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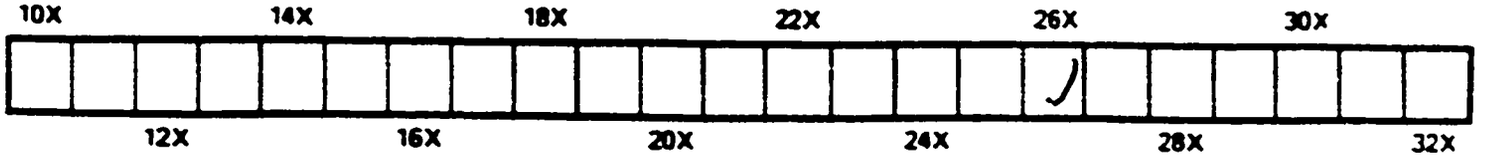

DIVISION COURTS.

OFFICERS AND SUITORS.

CLERKS—*Answers to queries by.*

County of Waterloo,
Hawksville, 5th May, 1856.

To the Editors of the U. C. Law Journal.

GENTLEMEN,—

A. B. has an unsatisfied judgment in this Court against C. D. of the County of Wellington; a transcript of the entry of judgment, pursuant to the Act 18 Vic., cap. 130, sec. 3, has been sent to J. C., Esq., Clerk of the Court for the Division in which C. D. resides, who issued execution. The Execution has been returned "*nulla bona.*" A.B. the plaintiff has ordered out a Judgment Summons. (1) If C. D. appears under judgment summons, and the Judge should make an order for his committal, can our Bailiff arrest him under my warrant and take him to the gaol of this county, he being a resident of another County? (2) If C. D. disobeys the summons, and our Judge makes an order for his committal for contempt, how is it to be done?

M. P. E.

The right solution of these questions is of great importance, and the very loose and doubtful way in which the D. C. Acts are framed, renders the construction of the clauses bearing on the question a task of considerable difficulty. Officers of the Division Courts, for all may be affected by a mistaken course of action, are in no small degree indebted to Mr. E. for giving publicity to the points submitted. We will examine with care, and give the result of our investigations either in the editorial of *this* number or in the July issue; an off-hand answer we could not venture to make in time for this "form." We would be glad to hear if any of the County Judges had judicially considered the subject, and we invite observations from well informed parties.

The first difficulty to our mind is, does the last D. C. Act (sec. 1) disable the warrant of a Judge from being executed out of the limits of his own County? If not, does the 97th sec. of the D. C. Act meet the questions proposed? Was it contemplated by the Legislature that the defendant should be brought to the gaol of the County from which the warrant issues? If not, regarding the form of the warrant and the general bearing of the Judgment Summons clauses, is the gaoler of the County in which the defendant lives, and is arrested, authorized to receive the prisoner, if another gaol be the place of confinement mentioned in the warrant; and, should a Habeas Corpus be sued out, could such warrant be held, on the face of it, to authorize the defendant's detention? Can the Judge be held to have authority under the Statute, to make an order to commit to any gaol out of his County?—These and many other points will require to be incidentally considered. It would be easy to give a reply in general terms to the questions proposed, but the more useful course will be to enter fully upon their discussion, giving our views and such information as may be received from others.

T.M.—If a witness attends under subpœnas and gives evidence in several cases for the same plaintiff, but against different defendants, can his fees be allowed in each case?

If the witness gives evidence in several cases, neither plaintiffs nor defendants the same, is he entitled to double, treble fees, &c. according to the number of cases he is subpœnaed in?

A witness attending and being examined on different trials is nevertheless entitled only to the single fee according to the Tariff, and his expenses should be apportioned equally among the several cases, unless otherwise ordered by the Judge. In practice it is not unusual where the fees are large and the demands vary very much in amount, (for example, one for £2 and the other for £10) to direct the apportionment to be according to amount, and not equally.

A. C.—Where is the minute (No. 60) of order for fine for contempt to be entered in the Procedure Book, when it is on a witness examined in a cause.

It may be entered in any place in the Procedure Book having the suitable heading, giving the style of the Court. The most appropriate place, in any case, we would think, at the end of the suits entered for the then sittings.

BAILIFFS—*Answers to queries by.*

J. H. states a case in rather a round-about way; it may be reduced to a very brief question:—*Can a term for years be taken in execution under a warrant of execution from a Division Court?* Our opinion is, that it can, but when sold, the Bailiff should execute a bill of sale to the purchaser, and if he has obtained possession of the *lease* under which the defendant holds, hand it over at the same time.

SUITORS.

Conduct of the Parties at the Trial.

The first thing we would say under this head to *both* parties is,—remember you are in a Court of Justice, and do not allow angry feelings to betray you into any breach of decorum. Keep your temper! the man who flies into a passion is no match for the man who keeps cool; the former is always sure to forget something important to his case. Do not for a moment suppose you will gain any advantages by abusing your adversary; the object of a trial in Court is to elicit truth, and not to listen to angry contention: remember yours is not the only case to be heard—there may be numbers of persons

waiting their turn, and you must not exhibit the monopolizing spirit which tacitly says, "You shall hear no case this day but ours." The words of a writer on Local Courts more than half a century ago might be applied to the Division Courts: "The Judge uses every means to understand a cause before he determines, but when once master of the case he closes it—this gives the losers occasion to complain that the Judge will not hear them: *that is, will not hear them by the hour.* If two contentious persons were to be heard as long as they chose to speak, there would not be more than one case tried in a day."

When a case is called on, the Judge ascertains what objections the defendant has to the plaintiff's demand; the plaintiff should notice what is objected to, and when called on for proof, name his witness or witnesses to the Judge, and as each is called on and sworn, question him in support of the demand. When the plaintiff is through, the defendant has the right to cross-question the witnesses, and each party should avoid interrupting the other while examining or cross-examining a witness, or while addressing any explanation or remarks to the Judge. Nothing is to be gained by such interruptions, and the Judge will always take care that parties have a fitting opportunity to say all that is material until he is master of the case.

To the defendant we would say further, by way of advice,—frankly admit such portion of the plaintiff's demand as you know to be correct; *come at once at the point really in dispute;* if, for example, the action be upon a note you have signed, and your defence is that it was obtained without consideration, or has been paid, or that it is over balanced by set-off, say, "I admit I signed the note, but I got no value for it," or, "I have a set-off exceeding it," or something to the same effect. If the claim be upon an account, prepare beforehand a memorandum of the items to which you object, and hand it to the Judge when asked for your objections, or make a mark in the copy of account served opposite each item which you deny, for you cannot expect to have other suitors delayed by hunting through a long account for the items objected to by you (that would be a premium to negligence) you should yourself do so before Court. Whatever your defence, come, as we said before, at once to the point—don't be beating about the bush—nothing is gained by equivocation or evasion; on the contrary, the denial of what is true, where it is afterwards proved, must create an unfavorable impression of your defence generally. We trust these few hints may prove useful, and show the class who form the great majority of litigants in the Division Courts, what line of conduct is most becoming and most advantageous.

ON THE DUTIES OF MAGISTRATES.

SKETCHES BY A J. P.

(Continued from page 85.)

The Hearing.

Magistrates are entrusted with the functions both of Judge and Jury, and must exercise their summary jurisdiction in a place to which the public may have reasonable access, and it being "more consonant with their obligation to dispense impartial justice for their judicial proceedings to be conducted with due solemnity and publicity," we shall presume that their sittings for trials will be held in open Court of Petty Sessions, which has been already noticed; and in what follows respecting the hearing upon summary conviction, we shall assume such will be the case.

Care should be taken that such Court is properly constituted, and the Statute governing each particular proceeding should be examined, as there are some cases in which the actual presence of three Magistrates at and to take part in the hearing is necessary in order to a valid adjudication. On this account and to avoid delay, it is desirable that a full Bench of Magistrates should attend at every sittings of the Petty Sessions. If the particular Statute authorizing the summary proceeding gives no direction as to the number of Magistrates necessary to a conviction, the general rule as laid down in 16 Vic. cap. 178 governs; sec. 11 thus enacts:

"That every complaint or information shall be heard, tried, determined and adjudged by one, two or more Justice or Justices of the Peace, as shall be directed by the Act or Acts of Parliament, upon which such complaint or information shall be framed, or such other Act or Acts of Parliament as there may be in that behalf; *and if there be no such direction in any such Act of Parliament, then such complaint or information may be heard, tried, determined and adjudged by any one Justice of the Territorial Division where the matter of such information or complaint shall have arisen.*"

The Duty of Parties to attend at time appointed for the Hearing.—The contending parties and their witnesses are bound to be present at the time and place appointed in the summons for the hearing, and not only to attend at the precise hour named, but to wait during all reasonable hours of the same day, until the Justices are ready to hear the case.[1] It is recommended that Magistrates should be punctual in their attendance at the appointed hour and proceed to business with as little delay as possible.

