DIARY FOR MAY.

1. SUN. *2nd Sun. aft. Easter. St. Philip & St. James.*
8. SUN. *3rd Sunday after Easter.*
13. Fri.. Exam. of Law Students for call to the Bar.
14. Sat.. Exam. of Articled Clerks for certificate of fitness.
15. SUN. *4th Sunday after Easter.*
16. Mon. Easter Term begins.
18. Wed. Last day for service for Co. Ct. York. Interim Exam. of Law Students and Articled Clerks.
20. Fri .. Paper Day, Q. B. New Trial Day, Common P.
21. Sat.. Paper Day, C. P. New Trial Day, Queen's B.
22. SUN. *Rogation.*
23. Mon. Paper Day, Q. B. New Trial Day, Common P.
24. Tues. Paper Day, C. P. New Trial Day, Queen's B.
25. Wed. Paper Day, Q. B. New Trial Day, Common P.
26. Thur. *Ascension.* Paper Day, Common Pleas.
27. Fri .. New Trial Day, Queen's Bench.
28. Sat... Declare for County Court.
29. SUN. *1st Sunday after Ascension.*
30. Mon.. Paper day, Q. B. New Trial Day, Common P.
31. Tues. Paper Day, C. P. New Trial Day, Queen's B.

The Local Courts'

AND

MUNICIPAL GAZETTE.

MAY, 1870.

THE MINISTER OF JUSTICE.

With mingled feelings of grief and hope, we allude to the painful and alarming illness which has prostrated for a time at least, Sir John A. Macdonald, the Minister of Justice. Grief, that one so eminent and so endeared to all who know him personally should suffer so much pain, and that the country should, at the present crisis especially, lose the services of one who has for so many years devoted his amazing talent with untiring industry to the arduous duties which devolve upon him—and hope, that he may yet recover from the illness which has brought him to the verge of the grave.

The attack came upon him in the midst of his work, the thought of which never leaves his mind day or night, and this combines with the painful nature of his malady to secure to him the sympathy of those politically opposed to him, and which was on a recent occasion gracefully expressed by the leader of the opposition.

We rejoice to hear that he is slowly but steadly improving. We trust his recovery may be permanent, and that he may long be spared to a people to whom his loss would be a public calamity, and whose warmest sympathies are with him and Lady Macdonald in their present affliction.

WOMEN JURORS IN UNITED STATES.

The following is a letter addressed to Mrs. Myra Bradwell, the enterprising editress of the *Chicago Legal News*, from the Judge who presided at the trial of a recent case in Wyoming, U. S., where half the jury were men and half women :—

DAER MADAM :—I am in receipt of your favor of the 26th ult., in which you request me to "give you a truthful statement, over my own signature, for publication in your paper, of the history of, and my observations in regard to, the women Grand and Petit jurors in Wyoming."

I had no agency in the enactment of the law in Wyoming conferring legal equality upon women. I found it upon the statute-book of that Territory, and in accordance with its provisions several women were legally drawn by the proper officers on the Grand and Petit Juries of Albany county, and were duly summoned by the Sheriff without any agency of mine. On being apprised of these facts, I conceived it to be my plain duty to fairly enforce this law, as I would any other.

While I had never been an advocate for the law, I felt that thousands of good men and women had been, and that they had a right to see it fairly administered; and I was resolved that it should not be sneered down if I had to employ the whole power of the court to prevent it. I felt that even those who were opposed to the policy of admitting women to the right of suffrage and to hold office, would condemn me if I did not do this. It was also sufficient for me that my own judgment approved this course.

With such assurances, these women chose to serve, and were duly impaneled as jurors. They are educated, cultivated Eastern ladies, who are an honor to their sex. They have, with true womanly devotion, left their homes of comfort in the States, to share the fortunes of their husbands and brothers in the far West, and to aid them in founding a new State beyond the Missouri.

And now as to the results. With all my prejudices against the policy, I am under conscientious obligations to say that these women acquitted themselves with such dignity, decorum, propriety of conduct, and intelligence as to win the admiration of every fair-minded citizen of Wyoming. They were careful, painstaking, intelligent, and conscientious. They were firm and resolute and for the right as established by the law and the testimony. Their verdicts were right, and after three or four criminal trials, the lawyers engaged in defending persons accused of crime, began to avail themselves of the right of peremptory challenge to get rid of the women jurors, who were too much in favor of enforcing the laws and pun-

lishing crime to suit the interests of their clients! After the Grand jury had been in session two days, the dance-house keepers, gamblers, and *demi-monde* fled out of the city in dismay, to escape the indictment of women Grand jurors! In short, I have never, in twenty-five years of constant experience in the courts of the country, seen a more faithful, intelligent and resolutely honest Grand and Petit jury than these.

A contemptibly lying and silly despatch went over the wires to the effect that during the trial of A. W. Howie for homicide, (in which the jury consisted of six women and six men,) the men and women were kept locked up together all night for four nights. Only two nights intervened during the trial, and on these nights, by my order, the jury were taken to the parlour of the large, commodious and well-furnished hotel of the Union Pacific Railroad, in charge of the Sheriff and a woman bailiff, where they were supplied with meals and every comfort, and at ten o'clock the women were conducted by the bailiff to a large and suitable apartment, where beds were prepared for them, and the men to another adjoining, where beds were prepared for them, and where they remained in charge of sworn officers until morning, when they were again all conducted to the parlor, and from thence in a body to breakfast, and thence to the jury-room, which was a clean and comfortable one, carpeted and heated, and furnished with all proper conveniences.

The cause was submitted to the jury for their decision about 11 o'clock in the forenoon, and they agreed upon their verdict, which was received by the court between 11 and 12 o'clock at night of the same day, when they were discharged.

Everybody commended the conduct of this jury, and were satisfied with their verdict, except the unfortunate individual who was convicted of murder in the second degree.

The presence of these ladies in court secured the most perfect decorum and propriety of conduct, and the gentlemen of the bar and others vied with each other in their courteous and respectful demeanor towards the ladies and the court. Nothing occurred to offend the most refined lady (if she was a sensible lady), and the universal judgment of every intelligent and fair-minded man present was and is, that the experiment was a success."

Of course it is a good deal a matter of taste these things, but we may be permitted to express a very profound feeling of thankfulness that our lot has not fallen in that part of the continent where there may be *females*, but nothing *feminine*. The Judge, however, seems to have done all he could to carry out with due care and propriety a law of very questionable utility.

SELECTIONS.

VERBAL EVIDENCE

TO VARY WRITTEN CONTRACTS—PRINCIPAL AND SURETY—BILL OF EXCHANGE.

Abrey v. *T. Crux*, C. P., 18 W. R. 63.

The Court of Common Pleas seem to have had some difficulty in applying in this case the well-known rule of evidence that a written contract cannot be varied or contradicted by verbal evidence of a contemporaneous or prior agreement. The action was by the holder of a bill of exchange against the drawer, the acceptor not having paid the bill at maturity. The defendant pleaded that he was a mere surety for the acceptor, and that he drew the bill upon the acceptor as such surety only, as the plaintiff knew, and that it was then agreed between the plaintiff, the defendant, and the acceptor, that the acceptor should deposit certain securities with the plaintiff, which, if the acceptor did not pay the bill, were to be sold by the plaintiff, and the proceeds applied in discharge of the bill, and that, until such sale, the defendant should not be liable upon the bill, and that the securities were duly deposited, but the plaintiff had not sold them. At the trial a verbal agreement, to the effect stated in the plea, was proved. The question was, whether such evidence was admissible, as the agreement was not in writing. It was held that evidence of the agreement was not admissible on the ground, as put by Bovill, C.J., that "the oral agreement stated to have been entered into in the plea goes to contradict the contract stated to have been entered into by the declaration. This oral condition is inadmissible in evidence to qualify the written agreement."

Keating and Brett, J.J., concurred in this view, Willes, J., expressed a doubt as to the propriety of thus deciding. It was, he says, an arrangement "how the surplus of the money owed was to be paid if it turned out that the funds in the holder's hands were not sufficient to satisfy the debt," and in that case the bill was to be enforced in order to pay that surplus. To admit such evidence would be contrary to the ordinary rules, but he thought that an exception to such rules ought in the case of bills of exchange to be made under circumstances like those of the present case.

It might at first sight appear that this case conflicts with those decisions which have established that verbal evidence is admissible to show that a writing which appears a complete contract was yet subject to a condition precedent which has not been performed. The principle, however, of *Pym* v. *Campbell* (4 W. R. 520) and *Rogers* v. *Haldey* (11 W. R. 1074), which, with other authorities, have established

this rule, apply only to cases where a condition *precedent* has not been performed. The principle of those cases is that there never was in fact any agreement at all between the parties. If it can be shown that there was a complete agreement between the parties verbal evidence of any condition subsequent is not admissible.

In *Abrey* v. *Crux* the condition alleged in the plea was a condition subsequent. The plea did not allege that the bill was not in fact completely drawn and issued; on the contrary, it admitted that there had been a complete bill on which the acceptor had become liable, but it set up an agreement that the defendant, the drawer (without whom the bill would have been an incomplete instrument), should not be liable unless the plaintiff performed a certain condition. This agreement contradicted the terms of the bill, and therefore could not be proved by verbal evidence.

Although the decision of *Abrey* v. *Crux* merely follows former authorities, the case is remarkable on account of the observations of Willes, J., who seems to have been dissatisfied with the application of the ordinary rules of evidence in a case like this. His objection to their application was apparently that such rules might cause great hardship. This is so no doubt, and the same may be said of almost all rules of evidence, which may sometimes, and probably occasionally do actually obstruct rather than facilitate the object of all evidence —viz., the discovery of the truth. It has, however, been considered that incalculably greater inconvieuce would follow if there were no rules to guide the admission of evidence, and the occasional evil is more than compensated for by the general advantage that is secured by the adoption of such rules.

