appoint an arbitrator on his behalf, and such notice shall name the arbitrator of the party requiring the arbitration; and in case the party served with such notice does not, within the three days mentioned therein, name and appoint an arbitrator, then the party requiring the arbitration may appoint the second arbitrator.

3. The local superintendent, or in case of his inability to attend, any person appointed by him to act in his behalf, shall be a third arbitrator, and such three arbitrators or a majority of them shall finally decide the matter."

The 85th section enacts that the arbitrators may require the attendance of the parties and witnesses, books, &c., and administer oaths, &c.

The 86th section authorizes the arbitrators, or any two of them, to issue their warrant to any person named therein to enforce the collection of any money awarded to be paid, and the person named in such warrant shall have the same powers and authority to enforce the collection of the moneys mentioned in the warrant, &c., by seizure and sale of the property of the party against whom the same has issued, as any bailiff of a Division Court has in enforcing a judgment and execution issued out of such court.

The 87th section enacts, that no action shall be brought in any court of law or equity to enforce any claim or demand between trustees and teachers which can be referred to arbitration as aforesaid.

And by the 9th section of 23 Vic. ch. 49, it is declared that if the trustees wilfully refuse or neglect, for one month after publication of award, to comply with or give effect to an award of arbitrators appointed as provided by the 84th section of the Upper Canada School Act, the trustees so refusing or neglecting shall be held to be personally responsble for the amount of such award, which may be enforced against them individually by warrant of such arbitrators within one month after publication of their award; and no want of form shall invalidate the award or proceedings of arbitrators under the school acts.

It was contended on the part of the plaintiff that the arbitrators had no jurisdiction to make any award, as no contract under the corporate seal of the trustees was proved to have been produced before them—the 12th section of 23 Vic. ch. 49, enacting that all agreements between trustees and teachers to be valid and binding shall be in writing, signed by the parties thereto, and sealed with the corporate seal. But it was proved by the plaintiff's witness that an agreement was produced before the arbitrators, and the witness thought under the corporate seal; and as the plaintiff, as a trustee, named an arbitrator, and submitted the matter in dispute to the arbitrators, we may, under these circumstance, assume that the arbitrators had all the necessary material before them to give them jurisdiction to enter upon the arbitration and make the award.

It was also objected that the award was informal: that there was no award, as it was not made in terms between the corporation and the teacher. The award put in evidence was in the following words:

"At an arbitration, held May the 2nd, 1864, to decide a dispute between the trustees of the Roman Catholic separate school No. 20, Thurlow, in the village of Canifton, and Miss Ann McGurn, teacher in said section, the following were the arbitrators: Wm. Naylor, on behalf of Miss McGurn; S. S. Pake on behalf of the trustees; F. H. Rouse, Local Superintendent of Hastings. After hearing the evidence, and considering the case fully, the arbitrators decide and award that the trustees of said section shall forthwith pay into the hands of Mr. Rouse the sum of sixty-four dollars twenty-two and one half cents, such such sum to be disposed of as follows:—

To Miss McGurn	$59 12½
Expenses of arbitration	5 10
	$64 22½

(Signed) SAMUEL S. PAKE,
WILLIAM NAYLOR,
F. H. ROUSE, L Sup. S. Hast.

Belleville, May 2, 1864.

The 17th section of the Separate School Act, Con. Stats. U. C. ch. 65, declares that the trustees of each separate school shall be a body corporate, under the name of the Trustees of the Separate School of (as the case may be), in the township, city or town (as the case may be) of, &c.: and, as before stated, the latter part of sec. 9 of 23 Vic. ch. 49, enacts that no want of form shall invalidate the award or proceedings of arbitrators under the school acts.

The object of the legislature was to give a simple, speedy and inexpensive mode of settling disputes between trustees and teachers by arbitration, and it probably assumed that it might frequently happen that arbitrators would be appointed from a class unacquainted with the drawing up awards in a technical form; and in order to avoid expense and litigation, and to give effect to the adjudication of the arbitrators when acting within their jurisdiction and powers, provided against their awards becoming inoperative from want of form. Such being the case, I think it is incumbent on us to give the most liberal construction to the provisions of the statutes, with a view of carrying into effect the intentions of the legislature; and where we can see, as in the present case, on the face of the award itself, that in all material points it is sufficiently certain, although informal in some respects, to strive to uphold it. And in my judgment the objections taken to the award are to matters of form, within the meaning of the enactment, and they do not render the award invalid.