Non-appearance of both parties.—Should there be more cases than one to be disposed of, and the parties do not answer when a particular case is called on, it will be well for the Justices to proceed with any other business ready, leaving to the last

[1] Williams v. Frith, 1 Doug. 181.

the case in which the parties have not appeared. This will be found a convenient arrangement to adopt, but the order of proceedings is entirely in the discretion of the Justices composing the Court of Petty Sessions. When a case is finally taken up, should neither party appear or answer when duly called by the Constable, the only course is to *dismiss the complaint.*

Non-appearance of the Complainant—Appearance of the Defendant.—In case the defendant appears and the complainant does not appear, either personally or by attorney or counsel, then the complaint may be dismissed, unless the Justices are of opinion that the ends of Justice require that an adjournment should be made; and if the case be one of an aggravated character, or there is room to suppose that the complainant's absence is owing to accident or necessity, it would be proper to adjourn the hearing on such terms as may seem just. The 16 Vic., cap. 178, has the following provision in sec. 12:—

"If on the day and place so appointed as aforesaid such defendant shall appear voluntarily in obedience to the Summons in that behalf served upon him, or shall be brought before the said Justice or Justices by virtue of any warrant, then if the said complainant or informant do not appear by himself, his counsel or attorney, the said Justice or Justices shall dismiss such complaint or information, unless for some reason he or they shall think proper to adjourn the hearing of the same until some other day, upon such terms as he or they shall think fit."

Proceedings on appearance of Complainant—Non-appearance of Defendant, and ex parte Hearing.—If at the time appointed for the hearing the complainant should appear and the defendant should not appear, it will be for the Justices to determine whether they will proceed with the case or adjourn till a future day. Should the defendant send or bring to the notice of the Justices any reasonable excuse for his non-attendance, as illness, compulsory attendance elsewhere, or some other reasonable excuse, and the Justices are satisfied that such excuse is made in good faith, and not for the purpose of evasion or delay, and the ends of Justice do not imperatively demand immediate action, the proper course is to adjourn the hearing to a future day, directing a notice of the adjournment or a fresh summons (the latter is the better practice) to be served on the defendant; or if the Justices discover by the examination of the officer who serves the summons, or by any other means, that the defendant's absence is accidental or unavoidable, and find that his appearance can be insured by an adjournment, they should by all means postpone the hearing—the presence of both litigants being always desirable with a view to a safe and satisfactory adjudication.

If, however, the defendant does not appear, and no excuse for his non-attendance is offered or appears, the Justices may take one of two courses, *in their discretion*, that is to say, they may either *issue a warrant* to compel the attendance of the defendant or proceed to hear the case *ex parte*. As already noticed, the proceeding by warrant should only be taken where the defendant is otherwise likely to evade justice, or the case is of an aggravated or serious nature—and whichever alternative be adopted—whether issuing warrant or proceeding to hear the case in the defendant's absence—great care should be taken in making the proper preliminary enquiry, so as to satisfy the Justices that the summons has in fact found its way into the defendant's hands,[2] and that his non-attendance is owing to wilfulness or negligence; it would be a grievous wrong to act against a defendant who had no proper notice of being required to answer, or who was prevented from appearing by accident or inevitable necessity. In order then to satisfy themselves on this point, the Justices should call up the Constable who was entrusted with the service of the summons and examine him; first administering an oath to the following effect:—

"You shall true answers make to all such questions as shall be demanded of you touching this case.—So help you God."

The Constable's deposition should then be taken down in writing, and when concluded signed in the usual way. The officer, after he is sworn, should be particularly questioned as to the *time* of service, and when the summons has not been given personally to the defendant the *manner* in which service has been made, as has been before particularly referred to;[3] and also if he knows of any impediment to defendant's attending. When the service is found to be sufficient according to the mode prescribed by the Statute under which the proceeding is had, or if no mode be prescribed, when it is ascertained that the service has been personal, or that the summons has been left for the defendant at his last or most usual place of abode, a sufficient period before the time appointed for hearing, to enable the party to come prepared with his defence, the Magistrates may safely proceed to hear and determine the case *ex parte*—that is, they may take the evidence and proceed with the case as if defendant were present.

The following provisions on the subject of hearing *ex parte* are contained in the 16 Vic., cap. 178, sec. 2:—

"Or if where a summons shall be so issued as aforesaid, and upon the day and at the place appointed in and by the said summons for the appearance of the party so summoned, such party shall fail to appear accordingly in obedience to such summons, then and in every such case, if it be proved on oath or affirmation to the Justice or Justices then present, that such summons was duly served upon such party a rea-

[2] See *ante* pages 5—23 and 24.
[3] See *ante* page 8.

sonable time before the time so appointed for his appearance as aforesaid, it shall be lawful for such Justice or Justices of the Peace to proceed *ex parte* to the hearing of such information or complaint, and to adjudicate thereon as fully and effectually to all intents and purposes as if such party had personally appeared before him or them in obedience to the said summons."

Sec. 12 contains a more full re-enactment of the same provision, viz.:—

"That if at the day and place appointed in and by the summons aforesaid for hearing and determining such complaint or information, the defendant against whom the same shall have been made or laid, shall not appear when called, the Constable or other person who shall have served him with the summons in that behalf shall then declare upon oath in what manner he served the said summons; and if it appear to the satisfaction of the Justice or Justices that he be duly served with the said summons in that case, such Justice or Justices may proceed to hear and determine the case in the absence of such defendant: or the said Justice or Justices upon the non-appearance of such defendant as aforesaid may if he or they shall think fit issue his or their warrant in manner hereinbefore directed, and shall adjourn the hearing of such complaint or information until the defendant shall be apprehended."

The *ex parte* hearing of a case must be conducted with as much regularity and deliberation as though the defendant were present, and Magistrates should require strict proof of the matter charged, take down the evidence and conduct the whole enquiry in all its stages, even with a more jealous care for form and accuracy than if the defendant was actually present; for his absence in no way justifies a loose mode of proceeding,—nor can such absence be taken as an admission of the truth of a charge, or as raising a presumption of guilt against a defendant.

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

(*For the Law Journal.*—By V.)

CONTINUED FROM PAGE 87.

SPECIAL OR NON-PERSONAL SERVICE OF SUMMONS.

The 24th sec. of the D. C. Act providing that a copy of the summons shall be served on the defendant, thus enacts: "and delivery of summons and account to the defendant's *wife* or *servant*, or *any grown person* being *an inmate of his dwelling-house*, or usual *place of abode*, *trading or dealing*, shall be deemed a good service, where *the amount claimed* does not exceed two pounds." Premising, as in the case of *personal* service, that it is for the Judge to say what amounts to proof of due service, we proceed to notice the provision a little in detail. It is sufficiently obvious that the Legislature must have presumed that the object of the summons will be sufficiently answered by the *substitutional service* prescribed; but in considering what service is a good service, the object to be accomplished, namely, notice to the defendant what is the claim against him, and when and where he is to answer it, must be steadily kept in view.

Delivery to the defendant's wife, it is probable may be made, not merely at the defendant's dwelling-house but any place where the officer may find her; a woman with whom the defendant cohabits and holds out to the public as his wife, although not actually so, would doubtless be held to answer that description within the meaning of the section, but the wife *in fact*, if *separated* from her husband and living apart from him, would not come within the spirit of the enactment.

Delivery to the defendant's servant: "Servant" as here used, seems evidently to mean a menial servant, one who boards and sleeps in his master's house, at all events "an inmate of his dwelling-house" or usual place of abode or business; the terms employed would probably include domestic servants,—farm servants,—book-keepers and shopmen,—but would not extend to day labourers, contractors for job-work, or other persons employed for a particular object, not residing *under the defendant's roof.*

Delivery to any grown person, &c.: It is very difficult to assign any exact meaning to the term "grown person"; the literal meaning would seem to be *full grown*, but that probably is too confined an interpretation to give the words in the connection in which they appear, and might lead to needless particularity: if any particular rule was suggested as to age, a young person about the age of fifteen would seem to us a "grown person" within the meaning of the section. The person served should be one in the employment of the defendant, or related to him or some one who may be reasonably supposed to have intercourse with him, and from whom he is likely to receive the summons; and therefore the necessity for the Bailiff making proper enquiries, so as to be able to insert in the affidavit, or state at the hearing, the name of the person with whom he leaves the summons, and the relation in which such person stands to the defendant.

"*Being an inmate of his dwelling-house, &c.*"—that is one who lodges or dwells therein. A man's *dwelling-house* is *primâ facie* where his wife and family reside, and if he has a family dwelling in one place, and he occupy a house and occasionally sleep in another, he will not be a resident in the latter place, for his residence is his domicile, and his domicile is his home, and his home is where his family reside.—(Story's Conflict of Laws, sec. 63: Reg. *v.* the Duke of Richmond, 6 T.R. 561.

But a man may have two dwelling places at the same time, for if he has two houses and servants in both, and lives sometimes in one and sometimes in the other, both will be his dwelling-houses.—(Co. Rep. 389.)

"*Usual place of abode, &c.*": These words seem synonymous with dwelling-house; a man's place of abode is where he lives ar d considers his home; but it may be that they have a meaning distinct from the words "dwelling-house," which precede them in the clause, and refer to a case where a man has lodgings for *a temporary purpose* only and lives there for a time, but with the intention of returning to his *permanent* place of abode elsewhere: or they may refer to a man who has no permanent dwelling, but is constantly changing his "place of abode."

"*Place of trading or dealing*": Trading and dealing, as here used, appear to be synonymous, and to mean the place where a trader or dealer (that is a shop-keeper, a merchant, a broker, or other person who engages in buying or selling, or in barter or traffic) carries on his business or trading, and whether a man be a trader or not, it may be observed, does not depend on the *amount* of trading, but what the parties' *intention* is in buying and selling: the terms would not seem to include a place of professional business, as a Physician's or Lawyer's office. Any place of *trading*, &c., evidently means the defendant's own independent trading or dealing, and not where he carries it on as Clerk for another.