These remarks apply as much to the case of *Abrey* v. *Crux* as to any other case. Willes, J., says, "Great injustice might have arisen if the plaintiff had wilfully destroyed these securities before the bill had become due. He could even then have enforced the bill against the defendant, who would have had no remedy at law." Although any opinion expressed by Willes, J., is deserving of the greatest respect, we cannot help doubting whether he is quite right in this instance. It has been held that if a creditor has securities in his possession, and loses them or gives them up to the debtor, the surety will, to the extent of such securities, be discharged (W. & H. L. C., 832, 2nd ed., and cases there collected). We should think, therefore, that if a creditor wilfully destroyed securities, *a fortiori* the surety would be *pro tanto* discharged; and that such facts would, if properly stated in an equitable plea, be a good defence to an action like *Abrey* v. *Crux*.

It is clear also that there was no great hardship in fact in *Abrey* v. *Crux*. The defendant, the surety, on paying the amount of the bill, would become entitled to the securities in the plaintiff's hands, and his plea admitted that he only had a defence to the action to the extent of the value of those securities. It seems, therefore, that there is no peculiar hardship in cases like *Abrey* v. *Crux*, and that there is no reason why the rules of evidence, which are salutary in other cases, should be relaxed in these; and we, therefore, think that the decision in fact given is more satisfactory than one in accordance with the views expressed by Willes, J., would have been.—*Solicitors' Journal.*

RIGHT OF A LANDLORD TO REGAIN POSSESSION BY FORCE.

"The law," says Mr. Justice Wilde, in *Sampson* v. *Henry*, 11 Pick. 379, 387, "does not allow any one to break the peace, and forcibly to redress his private wrong. He may make use of force to defend his lawful possession; but, being dispossessed, he has no right to recover possession by force and by a breach of the peace." A similar declaration was made by Lord Lyndhurst at Nisi Prius, in the case of *Hillary* v. *Gay*, 6 C. & P. 284 In neither case was so broad a proposition called for by the facts at issue; yet the doctrine thus advanced has been repeated without qualification by courts and text-writers, and applied in cases, or made the foundation for liabilities to which its application was warranted neither by authority nor on principle.

The subject we propose to consider is, how far a landlord, who regains by force the possession of the demised premises, after the possessory right of the tenant therein has determined, can be held subject therefor to any other liabilities than those which the Statutes of Forcible Entry and Detainer have expressly annexed to his act; and, secondly, what is nature and extent of these express liabilities.

By the Statutes of Forcible Entry and Detainer, whether in England or the United States, but three penalties are anywhere expressly imposed; first, fine or imprisonment; secondly, restitution upon a conviction, or, when the force is found upon inquisition or otherwise by a justice or a jury, in some localities purely a criminal, and in others also a civil, consequence of the act; and, thirdly, a special action on the statute with treble damages, which is given by the English statute, and by those of a few of the United States.* But, by implication from the statutes, the employment of force by the landlord in regaining possession has also been held to render him liable in trespass for assault, or for removal of the tenant's goods, and in a few instances also to an action of trespass *qu. cl.* We propose to proceed in our inquiry in the inverse order to this enumeration, and to inquire, first, how far an action of trespass at common law is warranted by the authorities, and then what is the extent and application of the statutory penalties proper.

That a tenant whose right to possession is determined either by the expiry of his term, by forfeiture, or by notice to quit, and who is therefore a tenant at sufferance, and himself a wrong-doer, may yet treat his lessor, who is

* Of Vermont, Connecticut, New York, and Wisconsin

entitled to immediate possession, as a trespasser, and relying on his right, maintain trespass *qu. cl.* against him, merely because the right of the latter has been forcibly asserted, seems so extraordinary a proposition, that if not warranted by express words of the statutes, nothing but the clearest implication from their language could justify it, and as the removal of the tenant upon or after entry is but a part of the act of entry, and depends on the legality of the possession thereby gained, for its justification, the action for assault or for the removal of the tenant's goods, must stand or fall with the action of trespass *qu. cl.*

It is admitted, it should be remarked, in the first place, that, at common law, the lessor was liable to no action for forcible entry or expulsion of the tenant; but at most to an indictment for a breach of the peace, punishable only by fine or imprisonment.* But the ground taken is, that the express prohibition of such entry, with a penalty therefore, by the Statutes of Forcible Entry and Detainer, made the act civilly illegal and incapable of revesting the lessor with a lawful possession, and that for such entry or any assertion of possession based thereon, the lessor became liable like any mere stranger to the lessee.

The English statutes on this subject, from which, with some variations, all those in the United States have been derived, were, excepting only some supplementary enactments not material here, three in number; 5 Rich. II. c. 8; 8 Hen. VI. c. 9, and 21 Jac. I. c. 15. By the first, it was declared "That none from henceforth shall make any entry into lands or tenements but in case where entry is given by law; and, in such case, not with the strong hand, nor with multitude of people, but only in a peaceable and easy manner;" and fine and imprisonment were imposed upon conviction for such forcible entry. By the Stat. 8 Hen. VI. c. 9, forcible detainer, as well as forcible entry, was made criminal, an action of trespass or assize of novel disseisin on the statute with treble damages was given to the party disseised, and restitution on the finding of the force was also to be made to the party *disseised*, and as this term was held to imply a freehold, the right to have restitution was by the Stat. 21 Jac. I. c. 15, extended to tenants for years also.

It will be perceived, that while these statutes make a violent entry or detainer an offence, they also expressly specify the penalties incurred, and thereby exclude the idea of any implied liability, except the indictment at common law, and it has accordingly been held with increasing definiteness by the English courts that these statutes are special, subjecting the offender only to the penalties named therein, and do not affect the civil character of the act. But two decisions—one of them an extra-judicial Nisi Prius ruling, and the other a majority opinion—break the nearly uniform current of authority, and treat the lessor as a trespasser, and liable as such to his tenant at sufferance. Neither of them however—although they are the sole reliance of the American courts that have held the lessor to such a liability—sustain an action of trespass *qu. cl.*, but only of trespass for assault, and both were shaken and finally overruled by repeated decisions in the Courts of Exchequer, King's Bench, and Common Pleas.

For the doctrine seems early to have been established that the removal of the tenant by force, unless excessive, was not of itself the subject of a personal action, but depended on the title to the possession, and hence that *liberum tenementum* was a good plea to such a removal as well as to trespass *qu. cl.* Thus in *Taylor* v. *Cole*, 3 T. R. 292, in an action of trespass *qu. cl.* with a count for expulsion, a plea of justification of the entry under process was held a defence to both counts. The occupant yielded without forcible resistance to the expulsion, but it was held generally that expulsion was mere matter of aggravation to the trespass to the land, and was answered with this by a plea of title unless there was undue force and the plaintiff new assigned for an assault. The principle established by this case was, therefore, that a party regaining possession by title might assert that possession and expel the occupant with any proper amount of force. The sufficiency of title, as a justification, was again declared in *Argent* v. *Durrant*, 8 T. R. 403, where a lessor was held not liable for entering and pulling down a wall, while the tenant held over, and was carried still further in *Butcher* v. *Butcher*, 7 B. & C. 399, where a freeholder after entry was allowed to treat the party who persisted in remaining as a mere wrong-doer, and to maintain trespass *qu. cl.*, against him.

While these last two cases sustain the right to expel after a peaceable entry, they do not determine how much force in entering could be justified under color of title, or whether a violent entry, because criminal, was civilly illegal. But in *Taylor* v. *Cole*, *supra*, the principle that a legal possession can be acquired by an entry though made with such force as to be criminal under the Statutes of Forcible Entry and Detainer is very distinctly intimated by Lord Kenyon, who says, "It is true that persons having a right are not to assert that right by force; if any violence is used it becomes the subject of a criminal prosecution." And in *Taunton* v. *Costar*, 7 T. R. 431, the same eminent judge distinguished between the the penal consequences of a forcible entry and its civil effect still more clearly, saying, "Here is a tenant from year to year whose term expired. . . . . He now attempts to convert the lawful entry of his landlord into a trespass. If an action of trespass had been brought, it is clear the landlord could have justified under a plea of *liberum tenementum*. If, indeed, the landlord had entered with a strong hand to dispossess the tenant by force, he might have been indicted for a forcible en-

* Hawkins, Pl. Cr. B. 1, ch. 28, sec. 3; *Dustin* v. *Cowdrey*, 23 Vt. 631, 635.

try, but there can be no doubt of his right to enter upon the land," &c. In *Turner* v. *Meymott*, 1 Bing. 158, the point was directly decided. There the landlord, on the determination of a tenancy at will, broke into the house with a crowbar, tenant being absent, but having left furniture in the house, and resumed possession. It had been settled long before that such an entry into a dwelling-house was *per se* indictable.* The tenant brought trespass, *qu. cl.* on the ground that the entry, being a criminal act, was not a legal repossession, but a trespass, and obtained a verdict. It was strenuously urged in its support, that a right to regain possession by force would render the action of ejectment superfluous, and that it was absurd to hold an act legal for which an indictment lay. But the court at once set the verdict aside, saying, "It must be admitted that [the landlord] had a right to take possession in some way. . . . If he has used force that is an offence in itself, *but an offence against the public*, for which if he has done wrong he may be indicted.