Upon the other point in the case, and which was the principal one argued at the bar—where the arbitrators and their bailiff were within the protection of the statute for the Protection of

Justices of the Peace and other officers from vexatious actions—I am of opinion that they are. Arbitrators such as these defendants were are, by force of the common school acts, upon their appointment constituted a tribunal upon whom is cast the duty of determining the rights and liabilities of the parties concerned, and indeed the only one to which the parties can resort to ascertain their rights—See section 87 above quoted, and *Tiernan* v. *School Trustees of Nepean* 14 U. C. Q. B. 15; and the legislature has invested them with authority, in the event of non-compliance with their award, after the period mentioned in the statute, to enforce obedience by issuing their warrant to seize and sell the goods of the trustees, clothing the person to whom they direct their warrant with the same power and authority for its execution as a bailiff of the Division Court.

It therefore appears clear to me that these defendants were persons fulfilling a public duty imposed by act of Parliament, and that this action is brought against them for acts done by them in the performance of such public duty, and that they are consequently within the protection of ch. 126, the 1st sec. of which enacts that such an action shall be an action on the case for a tort, and in the declaration it shall be expressly alleged that the act complained of was done maliciously and without reasonable or probable cause, and that if upon the trial, the general issue being pleaded, the plaintiff fail to prove such allegation he shall be nonsuit, &c. Here the action is one of trespass, and the evidence adduced by the plaintiff on the trial negatived, in my opinion, malice and want of probable cause.

In *Kennedy* v. *Burness et al.* 15 U. C. Q. B. 487 Sir John Robinson, in giving judgment, and discussing the question whether trespass would lie against the arbitrators in that case, says: "It would not lie, I think, if the arbitrators had jurisdiction in the matter in which they acted, because then their making the award in favour of the teacher in a matter within their jurisdiction would be a legal act, and the issuing of the warrant to enforce the award is enjoined upon them by the legislature. If they took an erroneous view of the merits, and mistook the law, or came to an unsound conclusion upon the evidence, when the matter referred to them was within their jurisdiction, that would not make them trespassers. They would be protected, as justices would be protected who are authorized by statute to determine differences between masters and servants"—referring to *Lowther* v. *Earl of Radnor*, 8 East. 113.

Upon the whole case I am of opinion that our judgment should be in favour of the defendants, and that the rules be made absolute to enter a nonsuit.

DRAPER, C. J.—If this question were *res integra*, I should have taken further time to consider before adopting any conclusion. But agreeing in the general views expressed by my brother Morrison as to our giving a liberal interpretation to the act in favour of those called upon to give effect to its provisions, I am prepared to adhere to the opinion already expressed in this court, and cited in the judgment just delivered. I treat that opinion as deciding the point until it shall be overruled by a higher authority, and therefore concur in making the rules absolute to enter a nonsuit.

HAGARTY, J., concurred, saying that he thought the point settled by the case referred to.

Rules absolute.

THE QUEEN v. HOGG.

Falsely personating a voter at a municipal election is not an indictable offence. Remarks as to the form of indictment in such a case.

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

Criminal case, reserved from the Court of General Quarter Sessions for the county of Grey, held in September, 1865.

The defendant, Nicholas Hogg, was tried and convicted at the said sessions upon the following indictment:—

"The jurors for our Lady the Queen upon their oath present, that on, to wit, the third day of January, 1865, at the annual municipal election for the election of a member of the municipal council of the corporation of the township of St. Vincent, for the year aforesaid, for ward number two of the said township, holden in the said ward number two, on, to wit, the second and third days of January in the year aforesaid, and at which election two persons, namely, Cyrus Richmond Sing and James Grier, were duly nominated for the said office of councillor for said ward number two of said township of Saint Vincent, and a poll duly demanded, Nicholas Hogg did unlawfully, wilfully, and knowingly personate and falsely assume to vote and did vote for one of the said candidates, namely, James Grier, in the name of George McVittie, whose name appears on the last revised assessment roll, being the assessment roll for the year of our Lord, 1864, of and for the said township, as a freeholder of the municipality of the said township and who is rated on the said last revised assessment roll for real property in said ward number two, held in his own right, and whose name, with the assessed value of the real property for which he was so rated in said ward number two, appears on the proper list of voters furnished for the purposes of the said election to the returning officer for said ward for said year 1865, under section 97, sub-section 2, of chapter 54 of the Consolidated Statutes of Upper Canada."

At the close of the case for the Crown, the counsel for the prisoner asked that an acquittal should be directed, on the following grounds:

1. That there is not a statute of Canada making the personating a voter at a municipal election an offence or crime. 2. That it is not an offence at common law.

The court reserved these questions of law for the consideration of the justices of Her Majesty's Court of Queen's Bench for Upper Canada, under the authority of the statute in that behalf.