Attachment Cases, Service in.—The 69th section of the Division Court Act provides that in order to proceed for the recovery of any debt due by a person against whose property a warrant of attachment has issued, that the summons may be served by leaving a copy at the last place of abode, trade or "dealing of the defendant, with any person "or persons there dwelling, or by leaving the same "at the said dwelling if no person be there found."

We have already so far noticed similar terms to those here used, that further reference is unnecessary. The distinction between ordinary special ("house") service and service in cases of attachment is, that instead of specifying the persons with whom the summons is to be left in attachment cases, it is said *any person* there dwelling—which means any grown person—and that if the defendant's last place of abode be unoccupied that it may be left there. It is not contemplated that if the place be actually inhabited and the family be casually absent when the Bailiff calls, so that he finds no person then in, that he may leave the summons there; the true meaning of the provision is such substitutional service can be made only when the premises are deserted or unoccupied. "Leaving the same" means that it must be *so* left that should the defendant or any of his family return, the summons may be placed in such a way that it may be easily seen. The ordinary practice, so far as we are informed, is to fasten the summons to the house door.

In determining points respecting special service (or "house services" as they are called) each case must depend very much upon its own particular circumstances, and the presumption these circumstances raise as to the summons coming to the notice of the defendant. If according to the usual and every day course of things there arises a *high probability* that the summons has actually come to the defendant's hands, the Judge would doubtless hold and allow the service as good.

In closing this division of the subject we would impress Bailiffs with the necessity of serving every summons personally if possible, and in case of "house services" they should endeavor to see the wife, son, daughter, or domestic servant of the defendant, not contenting themselves with handing the summons to the first person they see in the house, and the name of the person with whom the summons is left should be found out and enquiries should be made where the defendant is and when he is expected to return home; and as

before said, the object of service—to notify *the defendant*—it should be the anxious aim of Bailiff to accomplish.

U. C. REPORTS.

GENERAL AND MUNICIPAL LAW.

IN THE MATTER OF LEY AND THE MUNICIPALITY OF THE TOWNSHIP OF CLARKE.

(Reported by C. Robinson, Esq., Barrister-at-Law.)

(Michaelmas Term, 19 Vic.)

Alterations of school sections within a township and of union school sections.

Under 13 & 14 Vic. ch. 48, sec. 18, sub-sec. 4, the municipality may alter the boundaries of school sections within their townships, by taking from one and adding to another, without any previous request of the freeholders or householders, and notwithstanding their disapprobation of the change, provided that those affected by the alteration have notice of the intention to make it.

But they have no power to alter the boundaries of a union school section consisting of parts of different townships.

[13 Q. B. R. 433.]

Wilson, Q.C., obtained a rule on the Municipality of Clarke, to show cause why the by-law of the municipality No. 60, for the extension of the limits of the union school section No. 22, should not be quashed:

1. Because it was passed illegally, there being no request of the majority of the freeholders and householders of the section altered by the by-law, expressed at a public meeting called by the trustees, as required by the statute 13 & 14 Vic., ch. 48, sec. 18, sub-sec. 4.

2. Because all the parties affected by the alteration were not duly notified of the passing or intended passing of the by-law.

3. Because the municipality had no power to pass the said by-law, or to alter the limits of the union school section No. 22.

The by-law was passed on the 23rd of December, 1853. It enacted, that from and after the passing of the by-law, lot 30 in the 6th concession of Clarke, should be added to form part of union school section No. 22.

C. Robinson showed cause.

The facts are fully stated in the judgment.

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

It is very clearly shown by the affidavits, which are carefully prepared, that the municipality of Clarke took upon themselves, without the request or consent of the freeholders and householders, to alter, by the by-law complained of, the limits of the school sections Nos. 22 & 12, in Clarke, by taking from the latter a portion of a lot of land which had formerly belonged to it, and by making the whole of that lot (30, in the 6th concession of Clarke) a part of the section 22, whereas, by the arrangement before established, a part only of the lot 30 was united to that section.

The evidence furnished by the affidavits is quite clear as to the nature of the alteration, and that it was made not only without any request of the freeholders and householders of the sections 12 & 22, but contrary to their wish as expressed at a public meeting; and the application to quash the by-law is made by a ratepayer and freeholder residing in school section 12, from which a portion is taken by this by-law and added to section 22.

As I understand the affidavits, school section 22 is wholly in Clarke, and has been united with school section 2 in Darlington. And the by-law (60) complained of, passed by the Municipal Council of Clarke, takes away part of lot 30, in the 6th concession of Clarke, which before formed part of school section 12 in Clarke, and adds it to school section 22 in Clarke, forming with 2 in Darlington a united school section.

The affidavits seem to me to be inaccurate in one respect. They state repeatedly that the by-law *converts* No. 6 *into a school section, and unites it with* 22. It does no such thing that I can make out, but merely in effect takes part of lot 6 from section 12 and adds it to section 22, the lot and both the sections being wholly in Clarke.

If the by-law had made 6 a complete school section in itself, and then united it with section 22 of Clarke, it would have been a case of a municipal council uniting two school sections of their township; and such a by-law, to make it legal, would have required, under 13 & 14 Vic., ch. 48, sec. 18, sub-section 4, a previous application to the municipal council from a majority of the freeholders or householders of sections 12 and 22.

But what has been done is in fact an alteration of the boundaries of school sections 12 and 22 in Clarke, and I apprehend that the Municipal Council could make such alteration without any previous request from the ratepayers.(a)

But they were bound to see that those to be affected by the alteration had notice of their intention to make it. It is objected that such notice was not given. The applicant, Ley, is one of those affected by the alteration, and therefore entitled to move upon that ground.

But, as to the objection, it is evident on the applicant's own showing, as well as from affidavits filed on the part of the defendants, that the inhabitants, both of 12 and 22, had notice, for they met and discussed the proposition before the by-law was passed, and they sent to the Municipal Council notice of their disapproval. They have, therefore, no reason for objecting a want of notice.

They evidently mean to contend that the Municipal Council could not pass the by-law in opposition to their will; but the statute does not seem to us to countenance such a position. Sections in a township cannot be united without the previous request of the inhabitants; but an alteration in the boundaries of a section or of two sections, by taking a piece of one and adding it to another, can be made by the council without such request, though not without its appearing that those to be affected by the change *have had notice*. If they have had such notice, as it appears they had in this case, their disapproving of the change does not disable the Municipal Council from carrying it into effect, if, after hearing the objections, they should think it expedient to do so.

It is further objected, however, that the Municipal Council had not the power of altering the boundaries of a union school section, which they did in effect when they made the Clarke section 22 larger than it was before, because this necessarily added so much to the union section.

This objection, it appears to us, is entitled to prevail, for under the latter part of the 18th clause, it is to the reeves and local superintendents of the two townships that the jurisdiction is given to form or alter union school sections consisting of parts of different townships, and the township councils of either township are precluded from exercising a power of that kind.

We are of opinion that on this ground the by-law is illegal, as having been made by an authority not competent to make it, and must on that account be quashed.

Rule absolute.

SNOOK ET AL. v. THE TOWN COUNCIL OF BRANTFORD.

(Reported by C. Robinson, Esq., Barrister-at-Law.)

(Hilary Term, 19 Vic.)

Notice of action—14 & 15 Vic., ch. 64.

Held, Affirming Brown v. The Municipal Council of Sarnia, 11 U.C.R. 215—that corporations are not entitled to notice of action.

[13 Q. B. R., 621.]

This was an action on the case, brought by the plaintiffs as possessors of a grist-mill, in Brantford, in right of which they claimed the benefit of the water of a stream to flow to and past

(a) See the preceding case, Ness and The Municipality of Saltfleet.

the mill, and a right for such water to flow from the mill, without obstruction, through a race, into the stream again below the mill; and charged that the defendants wrongfully threw earth, &c., into the stream below the mill and the race, and thereby obstructed the escape of the water, whereby the plaintiffs' mill was stopped. The second count stated the plaintiffs' right in a similar manner in substance, and charged that a street within the limits of the town of Brantford, being the property of and under the control of defendants, and leading across the said stream below the plaintiffs' mill and race, by means of a bridge or culvert, became out of repair, and a large hole was made through the said bridge or culvert; that the defendants having been requested by the plaintiffs to repair such road and bridge, it became their duty to repair the same, and in so doing to use proper care to prevent earth, &c., from falling into said stream, and thereby obstructing the escape of the water from plaintiffs' mill; yet defendants in repairing the said road and culvert, so negligently conducted themselves, that through their negligence, quantities of earth, &c., were wilfully and injuriously permitted to fall through the hole in the culvert into the stream below the race, &c., and although the plaintiffs requested defendants to remove the earth, &c., and a reasonable time had elapsed, yet defendants would not remove the same, whereby plaintiffs' mill was stopped.

Plea—1. Not guilty by statute.—2. To the first count, traversing plaintiffs' right to the flow and escape of the water of the stream as alleged.—3. To second count, a similar traverse.

The case came on for trial at the Brantford assizes, in October 1855, before *McLean, J.* The plaintiffs' counsel having admitted in his opening that he was not prepared to prove that any notice of action had been served on the defendants, the learned judge nonsuited the plaintiff, with leave to move.