It seemed well settled, therefore, that a legal possession might be regained by force with no other risk than that of an indictment; and no distinction was taken between force to the premises and to the person of the tenant, nor could any be made, as each is alike indictable under the statute; † and further, that when the lessor had repossessed himself, he could expel the occupant with necessary force. So stood the law when the case of *Hillary* v. *Gay* arose at Nisi Prius. The action was trespass *qu. cl.*. with counts for expulsion, &c., and the facts were that after the plaintiff's tenancy at will had expired, the landlord distrained, and then entered peaceably, and, when in, removed plaintiff's wife and goods without unnecessary force. The defendant pleaded the general issue, and relied on his title, citing *Turner* v. *Meymott*, to show his right to assert that title by force; but Lord Lyndhurst, who presided, distingnished that case on the ground that there the tenant was not in possession, adverted also to the fact that here the tenancy had not determined, as the landlord by distraining had reaffirmed it, and, in a brief opinion, said, "The conduct of the landlord cannot be justified. If he had a right to the possession, he should have obtained that possession by legal means." This is the whole case. The landlord had no right after distraining to enter at all, as by that act the tenancy was restored: (Taylor, Land, & T. sec. 485), and he was liable for his entry without regard to force. What was said about force, was therefore extra-judicial; and whatever its weight, must, as there was no forcible entry at all, be referred to the count for expulsion. The decision amounts therefore, so far as our inquiry is concerned, only to a *dictum*, that, after a peaceable entry, the landlord is liable in trespass for assault, if he uses actual though moderate force to remove the tenant. But this would overrule *Butcher* v. *Butcher*, *supra*, which, it may be remarked, was not adverted to in this case, where a legal possession, once regained, left the occupant who persisted in remaining, liable to be treated as a mere trespasser.

When, therefore, the question next arose, the ground was taken, that the entry was not complete until possession was wholly regained, and hence, that, if the landlord after a peaceable entry used force to expel, his original entry became by relation forcible, and he was liable in trespass for assault, although not in trespass *qu. cl.* This anomalous doctrine was set forth in *Newton* v. *Harland*, 1 M. & G. 644, the second and only other English case which restricted the landlord's right to regain possession by force. The action was trespass for assault merely, and not trespass *qu. cl.* The lessor had entered quietly on the determination of the tenant's right of possession, and expelled him with moderate force. He pleaded lawful possession, *molliter manus*, on which issue on the above facts, Parke, B., directed a verdict for the defendant. A new trial was granted in the Common Pleas, Tindal, C. J., thinking that the facts had not been fully brought out, and expressing a doubt if the lessor could assert his right with force. On the second trial, Alderson, B., ruled that a lessor could expel a tenant holding over, if he "used no unnecessary violence," and a second verdict was found for the defendant. On the case again coming before the Court of Common Pleas, Tindal, C. J., held that there were two questions involved; first upon the right of the lessor to expel, after acquiring by entry peaceful possession; upon which he gave no opinion, and which in fact had already been decided by *Taylor* v. *Cole* and *Butcher* v. *Butcher*, *supra;* and second on the character of the possession acquired by the lessor by an entry with force to the person of the tenant, which he considered this to be. Such a possession he held to be unlawful, because gained by a criminal act. Erskine and Bosanquet, JJ., concurred. It was admitted, however, that the landlord could, after a peaceable entry, if the tenant remained in possession, maintain trespass against the latter; and also that, even for a forcible entry, the tenant could not have trespass *qu. cl.* against the landlord, for want of title; p. 667. How this liability of the tenant to be treated as a trespasser after the landlord's entry could be reconciled with the immunity claimed for him from expulsion with force, such as might be applied to any trespasser, was not explained. Coltman, J., dissented, holding that the right of the lessor to re-enter, even if force was used, was well established by the cases cited *supra*, and that having by his entry revested himself with a legal possession, his tenant at sufferance became a trespasser, and was liable to expulsion like any "mere wrong-doer."

This case, it will be seen, gives no countenance to an action of trespass *qu. cl.* This.

* *Rex* v. *Bathurst*, 3 Burr. 1710, per Mansfield, C. J., Wilmot and Yates, JJ.

† *Rex* v. *Bathurst*, *supra*; *Willard* v. *Warren*, 17 Wend 257, 262.

was expressly declared by Erskine, J. *ubi supra*. In so far as Lord Lyndhurst's *dictum* in *Hillary* v. *Gay* has been regarded as supporting such an action, it is here directly repudiated. But the doctrine maintained is, that force to the person of the tenant in possession is not justified by entry under title, because by relation such an entry is affected by the violence which followed it, and is illegal and void. And yet after such entry the tenant has not rightful possession enough to sue his lessor in trespass *qu. cl.*, for his entry, although he could have maintained that action against a stranger. The lessor's entry is, therefore, at once unlawful and yet not actionable, an injury to the tenant for which he nevertheless cannot sue. How it can be at the same time unlawful and justifiable is not attempted to be explained

Nor does this anomalous doctrine derive mere weight of authority from this case. The opinions of the three judges who decided it are quite balanced by the judgments of the dissenting judge, and of Barons Parke and Alderson. For the rulings of these latter judges at Nisi Prius in this case were not hasty enunciations, abandoned when controverted by a higher court, by were reasserted by them, with distinct emphasis, in the next case which arose —*Harvey* v. *Brydges*, 14 M. & W. 437—Parke, B., laying down the law in the broadest manner in these words: "Where a breach of the peace has been committed by a freeholder, who, in order to get possession of his land, assaults a person wrongfully holding possession of it against his will, although the freeholder may be responsible to the public in the shape of an indictment for a forcible entry, he is not liable to the other party. I cannot see how it is possible to doubt, that it is a perfectly good justification, that the plaintiff was in possession of the land against the will of the defendant, who was owner, and entered upon it accordingly, even though in so doing a breach of the peace was committed." Alderson, B., added, "may a freeholder lawfully enter on his own premises with any degree of force? I have still the misfortune to retain the same opinion that I expressed in *Newton* v. *Harland*." A plea of *liberum tenementum* was accordingly held a good answer both to trespass *qu. cl.*, and for expulsion also. The amount of force did not appear; but even if there were no actual force, and these statements of law went beyond the facts of the case before the court, they must now be considered conclusive, as the language of Parke, B., has been adopted in terms as a controlling authority in a late and parallel case where actual force was used, arising in the same court that decided *Newton* v. *Harland*: *Blades* v. *Higgs*, 10 C. B. N. S. 713, 721.

The language of Parke, B, is, it will be seen not limited to a denial of the anomalous doctrine of forcible entry by relation, propounded by the court in *Newton* v. *Harland*, but broadly lays down the right of entry by force, and its competency to confer a legal possession and consequent right to expel by force; and the decisive adoption of this broad proposition by the court in *Blades* v. *Higgs* is conclusive as to the position of the English law on this point at the present day. But without disposing of the questions involved in this inquiry merely by referring to this latest decision, we find that the cases prior to this and since *Harvey* v. *Brydges* have reaffirmed with equal distinctness the positions taken by the earlier cases first stated, and as distinctly have denied the authority of *Newton* v. *Harland*.

The doctrine asserted in this latter case and in *Hillary* v. *Gay*, that the presence of the tenant restricted the lessor from using force was effectually disposed of by *Davison* v. *Wilson*, 11 Q. B. 890, where title was held on demurrer a sufficient plea to trespass *qu. cl.*, for entering, &c., "with a strong hand" on the tenant's possession in such a manner as to constitute an indictable offence; and even more decisively by *Burling* v. *Read*, *ib.* 904, where the same plea was held good to trespass, *qu. cl.* for a forcible entry made on the possession of the tenant, and for destruction of the premises, and a plea of *molliter manus* to a count for assault for the forcible removal of the tenant. In *Davis* v. *Burrell*, 10 C. B. 821, the court in terms denied the authority of *Newton* v. *Harland*, and in fact overruled it, holding title a good plea to trespass for assault against the lessor who had re entered during the tenant's temporary absence, and forcibly held him out; since no distinction can be drawn between forcibly putting and forcibly keeping out of possession, and the facts were on all fours in the two cases. On the other hand, the sufficiency of the plea of title not only to trespass *qu. cl.* but to a count for expulsion also, unless this last was a distinct or excessive assault, was reaffirmed in *Meriton* v. *Coombes*, 1 Lowndes, M. & P. 510; where on the new assignment by the plaintiff of the expulsion, a demurrer was sustained, as there was no assault; since the expulsion was only an injury to the possession, and covered by the plea of title; in other words that the title or right to immediate possession gave also the right to expel with necessary force; and in *Pollen* v. *Brewer*, 7 C. B. N. S. 371, where, on trespass against the lessor, with separate counts for assault and *qu. cl.* with expulsion, the court held the latter not maintainable upon a plea of title, as the tenant was "clearly a trespasser," and that "the landlord had a right to enter and turn the tenant out," and the latter could only recover for the excessive force under the count for assault.

In all this long line of cases not one sustains the action of trespass *qu. cl.*, and it is distinctly admitted not to lie by the only decision adverse to the lessor's right to use force; and it is as distinctly the result of authority that no action lies for force to the person, unless this is excessive, and the distinction, if any, between force to the person and to the premises —the so-called doctrine of vacant possession —meets not the slightest countenance.

(*To be continued.*)

SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

NOTES OF NEW DECISIONS AND LEADING CASES.

FRAUDULENT CONVEYANCE—MORTGAGE—PURCHASE FOR VALUE WITHOUT NOTICE.—Where an insolvent person made a fraudulent mortgage of all his unincumbered property to his son to secure an alleged debt of $400 to the son, and a fictitious debt of $600 to the mortgagor's wife; and the son shortly afterwards transferred the mortgage, for value, to a person who had notice of the insolvency, and of other circumstances fitted to awaken his suspicion as to the *bona fides* of the mortgage, it was *held*, that he could not defend himself as a purchaser without notice of the fraud

In case of a purchase of a mortgage security recently given on all his real estate by an insolvent father to his son, the purchaser, if he has notice of the insolvency, should, before completing his purchase, satisfy himself by proper inquiries, that the mortgage was *bona fide*.—*Totten* v. *Douglas*, 16 U. C. Chan. Rep. 243.