Robert A. Harrison, for the Crown, cited Russ. C. & M. II. 539; 2 East P. C. ch. 20, sec. 6, p. 1010; Dupee's Case, 2 Sess. Cas. 11; Rosc. Crim. Ev. 447; *The Queen* v. *Preston*, 21 U. C. Q. B. 86.

McCarthy, contra, cited *Regina* v. *Dent*, 1 Den. C. C. 157.

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

It is conceded that our statute law contains no provision for the punishment of a person falsely personating a voter.

The case cited of *Regina* v. *Dent*, 1 Den. C. C. 159, is in point. *Patteson*. J., on a similar charge of fraud on the Imperial Municipal Act, decides that such a count discloses no offence at common law. "No case to maintain the affirmative was cited, nor is it believed that any such can be found. * * The analogy is all the other way."

Sec. 97, sub-sec. 9, of our Municipal Act authorises the oath to be taken by an elector that "he is the person named in the last revised assessment roll;" and sec. 423 would seem, though very loosely worded, to declare such a false statement to be perjury. It is not, however, necessary to decide this latter point.

Grave objections might be taken to the indictment before us. No averment is apparent negativing the identity of defendant with the voter suggested to be personated; and it is open, perhaps to be contended that the charge, as it reads, is for personating and voting for the candidate James Grier in the name of George McVittie, the voter whose name is on the roll, not for personating George McVittie.

We think the conviction cannot be upheld.

CORRESPONDENCE.

Action against bailiff for neglect of duty in not executing warrant of commitment—Indemnity.

To the Editors of the Local Courts' Gazette.

Sirs,—Suppose a party has a judgment in the Division Court and that execution has been issued and returned *nulla bona*; that an order has been obtained against the defendant for contempt for non-apppearance to judgment summons; that the party has previously on various times gone to jail under orders to pay; that no evidence can be given to prove that should the warrant now in the bailiff's hands be enforced defendant would pay. Suppose in such a case the bailiff allows the warrant to expire without making the arrest has the plaintiff, being the party aggrieved, an action against the bailiff, and what, if so, are the damages? Is not the court the only party aggrieved or concerned, as the party is ordered to be committed for contempt of court, not for non-payment to defendant? Supposing defendant has been examined and ordered to pay, remaining facts as above, what then?

Also, is the bailiff obliged to sell goods taken in execution, without being indemnified, when he does not call upon the parties to interplead, a third party having laid claims to the goods taken in execution? If he is obliged to sell what is the measure of damages when he refuses to sell, and does not call upon the parties to interplead, and plaintiff *cannot* shew a right to the goods—if any damages?

I hope you will excuse the insertion of so many questions in the above, but as they are questions that so exceedingly puzzle practitioners in the Division Court here that answers to them would very much oblige

Yours, &c.

"Ottawa."

[Though a commitment for non-appearance to a judgment summons, is in a certain sense a punishment for contempt of court, a bailiff is not thereby relieved from an action by a person aggrieved by his neglect of duty—which may, or may not, have the effect of causing a loss to the plaintiff. Under the circumstances mentioned, we do not think a judge would be likely to give more than nominal damages.

If a defendant has been examined and ordered to pay, but makes default, he cannot be committed except after a summons to shew cause.

It is the bailiff's duty to execute the writ placed in his hands; if a claim be made by a third party to the goods seized he can protect himself by interpleading. If he does not take this course, he must if he refuses to sell, be prepared to defend an action at the suit of the plaintiff. If such an action be brought, the plaintiff will nevertheless have to prove his case and shew that the defendant had goods liable to seizure under the writ, and that he has sustained damages and to what amount by the refusal of the bailiff to act.]

Bailiff's fees for serving jury summonses—Service of subpœnas and affidavits thereof.

To the Editors of the Local Courts' Gazette.

Gentlemen,—From the facilities you may have, exclusive of your own opinion, will you be pleased to answer the following queries.

Firstly. Can a bailiff of a division court charge for the service of a summons on a juror, exclusive of mileage, if so, what is the amount to be charged?

Secondly. In what part of the Schedule of Fees made by the judges for the guidance of the division court officer can the charges for such services be found.

Thirdly. Are affidavits of service of subpœnas on witness necessary, and can the same

be charged as costs of suit, if so, how many affidavits and the costs of each would be allowed on one subpœna that has, say two to ten names thereon.

Fourthly. As subpœnas or summonses to witnesses can be served by both the plaintiff and defendant, where is the law laid down for the affidavit of the service thereof.

NORFOLK.