Burns obtained a rule Nisi accordingly, to which

Hagarty, Q.C., showed cause.

DRAPER, J.—The defendants claim the protection of the statute 14 & 15 Vic., chap. 54, sec. 2, which is as follows:—"That no writ shall be sued out against any justice of the peace, or other officer or *person* fulfilling any public duty, for anything by him done in the performance of such public duty, whether such duty arises out of the common law, or is imposed by act of parliament, either imperial or provincial; nor shall any judgment or verdict be rendered against him, unless notice in writing of such intended writ, specifying the cause of action with reasonable clearness, shall have been delivered to such justice, officer, or other person, or left at the usual place of his abode, by the attorney or agent of the party who intends to sue out such writ, at least one calendar month before suing out such writ," &c.

They rest their claim to this protection on the word "person," which in the "Interpretation Act," 12 Vic., chap. 10, sec. 5, eighthly is thus defined: "The word 'person' shall include any body corporate or politic, or party, and the heirs, executors, administrators, or other legal representatives of such person to whom the context can apply, according to the law of that part of the province to which such context shall extend." Taking also into consideration the first section of the Interpretation act: "that each provision thereof shall extend and apply to each act passed in this present session, or in any future session of the Provincial Parliament, except in so far as any such provision shall be inconsistent with the intent and object of such act, or the interpretation which such provision would give to any word, expression or clause, shall be inconsistent with the context." And in sec. 5, seventhly, it is enacted that words importing the singular number or the masculine gender only, shall include more persons, parties or things of the same kind than one, and females as well as males, and the converse."

The defendants are a corporation under the 12 Vic., ch. 81, as amended by 13 & 14 Vic., ch. 64, 14 & 15 Vic., chap. 109, 16 Vic., chap. 181. The 12th Vic. contains an interpretation clause as to the word "governor," and also as to the words importing the singular number and masculine gender, just like the Interpretation Act, though the last named act had received the royal assent more than a month before chap. 81 did. This act provides also (sec. 155) that no action shall be sustained for anything done under any by-law, unless such by-law, or the part thereof under which the same shall be done, shall be quashed one calendar month previous to the bringing such action. The party sued may tender amends, and such tender may be pleaded; and if no more than the sum tendered be recovered, it shall be lawful for the court to award no costs to the plaintiff, and to award costs to the defendant, and to adjudge that they shall be deducted out of the verdict. The 14 & 15 Vic., cap. 109, sec. 35, provides that whenever the by-law, &c., of any municipality shall be quashed, such municipality shall alone be responsible in damages for any act done under such by-law, &c., and any clerk, constable, or other officer acting thereunder, shall be freed and discharged from any action or cause of action accruing to any person by reason of such by-law being illegal and void, or having been quashed. But none of these acts gave the municipality any privilege as to notice or limitation of action, or as to amount of costs, &c., &c.; and therefore no part of these acts are affected by the repeal contained in the first section of the 14 & 15 Vic., ch. 54, which repeals "so much of any act or acts now in force in this province, whether public, local or personal, as confers any privilege" of that character. Neither do any of these acts fall within the description contained in the preamble to the statute in question, viz., "acts of parliament in force in Canada, both public, local and personal, whereby certain protections and privileges are afforded to magistrates and others;" nor are any of the provisions of these acts altered or amended by this statute. If it can apply to this case at all, it must be because the legislature have evinced an intention to extend these privileges and protections to the whole body of municipal corporations throughout Canada, though the contrary intention is to be assumed from the absence of all provisions for that purpose, when the statutes erecting such corporations were passed.

Confining attention to the words of the statute itself, without for the moment adverting to the Interpretation Act, I think it it impossible to contend for a moment that its own language, taken *proprio vigore*, afford any colour for the conclusion that the legislature had municipal corporations in view when they passed it. The title, "An Act to amend and consolidate the laws affording protection to magistrates and others in the performance of public duties,"—the preamble already referred to—the repealing clause above quoted—all prohibit any such interpretation. The terms in which the protection of the second section is granted all point to an individual, not to a body corporate; all refer to justices of the peace, or to general or local officers having duties of some public character to execute and fulfil; and the concluding words of the statute appear to me to confirm this opinion—"Any such justice, officer and other person acting as aforesaid, shall be entitled to such protection and privileges in all such cases as he shall act *bonâ fide* in the execution of his duty, although in such act done he shall have exceeded his powers or jurisdiction, and have acted clearly contrary to law." All the language of the act is applicable strictly to the personal acts of an individual or individuals, and cannot, I apprehend, be applied to a corporate body without a strained and unnatural construction.

All therefore, in my opinion, must rest on the effect of the Interpretation Act. If that statute had said peremptorily, that in all acts to be thereafter passed the word "person" should include every body corporate, we must have given it that construction, however repugnant it might have appeared to an otherwise plain intent; but the enactment is not peremptory. The word "person" is not to be so interpreted, if it shall be inconsistent with the intent and object of the act, or with the context; and whether it be so or not must be considered and decided before the word "person" receives that interpretation.

It would be easy to cite numerous instances in which so to interpret the word "person" would be entirely repugnant to the sense and object of the statute in which it is used (take, for example, the Census Act, 14 & 15 Vic., ch. 49). It is therefore only necessary to enquire whether the object and intent of this act, and the context of it, in reference to the word "person," show that it was or was not intended to apply to our municipal corporations.

With all respect for the opinions of others, I must say I feel no doubt that such an interpretation would be inconsistent with the intent and object of the statute under consideration:

1. Its expressed intention is to amend and consolidate laws affecting individuals only, and the words, used in their natural sense, are consistent with that intention.

2. The language of the second section, as pointed out in the judgment delivered by my brother *Burns* in Brown v. The Municipal Council of Sarnia (11 U.C.R. 215) indicates proceedings against individuals.

3. Municipal corporations, under the 12 Vic., ch. 81, or the subsequent acts, have never had so extended a protection conferred on them, though their liability to damages was under consideration in 14 & 15 Vic., ch. 109, sec. 35, and parties acting under the illegal by-laws are exempted from liability; and in 13 & 14 Vic., chap. 15, sec. 1, where there is a provision for the action being brought within three calendar months, the civil liability of such corporations, in cases where they were indictable, was declared, but without the protection of notice or right to plead not guilty per statute; there is only a limitation of time as to the bringing the action.

4. The plaintiff could bring no action for any wrong done to him under colour of an illegal by-law, till one month after the by-law complained of is quashed. If the act 14 & 15 Vic., ch. 54, applies, then a month's notice must be given before the writ is sued out, and the writ must be sued out within six calendar months after the act committed. Now if the act were committed, for example, on the 1st of February, it is not too much to suppose that the party injured could not apply to quash the by-law until Easter Term; and, considering the time necessary to elapse after serving the rule, before it could be made absolute, the argument would not take place till towards the end of the term; and the judgment of the court would not probably be given until the Tuesday week after the term, which could not be earlier than the 23rd of June; and, assuming the plaintiff to have given his notice so as not to lose an hour, he could not sue out his writ before the 23rd of July, or in fact till very near the six months would have expired. So that cases might occur in which a party would have little more than a week, within which he could sue out his writ and bring his suit. And if we further consider the provisions of 13 & 14 Vic. ch. 15, then in many cases it would deprive a plaintiff of any remedy, unless we hold that that latter act is repealed by the 14 & 15 Vic., ch. 54—a conclusion I am not at present prepared to adopt. And under the most favorable circumstances a party obliged to get a by-law quashed, as a preliminary to his commencing such an action, would be placed under more disadvantageous circumstances than those who were suing individuals entitled simply to the protection of the 14 & 15 Vic. ch. 54; for it will not, I presume, be contended that the first section of that act repeals the provision of the 12th Vic. relative to the quashing of the by-law.

For these reasons, I am of opinion that this nonsuit should be set aside.

BURNS, J.—*With all due respect for the opinion of the Court* of Common Pleas, in the case of Read v. The city of Hamilton,(a) that corporations are entitled to notice of action by reason of the operation of the Interpretation Act overriding the statute 14 & 15 Vic., chap. 54, so as to make the word "person," used in the latter, apply to corporations, I must still entertain the opinion I expressed in the case of Brown v. The Municipal Council of Sarnia. In addition to the reasons there given by me, which led to the conclusion that the legislature did not intend to confer a privilege of exacting a notice, where it had not been previously provided for by law, the following have occurred to me. We find, after the passing of the Interpretation Act, that the legislature has used the same language as to corporations being entitled to plead the general issue and give the special matter in evidence, as had been used previously, without any provision for notice of action to be served. We find the legislature also making the same provision after the passing of the 14 & 15 Vic., ch. 54, for pleading the general issue and giving the special matter in evidence. The statute 13 & 14 Vic., ch. 15, enacts that certain Municipal Corporations shall be civilly responsible for damages, provided the action be brought within three months from the time the injury shall be sustained. In this act no provision is contained for service of notice, or for enabling the corporation to plead the general issue and give the special matter in evidence. Now it is strange, if the legislature intended the 14 & 15 Vic., ch. 54 to apply to corporations, by force of the Interpretation Act, that it should have been left upon so undefined a footing as, that if applied to corporations under the 13 & 14 Vic., ch. 15, it must have the effect of curtailing the action of the party aggrieved to two months instead of three, and to the extent of saying that the corporation shall be civilly responsible, provided the action be brought within three months, it must repeal that provision, and compel the party to serve a notice some time within two months, in order that he may sue out a writ within three months. I do not suppose it would be contended that the effect is that an action could be sustained, if commenced after the expiration of three months. I do not think the legislature supposed the statute 14 & 15 Vic., ch. 54, applied to such a case. Again: in the same session the legislature incorporated the Bytown and Prescott Railway Company, (13 & 14 Vic., ch. 132); and in the 50th section of the act enacted that every action brought for anything done under that act should be brought within six months after the fact committed, and that the defendant or defendants might plead the general issue and give the special matter in evidence. If the statute 14 & 15 Vic., ch. 54, be held to apply to corporations, it must follow that the second section repeals that provision in the other act, *quoad* the limitation of time for bringing the action and privilege of pleading the general issue. Now although the pleading of the general issue is again provided for in the 14 & 15 Vic., ch. 54; and, by the 8th section, the time for bringing an action is limited to six months after the act committed, and so far may be said to be in accordance with the 13 & 14 Vic., ch. 132; yet if the 14 & 15 Vic., ch. 54, is held to apply to corporations, I confess I do not see how it can be argued that under the statute 13 & 14 Vic., ch. 15, instead of the action being limited to three months, it must be held to be extended to six months, by force of the 8th section of 14 & 15 Vic., ch. 54.