BILL TO ENFORCE DOUBLE LIABILITY OF SHAREHOLDERS—PLEADING—PARTIES.—A bill will lie in equity, at the suit of a creditor, to enforce the double liability of the shareholders of an insolvent company.

But such a bill must be on behalf of all the creditors.—*Brooke* v. *The Bank of Upper Canada*, 16 U. C. Chan. Rep. 249

MAGISTRATES, MUNICIPAL, INSOLVENCY, & SCHOOL LAW.

NOTES OF NEW DECISIONS AND LEADING CASES.

CAVALRY TROOP — QUARTER-MASTER — HORSE EXEMPT FROM DISTRESS.—Plaintiff was, under commission from the Governor General, dated 28th May, 1859, appointed *quarter-master* in a troop of volunteer militia cavalry: *Held*, that under the general powers conferred by 22 Vic. ch. 18, sec. 16, the commander-in-chief might, at the date of this commission, have appointed a quarter-master to be attached to a cavalry troop, and that so long as he was serving with or attached to such troop he was an officer thereof, and his horse protected from distress under sec. 31 of 18 Vic ch. 77.—*Davey* v. *Cartwright*, 20 U. C. C. P. 1.

JURORS' EXPENSES—ARREARS DUE BY CITY FOR SEVERAL YEARS—COUNTY NO RIGHT TO RECOVER.—It is the duty of the county, under the act relating to jurors, each year to ascertain and demand from the city its proportion of the jury expenses for that year, and unless this is done, the accummulated arrears of several years, during which there has been an omission by the county to ascertain and demand any sum, cannot be recovered.

18 Vic. cap. 100, was not repealed by 22 Vic. cap. 100, but the provisions of the former act were thereby imported into one Consolidated Act relating to juries.

Quære, as to the proper party to sue in the case of assets belonging to a union of counties, and to recover which no suit is brought till after the dissolution of the union.—*Corporation of Frontenac* v. *Corporation of Kingston*, 20 U. C. C. P. Rep. 49.

INSOLVENCY—APPEAL—PRACTICE.—Sec. 27 of the Insolvent Act of 1865 (29 Vic. ch. 18) does not enable the creditors of a deceased person to put his executors or administrators into insolvency in their representative character.—*In re Sharpe, an Insolvent*, 20 U. C. C. P. 82.

INDICTMENT — CUTTING TIMBER — STATEMENT AND PROOF OF PROPERTY—VARIANCE.—Where an indictment charged defendant with procuring certain persons to cut trees, the property of A., B., and C., growing on certain land belonging to them, and the evidence shewed that the land belonged to them and to another as tenants in common: *Held*, that a conviction could not be supported.—*Regina* v. *Quinn*, 29 U. C. Q. B. 158.

ONTARIO REPORTS.

CHANCERY.

(Reported by ALEX. GRANT, ESQ., *Barrister-at-Law, Reporter to the Court.)*

DUNLOP v. THE TOWNSHIP OF YORK.

Municipal corporation—Compensation to mortgagee for land taken for highway—Dedication—User.

Land which had been mortgaged by the owner, was taken by a township council for a road, and the compensation having been ascertained by award, the corporation paid the amount to a creditor of the mortgagor, by whom it had been attached:

Held, that the mortgagee had the prior right; that his mortgage being a registered mortgage, the corporation must be taken to have acquired the land with notice of it; and that the mortgagee was entitled to recover the amount from the corporation with costs.

In a new country like Canada, user of a road by the public is not to be too readily used as evidence of an "intention" on the part of the owner to dedicate it.

(16 U. C. C. R. 216.]

Examination of witnesses and hearing.

Mr. *Strong*, Q. C., and Mr. *Barrett*, for the plaintiff.

Mr. *Blake*, Q. C., and Mr. *Bain*, for the defendants, *The Corporation of York*.

The bill was *pro confesso* against the defendant *John A. Scarlett*, the mortgagor.

SPRAGGE, V.C.—Apart from the question raised by the municipality, that the piece of land belonging to *John A. Scarlett*, and which he had mortgaged to the plaintiff with other land adjoining, was and had been dedicated to the public before the passing of the by-law establishing it as part of a public highway, I think that section 326 of the Municipal Institutions Act, C.S.U.C. ch. 54; entitles the plaintiff to a decree. The section runs thus, "all sums agreed upon or awarded in respect of such real property shall be subject to the limitations and charges to which the property was subject" Here was real property taken; and "such real property" as is referred to, and it was subject to a charge, the mortgage to the plaintiff Money was awarded to be paid in respect of it, and that money is made subject to the same charge. The municipality instead of paying it to the mortgagee, or holding it to answer his charge, paid it to a creditor of the mortgagor, under certain garnishee proceedings. If the mortgagee was entitled to it, the municipality made this payment in its own wrong, as I thought and held in *Furquhar* v. *The City of Toronto*, 12 Gr. 191.

Then, if the mortgagee was entitled, can the municipality for any reason say, that the payment they made was a proper payment, or a payment to be excused as against the mortgagee The mortgage was registered, and registry is by the law made in equity to constitute notice to all persons claiming any interest in the lands comprised in the registered instrument, subsequent to the registration. It is contended that this applies only to persons claiming under the party, not to those claiming by paramount title. Assuming it to be so, the municipality, at any rate, do not claim by paramount title. Their title is derived through the same party as is the title of the mortgagee. It is true that, for public reasons, the assent of the party was not requisite; still, the municipality were in law grantees, and the owner of the land taken, is in such cases, grantor *in invitum* of the land taken. The municipality cannot take by title paramount, when under the statute they pay to the owner the price of the land they get, which price may be fixed by agreement between them They are purchasers from the owner, and acquire title from or through him; and in no proper sense hold by title paramount. I think the registration was notice to them of the plaintiff's mortgage.

It is further contended, that if the claim for compensation had been made by the mortgagee, the municipality might have made other objections besides those made by them to the claim of the mortgagor, *e g.*, that they might say that the road being kept in repair by the corporation was a benefit to the owner The statute fixes the principle upon which compensation is to be made: it is for any damages necessarily resulting from the exercise of the powers of the municipality "beyond any advantage which the claimant may derive from the contemplated work" It was the duty of the municipality to concede nothing to the mortgagor, and I cannot hear them say that they did concede anything, or that they might have done so. That which it is suggested they might have urged in reduction of compensation, or as an element of consideration in fixing the price, I ought to assume that they did urge. There can really be no reason for two scales of compensation; for this reason among others, that it is the owner and he alone that is compensated; for it is he that is compensated whether the money passes directly into his own hands, or goes to reduce his debt to a third person.

Apart from the express enactment, the principle upon which compensation is allowed shews how just it is that the price to be paid should be subject to the charge upon the land. The compensation is measured by the diminution in value; and so unless the charge upon the land were made a charge upon the compensation, the security would be impaired, at the expense of the chargee.

It is not necessary to consider whether the municipality was right in dealing with the mortgagor alone in fixing the amount of compensation to be paid The mortgagee does not seek to disturb what was done in that respect. Supposing him to have been entitled to intervene, he may waive his right; and adopt what was done, and he is willing to do so It cannot lie in the mouth of the municipality to say that they dealt behind his back with that in which he had an interest, and that for that reason, his position shall be worse than if they had given him an opportunity to protect it He now acquiesces, thinking probably that his interests were protected sufficiently by one who had a common interest with himself, and it cannot lie with the municipality to open the matter

There is besides really nothing to open. The moment the sum was awarded it was in the hands of the municipality impressed with a trust in favor of the mortgagee, and it was so when paid away by the municipality It is in principle the case of a purchaser paying his purchase money to the mortgagor instead of the mortgagee with a registered mortgage: with this difference that in the case of an ordinary purchaser the land remains liable, while in the case of the municipality it is the purchase money that is made liable, the land itself becoming public property.

The other position taken by the municipality, that the land was already dedicated; and so was already a public highway, is a peculiar one. It is that the land was already what they by solemn acts professed to make it. Their by-law is entitled, "A By-law to open and establish a Public Highway in the Township of York," and the enactment is, "that a new line of road from Weston to Dundas Street in the Township of York, surveyed and laid out by Messrs. Dennis & Gossage, provincial land surveyors, known and described as follows," then follows a description of the line of road, such line running through, among other lots, those comprised in the plaintiff's mortgage.

But assuming it to be open to the municipality to shew that the land comprised in the plaintiff's mortgage had been in fact dedicated to the public by the mortgagor before the making of his mortgage, or by a former owner, I am of opinion that the evidence fails to establish any dedication. Dedication is, as has been often observed, a question of intention. User by the public, acquiesced in by the owner of the land, may be evidence of such intention; as was said by Lord Wensleydale, then Baron Parke, in *Pool* v. *Huskinson*, 11 M. & W. 830, "there must be an

animus dedicandi of which the user by the public is *evidence* and no more; and a single act of interruption by the owner is of much more weight upon a question of intention than many acts of enjoyment."