March 19, 1866.

[The schedule of bailiff's fees was not made by the judges, but is given in the statute. The first item speaks of the "service of summons or other proceeding except subpœna on each person." These words would appear to include the service of a summons on a juror, but the fee of 7c under the heading "not exceeding $8," militates against this construction. Upon the whole we think that an allowance of say 10c., the lowest fee for service, might properly be allowed, and such we believe is the practice in some counties, though not in all.

Affidavits of service, when the service has been made by a bailiff, are, we think, chargeable as costs of suit, and in fact necessary to show the amount of the conduct money paid to the witness. Only one affidavit in which all the services can be sworn to, should, when made by a bailiff, be allowed. If the service be made by a party to the suit we do not think it can be charged for.—EDS. L. C. G.]

Division Courts—Attaching and non-attaching Creditors—Priority.

TO THE EDITORS OF THE LOCAL COURTS GAZETTE.

GENTLEMEN,—A person absconded, leaving several creditors unpaid. Attachments were issued out of the Division Court in which he resided. Goods were seized and placed in custody of the clerk two weeks before the sitting of the court. Summons left at defendant's last abode. Consequently the cases had to lie over to the next sitting of the court. About two months after the seizure was made, a creditor obtained judgment against the defendant in another Division Court, and immediately ordered out an execution, and employed a bailiff to seize the goods and chattels in the clerk's possession. The clerk of the Division Court out of which the attachments issued had placed some sheep and cattle under the charge of a farmer for feeding. The bailiff aforesaid, armed with an execution and four or five men went to the farmer's lot and forcibly drove off the cattle, sheep, &c. The same bailiff afterwards went to the clerk's office and attempted to carry off *forcibly* a buggy belonging to the same seizure and said he was ordered by a lawyer to do so. The clerk refused and would not allow any goods to be taken away, and was then threatened with law proceedings.

Now, can goods that have been seized under attachment and delivered to the custody of the clerk be forcibly taken away under cover of an execution issued out of another Division Court?

Should not the judgment creditor file his claim in court, wait the issue of trial and then share *pro rata?*

I cannot for one moment suppose that the law will tolerate such ruffianly proceedings as I have before stated, and will therefore feel much obliged by receiving your opinion upon the subject.

Your obedient servant, L.

[See editorial remarks on page 49.—EDS L. C. G.]

Common School Act — Payment of School Section Auditors.

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

DEAR SIRS,—Is it lawful to pay Auditors of School Section accounts?

I was elected by the ratepayers of a school section for three consecutive years, as auditor, recently. I presented my account for auditing ($6). The Trustees informed me that the School Act did not contemplate the payment of Auditors, and therefore declined to pay me for my services as auditor. For the information of the numerous auditors of school section accounts throughout the Province, as well as myself, an answer to the above question will much oblige,

J. C.

[See editorial remarks on page 49.—EDS. L. C. G.]

REVIEW.

JOURNAL OF SOCIAL SCIENCE, including the sessional papers of the National Association for the promotion of Social Science: CHAPMAN & HALL, Picadilly, London.

We have received the first three numbers of a monthly publication bearing the above title, and under the editorial management of Edwin Lancaster, Esq., M.D., F.R.S., &c.

The objects and aims of this periodical are set forth in the introduction as follows: "The *Journal of Social Science* has been started with the object of circulating the papers read before the London meetings of the National Association for the promotion of Social Science and of supplying original papers and various information on the subjects embraced in the departments of the Association." The object of the Association here referred to, and the existence of which as yet is known probably to few in this country, is to place before the world in their most manifold applications the great facts and principles which have already been observed respecting Law, Education, Political Economy and Health, and as far as possible to advance those enquiries and methods of investigation which shall lead to yet further discoveries.

It commences by laying down what might, we think, be supposed now-a-days to be the obvious proposition, that it is not lawyers alone who are interested in the principles of legal procedure, not schoolmasters only who need study the question of education, nor merchants or statesmen who are alone interested in political economy, nor that to doctors only should be confided the great secrets by which health is maintained, and that no member of a civilised community, however low, is not interested in understanding and discussing the great principles by which the welfare of society is regulated.

The introduction then goes on to state that the subjects to be embraced under the different heads of law, education, public health and economy and trade, and concludes with a defence of the Association from the objections raised to the possible use or benefit of discussing matters of social interest from a scientific point of view, holding that there are, contrary to commonly received opinion, scientific methods of dealing with social phenomena.