The statute respecting the formation of road companies, passed since the statute respecting notice of action—viz., 16 Vic., ch. 190—in the 53rd section, makes the same provision respecting the pleading of the general issue and giving the special matter in evidence. I apprehend in the construction of this act it could never be contended that the corporation was entitled to notice of action, because a notice to be given is not provided for; and, being passed since the other act, it shews that the legislature did not certainly imagine that by force of the act respecting notices of action it was supposed the pleading of the general issue was a privilege conferred, unless expressly granted. The whole argument in applying the 14 & 15 Vic., ch. 54, to corporations, must be based upon the assumption that the construction of the Interpretation Act, which was made to apply to future acts as well as those pre-

(a) Not yet reported. See also Croft v. The Town Council of Peterborough. 5 C.P. 141; and in Barclay v. The Municipality of Darlington (not yet reported) the Court of Common Pleas have affirmed their previous decision on this point.

viously passed, overrode the other, and so made it apply to corporations up to that time. The answer to that, independent of the reasons given by me on a former occasion, is that we find the legislature making provision for limitation of actions, and for pleading the general issue, in cases of corporations, in the same manner as had previously been the case, without any reference to the act respecting notices of action. I have no doubt other acts of incorporation might be cited with similar provisions. On the former occasion, I endeavored to show, from the internal evidence of the act itself, that it did not apply to corporations; but now I have attempted to show by external evidence, derived from other acts, that the legislature did not contemplate that the 14 & 15 Vic., ch. 54, did more than provide for consolidating the several laws upon the subject, so far as respects individuals. How far I may have convinced others, I know not; but to my mind my argument convinces me that the legislature only supposed it was dealing with the cases of individuals. I think the nonsuit was wrong, and should be set aside.

ROBINSON, C.J., concurred.

Rule absolute.

MAGRATH v. THE MUNICIPALITY OF THE TOWNSHIP OF BROCK.

(Reported by C. Robinson, Esq., Barrister-at-Law.)

(Hilary Term, 19 Vic.)

Pleading—Duplicity—Notice of action to corporations—14 & 15 Vic., cap. 54.

Trespass against a municipality for breaking and entering plaintiff's close. The defendants in their plea set out the petition of the householders for a road to be opened running across this lot, the survey and report thereon, the by-law confirming the road; that the plaintiff claimed damages for such road passing over his land, and was awarded £2 10s., which he accepted in satisfaction of such damages; and they alleged that the trespasses complained of were necessarily committed in opening and making said road in pursuance of said by-law.

Held, on demurrer, that the plea was not double, and that it showed a good defence;—*Held*, also, MCLEAN, J., dissenting (confirming Brown v. Municipal Council of Sarnia, 11 U. C. R. 215) that the defendants were not entitled to notice of action.

[13 Q. B. R. 629.]

Trespass for breaking and entering plaintiff's close, being the east half of Lot 16, in the 9th concession of Brock, throwing down fences, and destroying the grass and crops, &c.

Fifth Plea—that before the said times when, &c., to wit, on, &c., John Hall Thompson, then being surveyor of highways in and for the said township of Brock, duly appointed by the defendants for that purpose, was required and requested, by a requisition in writing, signed by a large number, to wit, twelve persons, then being residents and householders of the township of Brock, to examine and lay out a road from the 7th concession to the 11th concession in the township of Brock, in, over, and across the east half of lot 16, in the 9th concession of the said township, being the said close in which, &c.; that he, the said J. H. T., then being such surveyor as aforesaid, in pursuance of and in compliance with said requisition, did afterwards, to wit, on, &c., as such surveyor, lay out a new line of road in, through, over and across the said east half of lot 16, in the said 9th concession of the said township of Brock, being the said close in which, &c.; and that he, the said J. H. T., did afterwards, and before the said times when, &c., he the said J. H. T., then being such surveyor as aforesaid, to wit, on, &c., duly report the said line of way so laid out to the defendants; and the defendants further say that they did afterwards, and before the said times when, &c., to wit, on, &c., make a by-law confirming the said line of way in these words and figures following, that is to say:—

"By-law No. 11: To confirm a line of road from the front of the 7th concession to the 11th concession of the township of Brock.—Be it enacted by the Municipality of the township of Brock, that the road laid out and surveyed by John Hall Thompson, Esq., road surveyor, from the front of the 7th concession to the 11th concession of Brock, as appears by his report bearing date the 27th of December, 1850, be, and the same is hereby established as a public road or highway, on the first line described in said report, and said road be three rods wide."

That the plaintiff afterwards, to wit, on, &c., and before the said several times when, &c., appeared in his own proper person before the defendants, and then made claim for compensation for the damages sustained by him for the passing of such by-law, and for the injury which he would sustain in consequence of the opening of said road through the said close, in which, &c.; and the defendants then awarded the plaintiff the sum of £2 10s., in satisfaction and compensation of his said damages, and the plaintiff then accepted the same in such full satisfaction and compensation; and the defendants further say that they did afterwards, to wit, on, &c., and before the said several times when, &c., amend the said by-law by inserting therein these words "And which reports are hereto appended;" that the said line of way so described in the said report, and confirmed and established by the said by-law so amended and passed in and through the said close of the plaintiff, in which, &c., and that the same did not run through or over, or touch upon any dwelling-house, barn, stable, or out-house, or any orchard, garden, yard, or pleasure grounds; and thereupon, after the making of the said by-law, and the amendment of the same, and a reasonable time before the said several times when, &c., due notice was given to the plaintiff that the said road or highway had been laid out in and through the said close of the plaintiff, in which, &c.; that after the making of the said by-law so amended as aforesaid, and after giving of the said notice to the plaintiff, and after a reasonable time after giving such notice had elapsed, and after the said line of road had, by virtue of the said by-law, been confirmed and established as a road or highway, they, the defendants, did at the said several times when, &c., under the authority of the said by-law, and acting in the execution thereof, proceed to open and establish, and did then open and establish the said road or highway by the said by-law directed, through the said east half of lot 16, in the 9th concession of the township of Brock aforesaid, being the close of the plaintiff, in which, &c., in the declaration mentioned, as directed by the said by-law, and as the same had been laid out and surveyed by the said J. H. T., in the said by-law mentioned, and being the line of road so laid out as aforesaid; and in opening the said highway, and necessarily for the purpose of carrying into effect the said by-law, did break and enter the said close in which, &c.; and because the fences of the plaintiff were then standing across the said highway so ordered to be opened, and the said road was thereby kept shut and closed by the plaintiff, and the defendants, as they lawfully might for the cause aforesaid, did necessarily prostrate and throw down the said fences, and remove them from the said highway; and the defendants did then necessarily for the purpose of levelling, digging, heaping up, and removing obstructions from the said highway, with cattle and horses, plough and upturn the soil of the said close, being in and upon the said line of highway, and because grass and corn of the plaintiff before then sown and placed in the said close, in which, &c., in and upon the said line of road, was still left standing and growing thereon by the plaintiff, therefore the defendants, in opening and levelling the said road, did necessarily, with feet in walking, and with horses and cattle, trample upon and cut up the said soil of the said close in which, &c., being in and upon the line of the said highway, and the grass and corn growing thereon, and did necessarily upturn the grass and crops thereon growing and being, *quæ sunt eadem*—Verification.

The last plea set up as a defence that no notice of action was given to the defendants.

Demurrer to the fifth Plea—That it does not show that due or proper notice was given of the passing of the by-law therein mentioned, or of the opening of the road therein also men-

tioned; that it is double, for therein it is sought to set up a payment in satisfaction of the trespasses complained of, and also a justification under a by-law; that it is uncertain, for it does not show or disclose whether the road therein mentioned was established by a void or by a valid by-law; that said plea does not show any highway or road duly established, for the court cannot from said plea adjudge whether the road therein mentioned was, or is laid out in manner according to law; that neither said plea, nor the by-law therein set forth, shows or describes any defined line of road or highway, so that the plaintiff cannot take any certain or material issue thereon; that said plea is in other respects insufficient.