There was for many years a line of road running through private property; the road ran from Dundas street to Weston, as does the road established by the by-law of the Township of York, but unlike the road established by the township, the whole of which runs through the township, this old road ran partly in the township and partly (the greater part) in the township of Etobicoke. The old road as well as the new ran across lots 6, 7, 8, & 9, in York; lots 7 & 8 are those comprised in the plaintiff's mortgage. The whole line of the old road ran through the property of Mr. John Scarlett, the father of the mortgagor, with the exception of one lot adjoining the village of Weston. This old road was in existence some forty years ago, and has been used by the public ever since, unless discontinued upon the opening of the new road; but though used by the public it is evident that such user was permissive only and with a continuous claim of ownership by Mr. Scarlett. Mr. Scarlett had several sons, four at any rate, and appears to have apportioned the greater part of his large property among those sons from time to time; without, however, at first giving them title; and retaining the control of the road throughout the whole of the property until at all events, he gave them title. He placed his son, the mortgagor, upon lots 7 & 8 some twenty years ago, and afterwards did considerable work in planking and in excavation upon the part of the road running through those lots. When he gave him a title to them does not appear. The mortgage was made in November, 1860, and it may be assumed to have been before that time. According to the evidence of Mr Wm Gamble, who knew the road intimately from 1835 to 1859 a toll-gate was placed upon the road by Mr. Scarlett, the father, about 1854 or 1855; before that Mr. Gamble says the road was always a private road for Mr. Scarlett, the father, and for his sons; and that the public were absolutely excluded as Mr. Gamble explains, for he says that when he first knew it it was travelled by the public, but he adds that Mr. Scarlett would not let them go through unless it served his purposes; and he says, "I know of my own knowledge that he stopped people on it and sometimes turned them back;" and he adds that there were gates across the road as far back as he can remember to prevent cattle from straying along the road, and that these gates also prevented people from travelling along the road. Another gentleman speaks of the toll-gate as put up at a much earlier date, he thinks about 1843, and and he is probably right, as he compounded with Mr. Scarlett for the toll.

The date of the erection of the toll-gate is not material. The first gate in York was on lot 8, it was afterwards removed to lot 9. Several witnesses were examined: they differ somewhat as to dates, and as to some minor circumstances. They certainly do not prove any dedication by Mr. Scarlett, the father; their evidence upon the whole is quite against it, and I hardly think it can be seriously contended that there was any dedication by him. But it is contended that ever since the removal of the toll-gate from lot 8 some fifteen or twenty years ago, the son, the mortgagor, has allowed the public the undisturbed use of a line of road through his property; and that this is evidence of an intention to dedicate. What would be the proper view, if this were not part of a line upon which toll was being actually collected, it is not necessary to say; but the fact of its being a part of such line makes it impossible to regard it as dedicated. As long as the title remained in the father, and as long as he retained control over the line, he took toll for passing along the whole line, and he certainly dedicated no part of it. When the mortgagor acquired title is not shewn. It may have been any time before November, 1860; but suppose it to have been at an earlier date, and that he had a right to close the line; and allowed its use by the public, still the character of his conduct would be not that of a dedication to the public, but of permitting the line to continue to run through his land as a feeder to the rest of the line. There is no room to infer an *animus dedicandi* from such a course of conduct.

As further evidence against dedication, is the fact that this line of road had been kept in repair by the proprietors of the road and that no public money or labor was expended upon it, a fact that was commented upon as against the fact of dedication by Lord Denman in *Davies* v. *Stephens*, 7 C. & P. 571.

I may add that in a new country like Canada it would never do to admit user by the public too readily as evidence of an intention to dedicate. Such user is very generally permissive, and allowed in a neighbourly spirit, by reason of access to market or from one part of a township to another, being more easy than by the regular line of road. Such user may go on for a number of years with nothing further from the mind of the owner of the land, or the minds of those using it as a line of road, than that the rights of the owner should be thereby affected.

I have dealt with the question of dedication, though I doubt very much whether it was open to the township to raise it. If upon the award being made the sum awarded was impressed with a trust in favor of the mortgagee, I should incline to think that the township could not go behind the award; but this point was not raised by the plaintiff's counsel: and I have thought it better to dispose of the question of dedication as well as of the question of title to the money awarded.

A question was made as to the *quantum* to which the plaintiff is entitled, supposing him to be entitled to something. The sum awarded appears to have been, partly in respect of the value of the land taken, simply as so much land at so much per acre, and partly by way of compensation for road work, excavation and planking done upon the line of road; and it is contended that the mortgagee is only entitled to the former. I do not agree in this. In the first place, the evidence leads me to think that the planking and excavation were the work of Scarlett, the father, and consequently upon the land at the date of the plaintiff's mortgage; but if not so, the mortgagee is entitled not to the bare land merely, or to the land as it stood at the date of the mortgage, but also to any improvements made by the mortgagor since; to the

benefit of anything done that has enhanced the value of the land. The compensation under the statute is for damages resulting from the taking of the land: the award therefor must be taken to be for so much as the property of the claimant was thereby reduced in value: to apply it to the case of a mortgagee, so much as his security was impaired.

It appears, however, that some deductions were made from the gross sum awarded; the award being that each party should pay one half of the costs of the arbitration and award. The whole cost of this was $160. The sum payable, therefore, was $520; and that, the plaintiff is in my judgment entitled to claim from the township, with interest from the date of the award, or whenever it was made payable. The award is not among the papers put in. The decree will be for the plaintiff, with costs, to be paid by the township.

ELECTION CASE.

(Reported by HENRY O'BRIEN, ESQ., *Barrister-at-Law.)*

REG. EX REL. MCGOUVERIN V. LAWLOR.

Quo warranto summons—Forfeiture of seat.

A summons in the nature of a *quo warranto*, under the Municipal Act, is not an appropriate proceeding to unseat a defendant who has forfeited his seat by an act subsequent to the election, the election having been legal.

[Chambers, March 8, 1870, *Mr. Dalton.*]

This was a summons in the nature of a *quo warranto* under the Municipal Act, complaining of the election of the defendant, as Reeve of the Municipality of the Township of Alfred, in the County of Prescott.

The facts appeared to be, that the defendant filled the office of Reeve for the year 1869: that at the election which took place on the 3rd January last, the defendant was again elected, and accepted office, and afterwards, on the 24th January last, was convicted before two justices "for that he the said George Lawlor, did on the 21st day of December, 1869, at the Township of Alfred aforesaid, sell and barter spirituous liquors without the license required by law," and he was fined $20 with $5 costs.

Mr. Clarke (Cameron & Smart) for the relator, claimed that the defendant should be unseated, the defendant having forfeited his seat under 32 Vic. (Ont.) cap 32, secs. 17, 22, 25.

W. S. Smith shewed cause, contending that the act did not cover a case where the election or qualification of the defendant was not called in question, but only matters subsequent thereto; and he alleged matters against the conviction not necessary to be noticed here.

MR. DALTON—The only cause alleged by the relator for unseating the defendant is the above conviction.

This proceeding, in the nature of a *quo warranto* summons, is entirely statutory. Section 130 of the Municipal Act contemplates the case of the *validity of the election* being contested, and sec. 131, which prescribes the proceeding for the trial, enacts, that if the relator shows by affidavit to the judge reasonable grounds for supposing that the election *was not legal*, or, *was not conducted according to law*, or, *that the person declared elected thereat was not duly elected*, the judge shall direct a writ of summons in the nature of a *quo warranto* to be issued to try the matters contested; and, throughout the subsections of sec. 131, the language is consistent. It is said in subsec. 9: *The judge shall in a summary manner upon statement and answer, without formal pleadings, hear and determine the validity of the election.*

Now from the time of his election and acceptance of office to the 24th January, the defendant properly filled the office, because, 1st, the election was legal; 2nd, it was conducted according to law, and 3rd, the defendant declared elected thereat was duly elected. The election was therefore valid, but by his conviction on that day it is alleged that the defendant forfeited his office, which till then he had rightly held. By the 17th sec. (Statutes of Ontario), 32 Vic. cap. 32, it is provided "If any member of any municipal council shall be convicted of any offence under this Act, (which this conviction is), he shall *thereby* forfeit and vacate his seat, and shall be ineligible to be elected to, or to sit or to vote in any municipal council for two years thereafter, &c."

Whether such a case would, or would not, be within secs 120, 124 & 125 of the Municipal Act, no doubt the law affords an appropriate remedy, but the present proceeding is, by express language of the Act, as it seems to me, confined to cases which exclude the cause now alleged, as an objection against the defendant's election.

Judgment should therefore be for the defendant, with costs.

Judgment for defendant with costs.

PRACTICE REPORTS.

IN RE POTTER AND KNAPP.

Arbitration — Notice of meetings — Proceeding ex parte — Duty of Arbitrator and dominus litis.—Costs.

Held, 1.—That before an arbitrator undertakes to proceed *ex parte*, he should satisfy himself by proper evidence that necessary notice of the appointment has been served, so as to enable the party notified to appear, and in case of non-appearance, it should clearly be shewn that such absence is wilful.

2. That the party acting in the prosecution of the arbitration ought to take care that all proper notices are served on the opposite party and should be able to shew, if he desires to proceed *ex parte*, that the other party has been properly notified, and that he wilfully absents himself; nor should the arbitrator proceed *ex parte* unless the notice conveys the information, that the arbitrator will proceed *ex parte* if the party served does not attend, nor should he so proceed, if a reasonable excuse for his inability to attend is given.

A party, therefore, who had not fulfilled his duty in this respect was ordered to pay costs, and the case was referred back.