The subjects brought before the Association are discussed by men fully able for the task, and whilst, as of course is to be expected in such matters, much may be said that is beside the mark, it is not possible where so many persons as are from time to time collected to listen to the discussions of this association that a large quantity of the seeds of knowledge thus sown will not "in future unlooked for occasions, bring forth an abundant harvest."

The original articles, some of which we reprint in our columns, are most interesting, treating of a variety of subjects of daily interest and of great practical importance, and not to be obtained that we know of in the same readable and accessible form in any other place. The publication does not conflict with any other and will be, to say the least, an interesting record of current matters connected with the subjects embraced in the introduction and the progress of "Social Science."

OBITUARY.

At Englefield, Spadina Avenue, Toronto, on Monday night the 26th March last, ANNA E. MUCKLE, the beloved wife of ROBERT A. HARRISON, Barrister-at-Law and one of the conductors of this Journal, departed this life in peace, aged 27 years.

APPOINTMENTS TO OFFICE.

CLERK OF THE PROCESS

ALAN CAMERON, Esquire, to be "The Clerk of the Process," in the room and stead of Robert Stanton, Esquire deceased. (Gazetted March 10, 1866.)

POLICE MAGISTRATE.

ALEXANDER McNABB, of Osgoode Hall, Esquire, Barrister-at-Law, to be Police Magistrate in and for the City of Toronto. (Gazetted March 17, 1866.)

NOTARIES PUBLIC.

JOHN FARLEY, of St. Thomas, Esquire, Attorney-at-Law, to be a Notary Public in Upper Canada.

ALFRED BOULTBEE, of Newmarket, Esquire, Barrister-at-Law, to be a Notary Public in Upper Canada.

EDWARD JAMES DENROCHE, of the City of Toronto, Esquire, Barrister-at-Law, to be a Notary Public in Upper Canada.

ROBERT VASHON ROGERS, jun., of Kingston, Esquire, Barrister-at-Law, to be a Notary Public in Upper Canada. (Gazetted March 3, 1866.)

JOHN WILLIAM FERGUSON, of the City of Hamilton, Esquire, Barrister-at-Law, to be a Notary Public in Upper Canada.

HENRY JAMES GIBBS, of the city of Ottawa, Advocate, Esquire, to be a Notary Public in Upper Canada.

HENRY WETENHALL, of the city of Hamilton, Esquire, Attorney-at-Law, to be a Notary Public in Upper Canada.

WILLIAM KINGSTON FLESHER, of the Village of Fleshertон, Esquire, to be a Notary Public in Upper Canada. (Gazetted March 10, 1866.)

DUNCAN CHISHOLM, of Port Hope, Esquire, Attorney-at-Law, to be a Notary Public in Upper Canada.

GEORGE MONCRIEFF, of the City of London, Esquire, Barrister-at-Law, to be a Notary Public in Upper Canada.

ANDREW FRASER SMITH, LL.B., of Brampton, Esquire, to be a Notary Public in Upper Canada. (Gazetted March 24, 1866.)

GEORGE EDMISON, of Peterborough, Esquire, Attorney-at-Law, to be a Notary Public in Upper Canada. (Gazetted March 31, 1866.)

CORONERS.

RALPH JONATHAN PARKS MORDEN, Esquire, to be an Associate Coroner, for the City of London.

THOMAS AUCHMUTY KEATING, of Morristown, Esquire, to be an Associate Coroner for the County of Wellington.

DUNCAN McINTYRE, of Wardsville, Esquire, M.D., to be an Associate Coroner for the County of Middlesex.

JOHN JAY HOYT, of the Town of Ingersoll, Esquire, to be an Associate Coroner for the County of Oxford.

PITKIN GROSS, of the Village of Brighton, Esquire, M.D., to be an Associate Coroner for the United Counties of Northumberland and Durham.

CHARLES DUNCOMB TUFFORD, of the Township of Burford, Esquire, M.D., to be an Associate Coroner for the County of Brant. (Gazetted March 3, 1866.)

JOHN NICHOL, of the Village of Listowell, Esquire, M.D., to be an Associate Coroner for the County of Perth.

THOMAS WALTON STEVENSON, of the Township of Alnwick, Esquire, to be an Associate Coroner for the United Counties of Northumberland and Durham.

JOHN PHILP, of the Village of Listowell, Esquire, M.D., to be an Associate Coroner for the County of Perth. (Gazetted March 10, 1866.)

CHARLES DOUGLASS, of the Village of Oil Springs, Esquire, M.D., to be an Associate Coroner for the County of Lambton. (Gazetted March 31, 1866.)

TO CORRESPONDENTS.

"OTTAWA"—"NORFOLK"—"L."—"J. C."—Under "Correspondence."