Demurrer to the last Plea, as showing no defence.

Hallinan for the demurrer. *McMichael* contra.

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

We do not think that we should hold the fifth plea to be insufficient. Any objection as to the description of the road in the by-law not being such as to show its situation with certainty was waived by the argument, on account of the amendment by the subsequent by-law having made that point plain.

Then, as to the exception on the ground of duplicity in the plea, we do not think it lies. It is one of those special pleas in which all the facts stated are clearly meant to lead to one conclusion, and in which it would be unreasonable to hold that the various matters are stated with the design of setting up several defences. The defendants here set out the petition of the freeholders, the survey and report, the by-law confirming the road, the claim of the present plaintiff for damages in consequence of so laying out the new road over his land, the payment of the damages by the defendants, and the acceptance of the money by the plaintiff in satisfaction of his alleged damage; and the defendants by this plea put it to the court, whether the plaintiff, after all this, can legally sue for a second satisfaction for the same alleged injury.

We think he cannot, but is bound by the satisfaction he has received, and is precluded from raising any question whether proper notice was given of the by-law before it was passed. If he meant to dispute the legality of the defendants' acts in establishing the new road, he should not have applied for and received the compensation, which implies an acquiescence on his part in what had been done.

We are of opinion that the defendants are entitled to judgment on the fifth plea.

As to the last plea, it sets up as a defence that no notice of action was given to the defendants, which brings up the same point that was decided in this court in Brown v. The Municipal Council of Sarnia (11 U.C.R. 215); and in accordance with that decision, we give judgment for the plaintiff on the demurrer to that plea, not considering that it was necessary to give notice of action to the corporation under 14 & 15 Vic., cap 51, sec. 8.

The Court of Common Pleas has taken, as we are aware, a different view of a question on which it is evident that there is room for a difference of opinion; and it is probable therefore that the doubt will be removed by legislation, or it may be removed upon appeal from our decision.

MCLEAN, J.—I have already given judgment in the case referred to in the Common Pleas, concurring in the decision of that court that corporations are entitled to notice of action. I still adhere to this opinion, and must therefore be considered as dissenting from the judgment just delivered, so far as regards the last plea.

BURNS, J., concurred in opinion with the Chief Justice.

Judgment for defendants on demurrer to the fifth plea.
Judgment for plaintiff on demurrer to the last plea.

O'REILLY *v.* VANEVERY ET AL. (Ejectment.)
do. *v.* VANNUCK ET AL.
(Two suits moved on same grounds.)

Alteration of præcipe and writ without leave of Court—Change of attorney—Appointment of Prochein Amys—Security for costs, plaintiff being an infant.
(In Chambers.)

The nature of the application and the grounds are fully set out in the judgment.

RICHARDS, J.—Summons obtained 15th of March to show cause next day why the writ in this cause or the service thereof upon the several defendants should not be set aside for irregularity on the grounds that the same was sued out by John R. Jones, as plaintiff's attorney, upon a præcipe filed by him in his own name; and after the writ was so issued, the præcipe was altered by the present attorney for the plaintiff by inserting his name as attorney for plaintiff,—and also, that the name of the said attorney endorsed upon the writ and capias was altered after the writ was issued. That plaintiff is in writ and capias improperly described as of the city of Toronto; that the lands mentioned in the writ are not shown with sufficient certainty to be within any county:—or why all proceedings should not be stayed until the plaintiff give security for costs on the ground that he is an infant under the age of twenty-one years:—or why proceedings should not be set aside on the ground that the plaintiff, being an infant, has improperly sued by attorney instead of his next friend.

It is admitted that the plaintiff is an infant under the age of twenty-one years, and that the writs of summons in ejectment were issued by Mr. Jones, an attorney of this Court, at the request of the plaintiff's step-father, one Montgomery, (who acts as his agent) on the 27th day of February, 1854.

It is stated on behalf of the plaintiff that Mr. James Boulton had been retained by the plaintiff himself to prosecute these suits, and that the writs were issued without proper authority by Mr. Jones, but at the same time what was done by him was done in good faith to expedite the proceedings of the plaintiff so that the cases should not be thrown over to the next assizes, and that Mr. Jones only issued the writs owing to Mr. Boulton's absence; that the next day after issuing the writs Mr. Boulton, Mr. Jones and Mr. Montgomery, acting as the plaintiff's agent, met, and they all mutually agreed that Mr. Boulton's name should be substituted for Mr. Jones, as well on the writs and capias as in the præcipe. They all went to the Crown Office, and the name of Mr. Jones was struck out and Mr. Boulton's inserted in the præcipe in each suit, all parties consenting, and Mr. Pearson, the Clerk in the Crown Office, permitting the same to be done; the name of Mr. Boulton was also substituted for Mr. Jones in the writs and copies as well as the notices endorsed thereon.

The Stat. 14 & 15 Vic., chap. 114, sec. 1, enacts "that all actions of ejectment shall be commenced by writ of summons *in the same manner as other actions*, * * * and such writ * * shall bear teste of the day on which it is issued."

The Stat. 12 Vic., chap. 63, which provides for the issuing of writs of summons by sec. 27, enacts that every writ issued by the authority of that Act should "bear date on the day on which the same shall be issued, * * * * and shall be endorsed with the name and place of business of the attorney actually suing out the same."

I am of opinion that the copies and service of the writs in these cases should be set aside for irregularity.

It is laid down in Chitty's Archibald's Practice, 7th edition, p. 1112, "That parties in general cannot take upon themselves to amend their own proceedings without leave of the Court or a Judge." The alteration of the præcipe in both these cases, having been made without the order of the Court or a Judge, I consider wholly irregular, and that such alteration is void, and that the matter should be viewed in precisely the same light as if Mr. Jones' name had not been erased. He therefore must be considered as the attorney issuing the writ.

It is urged that a writ may be altered before it is served, but in that event it must be resealed, otherwise the attorney would be considered guilty of *gross misconduct*, and the proceedings set aside.—*Jeggins v. Dawson*, 2 Dowl., 745. If resealed, Coleridge J. says, it must be considered as issued in fact when it was resealed. Then if it was, it has a wrong date upon it. It is irregular as being in contravention of the Act of Parliament. (I do not think, under the peculiar circumstances of that case, that *Braithwaite v. Lord Moreford*, 2 C. & M., 409, can be considered as any authority against the above dictum of Coleridge J.)

The same reasoning holds good in this case, as the writ has the date of the original issue, and if it be considered as re-issued on the next day then it has a wrong date upon it.

Again—it was not, when served, endorsed with the name of the attorney issuing it (if it be considered as properly issued by Mr. Jones) for his name had been erased and Mr. Boulton's inserted instead of it. If it is contended that Mr. Jones had no authority to issue the writs at all, then I cannot see how they can be considered as regular, for the writs served are the very ones issued by Mr. Jones, and have never been altered in their date or otherwise, the only alteration being in the endorsements and præcipe.

(As to alterations made and allowed in writs, see cases collected in note to *Wood v. Hurne*, 4 Dowl. & Lowndes 139; see also 1 Exch. Rep. 706, and 1 Practice Rep. 156, *Philips v. Lewis*.)

The more correct way of viewing the matter is to consider the writs as properly issued by Mr. Jones, and that what took place was a change of the attorney by consent of the attornies and the plaintiff himself. Can this be done without leave of the Court or a Judge's order? I think not.

See Manyham's Law of Attorneys, 110; Pulling's Law of Attorneys, 120; McNamara on Irregularities, 173, 174; Reg. Mich. 1654, and 10 Q.B.; Broom's Practice, 149; 4 M. & W. 197; 1 Taunton, 342; 4 Dowl., 677; 5 Dowl., 92; 6 Dowl., 490, 667; 3 Dowl., 538; 2 W. Blackstone, 1223; 1 do. 8.

As to setting aside the process because the infant can only sue by *Prochein Amy* or guardian, and cannot appoint an attorney, it seems that by the practice in England under the new rules the writ may be sued out as in ordinary cases, and the *Prochein Amy* appointed before declaration. The rule appointing the *Prochein Amy* is served with the copy of the declaration, and until the rule is served the defendant is not bound to plead: Chitty's Archibald, 7th edition, 889, 90 & 91; Broom's Practice, 288, vol. 1.

By the Statute of Jeofails 21, Jac. 1, when an infant appears and declares by attorney, it is cured after verdict, or after judgment by default; by 4 & 5 Anne, but it may be pleaded in abatement, 2 Letton's Prac. 67.

In all real or personal actions if an infant appear by attorney it is error; if he be plaintiff the bill or writ may be abated by plea. 2 Saunders, 212; Archibald on Pleading and Evidence, 273, and see form of plea; 1 Wentworth, 58, 62.

As, however, under the Prov. Stat. 14 & 15 Vic., chap. 114, no plea is filed or delivered by defendant in actions of ejectment, but the case is considered at once at issue as soon as an appearance is entered, the defendant cannot plead the infancy of the plaintiff in abatement. I think, however, he may after appearance apply immediately for a stay of proceedings until security for costs be given, or his guardian undertake for the payment of them, as was formerly the case in actions of ejectment brought by John Doe on the demise of an infant.—7th edition Chitty's Archibald, 1013-14.