[Practice Court, Hil. Term, 1870, *Gwynne, J.*]

O'Brien for Knapp, hereafter called the defendant, obtained a rule *nisi* calling upon Potter, hereafter called the plaintiff to shew cause why the award made in this cause should not be set aside, and vacated upon the following, among other grounds, viz:—On the ground of misconduct of the arbitrator: 1st. In having proceeded with the said reference and heard evidence on behalf of the plaintiff in the absence of the defendant and without notice to him, and without giving notice to the defendant of the time, if any, fixed for proceeding with the said reference, and without giving said defendant an opportunity of examining the remainder of his witnesses, or being heard

on the examination of the witnesses of the plaintiff before said arbitrator, subsequent thereto; and, because the said arbitrator exceeded his authority under the submission in having assessed the costs of and incidental to the award, and ordered payment of the same.

The rule was founded mainly upon an affidavit of the defendant, and one Henderson.

J. B. Read shewed cause, and filed four affidavits, namely, of Mr. Geo. Whates, McCrea, the plaintiff himself, and one Chase. He contended that the award should stand, the fault, if any, having been that of the defendant

O'Brien contra cited *McNully* v. *Jobson*. 2 Prac Rep. 119; *Waters* v *Daly*, Ib 202; *Williams* v. *Roblin*, Ib. 234; *In re Manley et al.*, Ib. 354; Russell on Awards, 179, 191, 199, 207, 655; *Gladwin* v. *Chilcote*, 9 Dowl. 550 The main facts of the case appear in the judgment of

GWYNNE, J.—It appears from the affidavits that neither plaintiff nor defendant had any person attending the arbitration for them as counsel or attorney, but that they acted each as his own counsel.

Now from these affidavits I am to say whether I am satisfied that the defendant wilfully abstained from attending the arbitration, although he had ample notice of its several sittings, and, whether the circumstances established by his affidavits shew that the arbitrator was justified in proceeding *ex parte*, or whether the arbitration was conducted in any part in the absence of the defendant, without his having had that reasonable notice of the proceedings which he was entitled to, and without which the arbitration would be divested of its judicial character, and the solemn duty of administering justice between parties be degraded into a farce.

I take it to be sufficiently established that the arbitration opened on the 28th May, which day the arbitrator says he formally appointed, by an appointment endorsed on the bond of submission. By reference to this bond, which was filed on the motion to make it a rule of court, I find that this is so, the appointment being dated the 22nd May for Friday the 28th May, and signed by the arbitrator Upon the 28th May, it appears that the plaintiff's witnesses were examined, but whether his case was closed upon that day, or upon the 4th June, does not appear; however, there is no complaint made of any of the proceedings of the 28th May Referring again to the submission, I find an endorsement thereon, also signed by the arbitrator in these words: "adjourned till Friday, June 4th, by consent of parties, J Higgins, Arbitrator." So far the proceedings appear regular, and to have been as represented by the defendant

Upon the 4th June, then, I take it that the plaintiff's case was closed, if it was not closed on the 28th, and then the defendant's case was opened by the examination of Henderson. Now the substance of defendant's affidavit and Henderson's is, that the arbitration upon that day broke off without Henderson's evidence having been closed and while the defendant had another witness named Buck, present to be examined: that there was no adjournment to any other day: and, that defendant left, informing both the plaintiff and McCrae that he would expect a notice of the next meeting, whenever it should be appointed. All the affidavits in reply state, on the contrary, that not only was Henderson's examination completed, but also his cross-examination; and the clerk swears that it was taken down in writing, and when so completed was signed by Henderson. Now upon this point, which certainly was a very material point, it would have been very easy, if this were true, for the examination so taken and signed to have been produced; it would no doubt have settled *one* point upon which there is a very grave contradiction in the affidavits filed by the respective parties.

Then again, the affidavits in reply, concur in saying that there was an adjournment made on the 4th June, after the close of Henderson's testimony, to a future day. The arbitrator, McCrea, and Chase, stating that day to be the 11th June, and the plaintiff stating it to have been until the 18th of June. This *may* be a clerical mistake, and yet in view of what I am about to advert to it *may not*. The arbitrator swears that he made a *formal* adjournment to the 11th; McCrea says that the adjournment was made unto the 11th June, and that he acted as clerk and noted all the adjournments Now referring to the submission upon which the first appointment and adjournment are endorsed, I find no adjournment upon the 4th June endorsed at all, but under the adjournment *to* the 4th June, I do find an entry of an adjournment, *which is erased*, and which is in the words following: "adjourned June 11th *to* Friday next, J. Higgins." and the Friday following the 11th June was the 18th June, which is the day mentioned by the plaintiff as the date of the adjournment from the 4th June, so that there may be some colour for something having taken place at some time relating to the 18th June, the day named by the plaintiff; but why is this erased, and why, if the arbitrator did make the *formal* adjournment which he says he he did on the 4th to the 11th, does not that appear on the submission where the other entries of appointment and adjournment, of which there is no dispute, do appear.

Again, if, as McCrea says, he noted down the several adjournments, the production of the minute kept by him would have been very material upon a point as to which also there is such grave contradiction in the affidavits. Then again, the arbitrator swears that what the defendant said upon the alleged adjournment to the 11th being made upon the 4th June was, "that he did not think he would attend, that I might go on whether he was present or not, that he had no further evidence to put in." McCrea states it in somewhat similar terms, namely, "that *he did not think* he would attend as he had no more evidence to offer, and it was of no use coming, and that the arbitrator might proceed in his absence." The plaintiff swears that the defendant stated "that *he would not* attend again, that there was no use as he had no more evidence to put in, and the arbitrator might go on with the hearing" Chase states it as the plaintiff does, that defendant said "that *he would not* attend as he had no further evidence to offer, and that he did *not think* it any use" Now, was Buck there or not in attendance to be examined as a witness by defendant. He swears he was, and no allusion is made to this fact in any of the affidavits filed by the plaintiff, but, assuming that the defendant said what is sworn to by the arbitrator and McCrea, *that he*

did not think he would attend; or even what is sworn by the plaintiff and Chase, "that he would not *attend, that he did not think it of any use*" I do not think than an arbitrator in the conduct of a judicial proceeding is justified from such language to proceed *ex parte*, behind the back of one of the parties, without seeing that he had had notice of the further proceedings, so as to give him an opportunity of changing his mind, and of calling more witnesses if he should think fit, or, of being present at least when other witnesses, if any, should be called by his opponent, and of pressing his views equally with his opponent before the arbitrator, if that should have been the purpose for which the meeting was to be held.

Then, the next point is, had the defendant any, and if any, what notice of the intended proceeding upon the 11th, and had the arbitrator any, and if any, what evidence of his having had such notice before he proceeded to take further evidence upon the part of the plaintiff.

The arbitrator swears that he directed McCrea to notify both parties of the intended meeting, that he *knows* that McCrea did so by sending notice to plaintiff and defendant; he says he *knows* that McCrea did so, but he gives me no means of testing the correctness of his knowledge. If he *knows* that McCrea sent the requisite notice he must know what information the notice contained, and how it was sent; but he says nothing in his affidavit upon either of these points. Then McCrea swears that he sent notices as directed by the arbitrator, but he does not say *how* he sent them; and this is in answer to an affidavit of the defendant, that he lives only two miles off, and that he never received any such, or any notice. McCrea without saying how he sent the notice, contents himself with saying that he sent one to defendant, and that he believes he received it, but he gives me no means of judging of the foundation for his belief, or, whether it should out-weigh the affidavit of the defendant, who swears that he never received it. The arbitrator, indeed, swears that the defendant acknowledged to him that he had received the notice.

Now the defendant in his affidavit swears that after he had heard of the award being made, he remonstrated with the arbitrator for having proceeded in his absence, and without having given him notice of his intended sitting of the 11th June; and that the arbitrator replied, that he regretted he had not had notice, but that he could not open the matter, and that he had taken advice upon the subject. Now did this occur or did it not? it is sworn that it did, and the arbitrator does not deny it. If the allegation of the arbitrator is intended as a denial of the statement in the defendant's affidavit, it is a bald way of denying a very precise and material averment; and if being uncontradicted I am to take the defendant's statement in this particular to be true, how am I to understand the arbitrator's reply to the effect that he had acted under advice, upon a point relating to his having proceeded *ex parte* without giving sufficient notice; if he had, *then* the defendant's acknowledgment that he had *received* the notice, or if the arbitrator, as he swears, *knew* that it had been sent *in time*; assuming it even to be true that the defendant did, as the arbitrator swears, *at some time* acknowledge that he had received a notice for the meeting of the 11th, the statement of the arbitrator upon that point is loose enough to be consistent with the fact that the acknowledgment was made after the conversation alluded to by defendant, and that the notice had been so carelessly sent, or sent so late that he did not receive it until long after the award was made, and when it was too late to be of any use But, looking at the preciseness of the affidavit of the defendant upon this point, and the vagueness of the affidavits in reply, I am compelled to adopt the affidavit of the defendant that he never received one; and I am left in doubt whether any was ever sent, or if sent, whether it was sent in such a manner as to present a reasonable expectation that the defendant would receive it in time.

But further, an arbitrator who acts in the character of a judge, before he undertakes to proceed *ex parte*, should satisfy himself by some proper evidence, that the necessary notice not only had been sent, but delivered so as to enable the party notified to appear, and there is no suggestion that the arbitrator required or called for any such evidence before he entered upon the *ex parte* examination of the plaintiff's witnesses on the 11th June.

Granting that the defendant may have had no further evidence to call, though he swears to the contrary, what right had the arbitrator to suppose that he knew that after his evidence was closed further evidence would be received from the plaintiff, without the defendant having notice of that proceeding The plaintiff indeed swears that the defendant knew that the plaintiff would require to call witnesses to rebut Henderson's evidence. How must the defendant have *known* that? the plaintiff does not pretend that he communicated to the defendant his intention of calling such evidence, and even though the defendant might be content to be absent at any future meeting, as all his evidence had been given, that reason for his absence will scarcely account for its being supposed that he should not attend if the plaintiff should be permitted to adduce fresh evidence, when we find him attending regularly while all the previous testimony was being taken.