It does not appear to me that the defendants are in a position to plead the infancy in abatement in an ordinary action until they have appeared, and consequently they are not yet in a position to take the step referred to above of stay of proceedings.

I express no opinion on the question of the correctness of the Practice in England of allowing the writ to be sued out before the appointment of the *Prochein Amy*. Under the old practice of considering the declaration the commencement of the action the appointment of the *Prochein Amy* at any time before declaration seemed consistent and reconcileable with principle, but now when issuing the writ is considered the commencement of the action, and not merely to bring the party into Court, one does not so clearly see how the practice of suing out a writ in the ordinary way and declaring by *Prochein Amy* can be considered regular.

As most if not all the late works on Practice in England lay it down that the writ can be sued out before the petition to appoint the *Prochein Amy* is presented, I would not venture to set aside the writ even if I entertained a much stronger opinion than I now do as to the inconsistency of that practice.

I think the order should be to set aside the copy and service of the writs, but without costs, as defendants have asked by their summons for more than they seem entitled to,—plaintiff to be at liberty to move the Court against this order if he shall be so advised.

Cooper *v.* Todd.

Costs—In actions of trespass where less than 40s. damages recovered when allowed under 16 Vic., ch. 175, sec. 26—Notice not to trespass—What sufficient.

[In Chambers.]

This was an action of trespass in which only one shilling damages was recovered. The plaintiff's counsel, after the trial, applied for a certificate for costs on the grounds, 1st, that the action was brought to try a right; 2nd, that evidence was given of a notice having been given to defendant not to trespass previous to the act of trespass for which the action was brought:

The learned Judge did not grant certificate at the time, and it was afterwards moved for in Chambers.

Draper, C. J. C. P.—The plaintiff relied exclusively on evidence of nine years possession, and his complaint as proved was, that defendant had placed the line-fence between them on a line of pickets recently planted by a surveyor which on parts came from two to four feet on the plaintiff's possession. Plaintiff's only witness admitted the real dispute to be that plaintiff claimed to have a frontage of 20 chains to his lot, which would carry him more than three rods within defendant's field. This witness also proved that the plaintiff had notified defendant not to meddle with the fence. The plaintiff offered no proof of title whatever, although his witness shows what the real dispute was, and which it may be supposed defendant would have contested, if plaintiff had entered into the question of actual right boundary between them, which it certainly was open to him to have done. I cannot certify the action was really brought to try a right, for the plaintiff might have tried the right, and did not, and I am disinclined to certify the trespass was wilful and malicious, looking at the whole evidence.

The Statute contains a proviso that plaintiff is not to be deprived of costs, when notice not to trespass has been previously served, and there was proof of a notice not to meddle with the fence, so that without a certificate the plaintiff is possibly entitled to costs. If I felt satisfied that moving the fence after a verbal notice not to meddle with it, made it wilful or malicious, of course I should feel bound to certify. But it struck me at the trial that the action, rested as it was by plaintiff on evidence of mere possession, was vexatious, leaving a question of right quite as open and undetermined as ever, when plaintiff might have tried it. On the other hand, the defendant, instead of taking possession of what the plaintiff had the occupation of was taking the law into his own hands, and after notice he might have brought ejectment. And he did not prove that the line on which he planted the fence was the true division line, only that a surveyor ran it as the true division line, so he left plaintiff's case, which was *prima facie* evidence of seizin unanswered.

I suppose at last I shall have to certify.

C.B., *England*] BRITISH LIFE ASSURANCE COMPANY (appellants) v. WARD (respondent.) *April* 25.

An agent for an Assurance Company has no implied authority to waive a forfeiture of a policy.

A. insured his wife's life; the premiums were to be paid weekly, and the policy forfeited if the premiums should be in arrear for more than four weeks. The premiums were not paid for eleven weeks. The agent of the company then received payment of the arrears:

Held, that in an action on the policy, the company were not liable, and that the agent had no implied authority to waive the forfeiture by accepting payment of the arrears.

This was an appeal from the decision of a County Court. The case stated that the plaintiff in the County Court insured the life of his wife in the office of the defendants on the 1st February, 1853, the premiums being payable weekly; that on a card given to the assured there was a notice that "members must pay the premiums regularly, and all members who allow the payments to be in arrear more than four weeks will forfeit their policies." On the 27th October, 1853, there were eleven weekly payments in arrear. On the 2nd November, one Gerard, the agent of the defendants, received payment of the arrears. On the 11th November the insured died. The defendants refused to pay the amount of the policy, on the ground that their agent had no authority to waive the forfeiture of the policy by the nonpayment of the premiums. The case found that the person who received the arrears of premiums was the sole local agent of the defendants, but that the defendants gave him no express authority to waive the forfeiture. The judge decided in favor of the plaintiff.

Tapping for the appellants.—The question is, whether the agent of the defendants had any authority to waive the breach. The case states that he had no express authority, and no authority can be implied from the facts stated in the case. The plaintiff must rely upon the general power of an agent to waive the nonpayment of the premiums. But his position as agent gives him no such authority: (*Acey v. Fernie*, 7 M. & W. 151.) In *Wing v. Harvey*, 23 L.J. 511, the circumstances were different: in that case, premiums had been received after breach for fifteen years, with the knowledge of the directors. Suppose the premiums had been payable yearly, and premiums had been in arrear for eleven years, could it be said that the agent had authority to waive the breach?

Keating, Q.C., for the respondent.—If there was any evidence for the jury of authority to the agent, that is sufficient for the judge, being judge of facts, to decide as he has done. [JERVIS, C.J.—From what do you say the judge inferred an authority?] I presume the judge found an authority from the fact of Gerard being the only local agent, and from a presumption that he must have had some secret instruction giving him authority.

JERVIS, C.J.—The judgment in this case must be reversed. I understand the case to set out everything from which the judge could find authority to the agent to waive the forfeiture. I do not see that any authority can be inferred from the facts stated; and my brother Williams suggests that the case proceeded on a mistake, and that the question is, not whether the agent had authority to waive a forfeiture, but whether he had authority to make a new contract? It is clear he had not. It is not like a waiver by a landlord of a forfeiture by his tenant for nonpayment of rent.

Judgment for a nonsuit.

TO CORRESPONDENTS.

M.P.E.—The communication is desirable; you will notice it elsewhere. We shall be always glad to hear from you.

J.D.—We beg to thank you for the friendly suggestion, and will if possible carry it into effect. The Index now in hand will be very full and complete. Your favourable opinion is not less acceptable than will be your good offices.

—M.—You will find the case you refer to in 12 Q.B. 521.

A.B.—The Manuscript will be attended to.

L. B. & Co.—Answered by mail. Number sent.

T. J. & W. J. & Co., Philadelphia.—Your favour duly received;—accept our thanks: the subject will receive attention. Parcel has just come to hand.

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THE UPPER CANADA LAW JOURNAL is published at the *Barrie Herald* Office, Dunlop-Street, Barrie.

THE LAW JOURNAL.

JUNE, 1856.

THE ADMINISTRATION OF JUSTICE—THE OFFICE OF COUNTY JUDGE.

We subjoin an article from the *Law Times*, universally admitted to be one of the first legal Journals in Great Britain. The reference is to an Editorial, "The Administration of Justice in the Local Courts," which appeared in this Journal in February last, and the views we therein expressed, it is gratifying to find, are endorsed by so high an authority. We simply presented the array of facts bearing on the office and position of our County Judges, but they were amply sufficient to commend our suggestions to the favorable consideration of those who might be willing and able to do justice in the premises. What has been done? There is a measure now before the House improving somewhat the remuneration of the County Judges—doubtless it will become law; but it aims more at accomplishing the minor object—Justice to individual Judges; than the higher end—improving the important office of Local Judge, so as to make it an object of laudable ambition to men distinguished for acquirements and talents which have secured to them eminence at the Bar.

Even with the proposed increase the salary will not be a remuneration at all proportioned to the

trust and labour of the office, and as compared to the present rate of professional emoluments, it offers no inducements to the successful practitioner to withdraw from the Bar.

The most important defect we pointed out, the new Bill does not touch, and the County Judges are yet without a guaranteed tenure during fitness and good behaviour—they are not freed from mere dependancy at pleasure—they are not placed beyond the reach of personal or party influences.

And yet this palpable truth remains: "Judges, while they behave themselves, while they act with justice, integrity and honour, should be independent of any power on earth. The essential interests, the permanent welfare of society requires this independence; not on account of the Judge, that is a small consideration,—but on account of those between whom he is to decide." That is the ground on which we urged the restoration of the tenure, *dum bene*, &c.; and it is the only true ground on which to place it: but such matters are not readily taken hold of.

The speculative undertaking, the requirements of capital, some business-like necessity has ever met facile, if not prompt, legislative attention; but matters pertaining to the administration of Justice, less tangible, less perceptible, less exciting to the feelings and imagination, may be delayed till circumstances force on their consideration; yet sooner or later they *will* receive attention, for they lie at the foundation of men's rights: and as the administration of Justice in a country is defective or complete, so is the value of all property diminished or enhanced. Those interested in the able and fearless administration of Justice may rest assured that truth and right once propounded, though they may lie dormant for a season, will eventually produce appropriate fruit. "Good Judges are vastly more important to the welfare of a community, than good statesmen or good legislators."

It is suggested to us that the matter which appeared in this Journal should have been laid before the public in the more convenient form of a pamphlet. This did not occur to us as necessary, or we would have had some copies struck off, for it is most desirable that questions of such importance to the public and the profession should be properly understood and deliberately considered.