In arbitrations, it is, in my opinion, the duty of the *party* acting in the prosecution of the arbitration, whether he be plaintiff or defendant, to take care that all proper and sufficient notices are *served* upon the opposite party, and it is the duty of the arbitrator, before he proceeds *ex parte*, to satisfy himself by sufficient evidence that such notices have been given. Before an arbitrator is justified in proceeding *ex parte*, he ought, in my opinion, to have before him the clearest evidence that the party not attending is wilfully absenting himself; and, when a question arises before the court as to whether an arbitrator has or has not been justified in proceeding *ex parte*, it is incumbent upon the party who did proceed before the arbitrator, to adduce evidence abundantly sufficient to satisfy the court that the party absenting himself had full notice of the meeting or meetings from which he was absent, so as to enable the court to see clearly whether the absence was wilful or excusable, and whether the arbitrator was or was not justified in proceeding in his absence. A very strong case indeed should be made to justify an arbitrator in so proceeding, and it might be well perhaps that it should be established as a rule, that no notice would justify such a proceeding unless it should convey

the information that the arbitrator will peremptorily proceed *ex parte* in case the party served with the notice should not attend, and the party serving it should, and even in such a case, the arbitrator should not proceed *ex parte* if the party served should, before the day of meeting, communicate to the arbitrator a reasonable excuse for his inability to attend.

In this case, I must say that I am not satisfied that the absence of the defendant was wilful There is reason, I think, to doubt that it was even negligent. I am not satisfied that the matters contained in the affidavits filed upon the motion have been displaced by the affidavits in reply, so as to place the defendant in the position of having committed a wilful default; and I do not think that a sufficient case is shewn to have justified the arbitrator in proceeding in the manner in which he did, *ex parte*. Whatever may be the merits of the case, I cannot say that those due precautions have been observed which alone could justify judicial proceedings being taken or continued against a party in his absence.

I have come to this conclusion upon a careful perusal of the several affidavits, and a consideration of the abstract principles of justice, with which all who are conversant with the conduct of proceedings in courts of justice are familiar, without seekingfor decisions in like cases, although I doubt not that if it were necessary, abundant authority can be found to support the conclusion at which I have arrived.

As I do not think that the arbitrator's conduct was wilfully improper, but that it proceeded rather from ignorance of the judicial duties of an arbitrator, the rule will be to refer the matter back to the arbitrator, with such enlargements as may be necessary.

I think the plaintiff must pay the costs of this application. It was his duty to see that the enlargements were properly made and notice served, before he called upon the arbitrator to proceed *ex parte*.

ENGLISH REPORTS.

GLADWELL v. TURNER.

Bill of exchange—Notice of dishonour—Reasonable dispatch.

The holder of a bill of exchange is excused for not giving regular notice of its being dishonoured to an indorser, of whose place of residence he is ignorant, if he use reasonable diligence to discover where the indorser may be found, and in subsequently communicating with him [18 W. R. 317.]

This was an action on a bill of exchange tried at the last sittings in Middlesex, before the Lord Chief Baron, when a verdict was recorded for the Plaintiff.

Mr. *Cole*, Q. C., now moved for a rule calling on the plaintiff to show cause why a nonsuit should not be entered on the ground of no due notice of dishonour of the bill having been given to the defendant.

It appeared that the bill in question had been drawn by the defendant on F. Welsh at three months. It was accepted by Welsh, and indorsed by him to Smith, who again indorsed to the plaintiff. The bill became due on Friday, the 17th September, and it was on that day presented by the plaintiff to Welsh, but dishonoured. The plaintiff called on Smith on the 17th, but did not succeed in finding him. He was ignorant of the defendant's address. Between five and six p.m. on Saturday, the 18th, the plaintiff again called upon Smith, and learnt from him the defendant's address. The plaintiff then sent a letter to the defendant containing notice of dishonour of the bill, but as the letter which was placed in a pillar box was not posted until after eight p.m. in the same evening, it was too late for that night's collection of letters, and did not reach the defendant until the course of the following Monday, bearing on the envelope the London postmark of that morning. The plaintiff and defendant both resided in London.

The learned counsel in support of the motion contended that the ignorance of the plaintiff of defendant's address up to five p.m. on the 18th did not relieve him from a charge of unreasonable negligence in failing to notify the defendant of the bill on the day next to that on which the bill was dishonoured. He cited Byles on Bills, 7th ed. 244; *Bateman* v. *Joseph*, 2 Camp. 461, in support of his contention.

Per CURIAM.*—The rule must be refused. Unless the holder of a bill, contrary to the dictum of Lord Ellenborough, is bound "omittis omnibus aliis negotiis," to devote himself to giving notice of its dishonour, it must be held that this notice under the circumstances before the Court was communicated with sufficiently reasonable despatch to the defendant. The plaintiff was under no obligation to give him notice of dishonour until Saturday, and he was through ignorance of the defendant's address, unable to do this until after 5 p.m. of that day. The delay of a few hours in posting the letter cannot be held such *laches* as to deprive the plaintiff of his remedy on the bill as against the defendant.

Rule refused.

CORRESPONDENCE.

Clerk of the Peace—Fees—Adjourned Sessions.

TO THE EDITORS OF THE LAW JOURNAL.

GENTLEMEN,—At the first meeting of the "Board of Audit" for the County of Waterloo, held under the recent Act 33 Vic. cap. 8, of which Board the writer is a member, the Clerk of the Peace had in his account the following item, viz.: "To attending seven adjourned sessions and making up record of each at $2.50—$17.50," which caused considerable discussion and was finally allowed by a majority of votes, one member of the Board dissenting.

The Minute Book of the Court of General Sessions of the Peace for the County of Waterloo, kept by the Clerk of the Peace, shows that the Court held last December had been adjourned seven times before it rose, viz. :—

* Kelly, C. B., Martin, Channell, and Pigott, BB.

On the 14th day of December the Court met for the transaction of general business; during that day the Clerk of the Peace brought into Court the Jurors' Book under the 39th section of the U. C. Jurors' Act—the Court after deciding as to a full Jury list, found that the selecting of Jurors could not be proceeded with "immediately" as there were civil and criminal cases for trial which were supposed, and subsequently proved, to occupy the whole of the first day, and as there was certain business such as auditing of accounts and the reading of Certificates for Naturalization of Aliens, the former of which requiring to be commenced on the second day of the Sessions, the latter to be read a second time on the last day of the General Sitting of the Court—an adjournment took place in the evening until the following day, 15th December. On that 15th December the general business of the Session was completed, the Court commenced the selection of Jurors and again adjourned to the 16th December for the purpose of continuing the selection of Jurors. On the 16th December the Court again met in open Sessions pursuant to adjournment, sat all day and adjourned to the 17th December; it again met in open Session on the 17th December pursuant to adjournment, sat all day and adjourned to the 21st December; then again met in open Sessions pursuant to adjournment, and so on for three days more till the Court rose.

The question arose whether the Clerk of the Peace was entitled to a fee for adjourning a Court from day to day and making up record of each adjourned sittings.

One of the members of the Board of Audit held that the Clerk of the Peace was not entitled to any of said adjournment fees, holding that an adjournment mentioned in the Tariff of Fees did not mean one held from day to day; another member of that Board maintained the very opposite and expressed himself in favor of allowing the item of $17.50 as charged by the officer, while the third Auditor entertained some doubts, but finally voted in favor of allowing the same; thus giving the individual the benefit of his doubt; and as this is considered a sound principle in Criminal Law, it is probably also sound in civil matters.

The Tariff of Fees for Clerks of the Peace, as framed by the Superior Court Judges in Trinity Term, 1862, has the following, under which the above-mentioned charge of $17.50 is made, viz.: No. 66, "*Attending* EACH *adjourned or special sessions and making up record thereof*, $2.50," to be paid out of the County funds to the Clerk of the Peace. The Tariff of 1862 appears to be an amendment to the Tariff framed by the Judges in Michaelmas Term, 1845, in which the Judges ordered: "That besides the fees set down in that Table, the several Officers will be entitled to receive fees for other services rendered by them respectively, which are not mentioned in that Tariff, wherever specific fees for such services are fixed by any Statute." Webster's Dictionary explains the word "*adjourn*" to signify, to suspend business to another day or for a longer period.

Blackstone, Vol. I., page 186, says: "An *adjournment* is no more than a continuance of the Session (of Parliament) from one day to another, *as the word itself signifies.*" He no doubt understood French and hence the meaning of "ajourner" and of "ajournement."

In Burn's Justice, Vol. V., it is laid down that the proper caption and style of an adjourned Session is thus:—

"Be it remembered that at the General Sessions of the Peace of Our Sovereign Lady The Queen, holden in and for the County of ———, at ——— in the said County, on ——— the —— day of ———, A. D. 18—, before ——— and ———, Esquires, and others, their fellow Justices of the Peace of Our said Lady, the said General Sessions were continued by them the said Justices by adjournment until ——— the —— day of ———, A. D. 18—, and at an adjourned Sessions then accordingly held by adjournment on the —— day of ———, A. D. 18—, before ——— and ———, Esquires, and others, their fellow Justices, &c." In another part of Burn's Justice it will be found that where there is an equal division of Justices, or from any other good cause no judgment is given, an adjournment should be entered by the Clerk of the Peace, that the Justices may resume the consideration at an adjourned Sessions.

The principal points advanced against allowing the charge for adjournments were: that the literal meaning of the word was not contemplated by the Tariff; that an adjournment from day to day did not entitle the Clerk of the Peace to the fee in No. 66 of said Tariff, and that that fee was only to be allowed when the Court adjourned for a longer period, as from week to week or the like.

While on the other hand and in favor of allowing said charge it was contended that the fee mentioned in the Tariff, being given without qualification, the Auditors were justified in giving it a liberal construction: that if it were conceded that for an adjournment from week to week the fee in the Tariff should be allowed, that there is no difference in principle or in law, whether the adjournment of the Sessions were for one day or for one week, and the common sense view was to allow the officer for making up the record of each adjournment, and that therefore the charge made by the Clerk of the Peace should be allowed.

Will you, gentlemen, kindly give your valuable opinion on the above subject, as no doubt many of your readers are interested in the same, and as it would be very desirable for future occasions to have so weighty an opinion as one from you bearing on the same.

I may add that, on enquiry, I am credibly informed, that in the Counties of Wellington and Middlesex the Clerks of the Peace are allowed $2.50 *for each and every day* there is an adjourned Sessions, whether for selecting Jurors or otherwise.

Respectfully yours,

OTTO KLOTZ.

[We have much pleasure in inserting the above letter. Mr. Klotz has ably and we think very fairly argued out the position he takes, and whatever may be thought as to the strict law every one who has any knowledge of the duties of the office will readily admit that the most favorable construction of the tariff gives but a poor compensation to the officer.

We should like to hear what answer, if any, could be given to the arguments advanced by Mr. Klotz. But so far as the matter is before us we must, without at present committing ourselves to an opinion on the point, think that a strong case has been made out by that gentleman. The narrow construction contended for was, we think, rightly overruled by the Board, until at least there is an authoritative decision on the point.

We have always taken ground against the payment of officers of justice by fees—that is, in cases where a salary could be estimated for or fixed. A fixed salary for general duties at least would save much labour in audit, and avoid unseemly contentions, which must be very unpleasant to officers. It is not an agreeable occupation to be contending, quarter after quarter, for one's rights; and, whatever may be the case in the future, we fear that in the past justice was not always done to officers. —EDS. L. J.]

REVIEWS.

THE CANADIAN PARLIAMENTARY CALENDAR AND DIRECTORY, 1870. Edited by H. J. Morgan, Ottawa: printed by Bell & Woodburn, Elgin Street.

Mr. Morgan, the Editor of the *Canadian Parliamentary Companion*, has done good service in issuing a *Parliamentary Celendar*. The one is a twin book to the other. Each contains in convenient form, information useful and necessary for members of the Canadian Parliament and others who take an interest in the public affairs of Canada.

This is the first year for the publication of the Calendar; but if at all successful, the editor promises that it shall be issued annually. Year by year it will, if continued, be of increased value as a history of the Dominion as it grows from youth to manhood. Already events of great public importance have transpired, and been duly chronicled in the Calendar before us. While we write events of equal importance, and of great public significance, are transpiring; it will be convenient for our public men to have before them a "ready reckoner," which gives day and year for every such event, without the necessity for a search being made in the cumbrous journals of the House and other public records.

Besides containing the Calendar, the little book before us is replete with information. In it we find the official title of the Governor General, and a short historical sketch of his life and public services. Next his Staff, and then the members of the Queen's Privy Council. The part of the book which contains the Directory, is very complete. The name and residence in Ottawa of each member of the Senate and House of Commons are given in alphabetical order, together with a statement shewing the names of the House of Commons candidates for the several constituencies at the last general election, and at each election since held, with the number of votes polled for each candidate, and the population of each constituency in the Dominion. Next there is an alphabetical list of the members of the Dominion Parliament, and of the four Local Legislatures, shewing their constituencies, and particularizing those who have been

appointed or elected since the general election of 1867. Following this is a Directory to the Public Departments, shewing where they are to be found, and the names of the officers in each of them Then we have the names of the members of the Local Governments, and the names of the officers in the several departments of each of the Provinces of the Dominion.

We call attention to the advertisement of an enterprising florist, whose "*Floral Guide*" speaks for itself.

The best recreation for a man wearied with the toils of court or an office is an hour's "labour of love" in a garden either before or after business hours. We therefore make no apology in speaking at this season of the year of something which, though not of professional interest, has been the solace and pleasure of many whose names are eminent in the legal world.

A somewhat unusual application was made to the Court of Common Pleas in the case of *Bradlaugh* v. *De Rin*, on the first day of term. The case was determined in that court (16 W. R. C. P. 1128) in 1868. The plaintiff appealed to the Exchequer Chamber, before whom a question arose as to a fact which had not been proved and a referee was appointed to ascertain the fact.

The plaintiff tendered himself as a witness before the referee, but was objected to on the ground of his disbelief in a future state of rewards and punishments, and the referee refused to receive his evidence. The plaintiff then applied to the Court of Common Pleas for an order to compel the referee to receive the plaintiff's oath, or a decloration in lieu thereof. The court refused to act in the matter, on the ground that they had no jurisdiction, as they had not directed the inquiry.

It would seem that if any court has jurisdiction to make the order asked for, it must be the Court of Exchequer Chamber by whom the reference was ordered. As, however, the *Evidence Further Amendment Act*, 1869 (32 & 33 Vict, c 68, s. 4), is now in force, by which persons objected to as incompetent to take an oath may make a declaration instead, the plaintiff ought to have no difficulty in giving his evidence. The 4th section of the Act exactly meets a case like the present, and it would appear that the plaintiff could obtain the benefit of its provisions without any application to the Court for that purpose.—*Solicitors' Journal.*

THE INNER TEMPLE.—The new hall of the Inner Temple is thus described in the *Builder*: "It occupies the site of the ancient hall of the Knights Templars, but has been greatly extended in all its dimensions. The new hall is 94 ft. by 41 ft., and its height to the wall-plate is 40 ft. The previous hall was 70 ft. by 29 ft., and the height to the wall-plate 23 ft. In rebuilding their hall, the benchers have availed themselves of the opportunity to greatly extend and improve the domestic offices, to provide commodious robing-rooms, lavatories, &c., for the use of the members and students, and to obtain better clerks' offices New offices have also been built for the treasurer, and the Parliament chamber has been increased in size. The exterior masonry is in Portland stone. The interior of the hall is built of the hardest Bath stone. The roof, screen and wall linings are all executed in wainscot. The hall is warmed and lighted by sunburners in the roof, and by 16 bracket-lights against the walls. The oriel window at the upper end of the hall is glazed with stained glass in armorial devices. The rest of the windows are glazed ornamentally in leaded lights and plain glass, but it is believed to be the intention of the benchers ultimately to glaze the whole of the windows with richly-coloured devices illustrative of the history of the Temple."—*The Law Journal.*

APPOINTMENTS TO OFFICE.

SHERIFF.

ABSALOM GREELY, of the Town of Picton, Esq., to be Sheriff of and for the County of Prince Edward, in the room and stead of HENRY I THORP, Esq., deceased. (Gazetted March 26th, 1870)

COUNTY CROWN ATTORNEY AND CLERK OF THE PEACE.

HENRY H. LOUCKS, of the Town of Pembroke, Esq., Barrister-at-Law, to be County Crown Attorney and Clerk of the Peace in and for the County of Renfrew, in the room and stead of William Duck, Esq., deceased. (Gazetted March 26th, 1870.

STIPENDIARY MAGISTRATE AND REGISTRAR.

JESSE WRIGHT ROSE, of Prince Albert, Esq., to be Stipendiary Magistrate and Registrar of Deeds in and for the Territorial District of Parry Sound. (Gazetted March 26th, 1870.)

NOTARIES PUBLIC.

RUPERT MEARSE WELLS, of the City of Toronto, Esq., Barrister-at-Law. (Gazetted Feb. 12, 1870.)

GEORGE YOUNG SMITH, of the Town of Whitby, Esq., Barrister-at-Law. (Gazetted March 5th, 1870.)

HENRY CARSCALLEN, of the City of Hamilton, Gentleman, Attorney-at-Law. (Gazetted March 19th, 1870.)

JOSEPH JACQUES, of the City of Toronto, Attorney-at-Law; and THOMAS CHAS. PATTESON, of the City of Toronto, Attorney-at-Law. (Gazetted March 26, 1870.)

ARTHUR J. MATHESON, of the Town of Perth, Esq., Barrister-at-Law; P. McVEAN CAMPBELL, of the Town of Chatham, Esq., Barrister-at-Law; ALFRED FROST, of the Town of Owen Sound, Gentleman, Attorney-at-Law. (Gazetted April 2nd, 1870.)

ASSOCIATE CORONERS.

DAVID P. BOGART, of Carleton Place, Esq., M.D., to be an Associate Coroner within and for the County of Lanark. (Gazetted Feb. 19th, 1870.]

PETER McLAREN, of the Town of Paisley, Esq. MD., to be an Associate Coroner within and for the County of Bruce. (Gazetted March 12th, 1870.)

THOMAS W. POOLE, of the Town of Lindsay, Esq., M.D., to be an Associate Coroner within and for the County of Victoria. (Gazetted March 19th, 1870.

JAMES P. LYNN, of the Village of Renfrew, Esquire, M. D., to be an Associote Coroner within and for the County of Renfrew. (Gazetted April 9th, 1870.)

ALCIDE J. B. DELAHAYE, of the Gore of Toronto, Esq., M.D., to be an Associate Coroner within and for the County of Peel. (Gazetted April 9th, 1870.)

DAVID BONNAR, of Albion, Esq., M.D., to be an Associate Coroner within and for the County of Peel. (Gazetted April 16th, 1870.)

JOHN ALBERT, of the Village of Meaford, Esq., to be an Associate Coroner within and for the County of Grey. (Gazetted April 23rd, 1870.)