We forbear further comment at present. The subject will be resumed hereafter.

The same question as to the necessity for increasing the salaries of the County Court Judges in some proportion to the increased skill and labor demanded of them, which is now under consideration at home, has been mooted in Upper Canada, and the same arguments are applicable to both. We have before us the *Law Journal* of that province, in which the case on their behalf is very powerfully stated. In Canada the Division Courts, which at first were designed to be merely courts for the recovery of small debts, have, like our own County Courts, been receiving increased jurisdictions, until they have become, what ours will probably be in a few years, the courts in which the entire legal business of the provinces is conducted. Thus, in addition to a jurisdiction over debts, the County Court Judge presides at the Quarter Sessions, and in the Insolvent Court. He hears and decides applications in causes in the Superior Courts for time to plead, reply or rejoin—for particulars of demand and set-off—for summonses and orders to compute; he adjudicates on the legality of any act done by justices, of whom he is, in fact, the legal adviser. This curious power is thus described:—

The provision requires that, upon an affidavit of the facts the County Judge, &c., shall issue a rule calling before him the magistrate and the party to be affected by such Act, and upon examining into the matter determine what should be done, awarding costs as may seem meet: and the magistrate is protected *in doing anything required of him by the County Judge's order.* "This simple means, not attended with much expense, conduces (in the language of the Act) to the advancement of justice—renders more effective and certain the performance of the duties of justices, and gives them protection."

The County Court Judge of Canada also admits to bail in criminal charges; he inquires into the cases of lunatic prisoners, and certifies for their removal to an asylum; he superintends the formation of the jury lists; he is the arbitrator to determine compensation under Railway Acts, and is empowered to put the company by his warrant into possession of lands taken for the railway; he hears and determines complaints respecting the mode of conducting the elections of school trustees; he determines the validity of municipal elections, and performs the duties of our revising barrister with respect to voters; he hears appeals from taxes; and last, not least, he has an equity jurisdiction to the extent of £200.

Such being the duties, what is the pay? Still the old £500 per annum, given when the duties were not a tithe of what they now are.

The consequence is, that no man of any present standing or future prospects at the bar will accept the office, and the result of this may be readily imagined.

Our colonial contemporary thus comments upon the cases we have stated:—

"It will be borne in mind that County Judges sit alone; and in a great variety of cases determine, not only the law but the facts of the case, without a jury, in most cases without professional assistance; that cases involving the most intricate and difficult points daily come before them for adjudication, and in many instances without appeal; that, in fact, almost every question which may arise before the Superior Courts, may arise also in the local Courts, and require to be there determined."

"The life of the laws," says Lord Bacon, "lies in the due execution and administration of them!"

With the present important and varied objects of ordinary jurisdiction committed to County Judges—with the jurisdiction

in respect to cases in the Superior Courts—with the multiform and highly responsible collateral duties made incident to their office; and in view of these duties being increased, it is of infinite concern to the public at large, that upright, able and learned men, should be *courted* to accept the office, and that none other should be appointed.

"County Judges (in the words of a personage who has favored us with a communication on the subject) should be men of character and standing—lawyers of experience; industrious, hard-working, deep-thinking plodding men; men who have steadiness, independence, and force of character—who are under the guidance of good feeling, influenced by proper impulses, and who have an interest in the common weal; prepared to stand up against improper local influences, personal and party prejudices—looking and pointing others to a standard, and that the right, as the rule for the actions and judgments of all men."

If men meeting such requirements are not readily to be found, let them be diligently sought for as occasion may require. The Upper Canada Bar, not inferior to that of any other in the Queen's dominions, comprises such in its ranks. Offer these men inducements to withdraw from a field where labour and talents are more appreciated and better rewarded than in the public service; and let aptitude for the office be the governing principle in every judicial appointment, and the right material may be had. And what are the inducements that should be offered for relinquishing a lucrative profession, a calling not less honourable than that of County Judge? First, a remuneration in proportion to the trust and labour of the office, and at least on the same scale of remuneration which talent commands in the counting-house and the bank. Give the judges sufficient "to support them in that station of life in which it is right on every ground they should move and act," with something over to save against the day when infirmities leave them unable to work, or provide a retired allowance on such a contingency.

What would the charge amount to? A mere nothing; for suitors in the local courts contribute to, nay, almost pay the whole charge of the establishment, and the fund is increasing; but if it did cost the province a few thousand dollars in providing for the administration of justice—what then? that should ever have the first claim on the public revenue; and the benefits of *local* administration are most sensibly felt. The labours of the County Judge are but partially known; they are not confined to the time spent in courts, nor to the labours of the read (the latter most trying on any constitution); they compel him to forego many advantages, to relinquish many comforts of social life.

Such facts as these need not be further dwelt upon; they speak for themselves. They will produce no small astonishment in England; and we trust that they will not be submitted in vain to the Canadian Legislature, in which, we believe, is now vested the sole power of appointing the salaries of public servants. If they want good men for Judges, they must pay the price at which alone good men can be got. Doubtless the work may be done at the present pay, for there are numbers of the Profession who are glad to get what they can, and who probably do but take a right estimate of their own value when they accept the salary; but are not such services dearly bought after all? Good Judges are vastly more important to the welfare of a community than good statesmen, or good legislators.

THE NEW COMMON LAW PROCEDURE ACT FOR UPPER CANADA.

In these stirring times of Law Reform we require to forget much of the past in becoming acquainted with the present. The new *Statute* (we may so speak of the Bill) will be the foundation for this knowledge of the practical part of the law, and a thorough acquaintance with the alterations and improvements it makes will be absolutely indispensable to the practitioner and student.

Every Lawyer can appreciate the value of practical and explanatory notes on a Statute, and particularly one embracing the whole field of civil procedure which the Common Law Procedure Act does. It is always an immense saving of labour to the busy practitioner to be able to see in a glance what clauses are original, what copied—the sources from which they are derived, and to have collected in appropriate places the decisions upon their construction. The notes upon a single clause may at any moment prove an equivalent in saving of labor, for the price of such a work, at least to those practitioners who are not above *receiving the light* which judicial construction throws upon the Law; and either in the Office or on the Circuit a portable edition of so important a Statute is a *desideratūm*.

We are much pleased to see that Mr. R. B. Harrison has undertaken the labour of publishing an edition of the above Act, "with notes explanatory "and practical, showing the origin and history of "each section. The changes effected by the Act "in the old Law, the decisions of the Courts in "England on similar enactments, &c."—just what the profession require; all this, nothing less, is necessary to give value and completeness to the work: but the author has a world of labour before him, and we sincerely trust he may reap corresponding advantages.

Mr. Harrison is already known as the author of a very excellent digest of the Upper Canada Reports, and judging from the manner in which that work was executed, we have every assurance that the one now in press will be all that the practitioner could reasonably expect: an edition of this important Statute is a necessity to the profession, and we do not know that the task of executing it could have fallen into better hands. The price is extremely low.

We shall take occasion again to refer to the proposed work.

LIFE ASSURANCE.

We direct attention to an important case "The British Life Assurance Co. (appellants) *v.* Ward, (respondent)" published in full on another page: it may serve to put policy holders on their guard,

for we happen to know several instances in which local agents have received payments of premiums after the periods limited had expired. This may go on smoothly enough, unless the life drops; but the practice is a dangerous one—and the whole provision for a family may be swept off by a single act of neglect.

Speaking on this subject generally, it occurs to us that possibly there might be some difficulty in cases of English and Foreign Insurance Companies having only agencies in Upper Canada. The holder of a Policy, we will suppose, omits payment until the last day, and then on calling at the agency finds that the agent has died suddenly, and he cannot pay the premium: the terms of the policy do not provide against any such contingency, as far as we are aware; what security then has the holder but in the honour of the Company? Our Home Offices, such as the *Canada*, are not open to this objection, but possibly Foreign Offices might be willing to insert in their policies a condition for better security of holders. We would recommend them to ascertain how their rights stand, what their position would be as respects claims on a Company in case they, the holders, were unable to find some authorized agent to make payment to when a premium became due.

BAILIFFS—ONE OF THE USES OF THIS JOURNAL.

We have received many letters from D.C. officers thanking us for information which our pages disclose: they are too long and too numerous even to extract from, but we give in another place the letter of Mr. Jones, one of the Bailiffs in Northumberland and Durham—a good sample of the rest. We know the writer only by his communication, and judging from the spirit of his letter, have no doubt that the Court of which he is an officer is well served.

We have always been really anxious to aid officers, and without exactly aspiring "to the better enlightenment of the public men of our Canada," as Mr. Jones says, it is pleasant to know that our exertions in an humble way have not been in vain.

POLITICAL *STATUS*—PROFESSIONAL CLAIMS.

The following (in the *Law Times* of the 26th April last) is cut from an article in reference to the discontent occasioned by the recent promotion of Mr. Cairns, of the English Chancery Bar:—

"Notoriously, at both Bars, political services have always purchased honours that were denied to professional merit. Lord Palmerston's Ministry has done no more than its predecessors had done before it, and the remedy should be sought in a change of the system, not in abuse of the particular instance in which its fault is shown more glaringly than usual. If political services are to be recognized at all as justifying legal promotion, the present exercise of the power may be well excused. But it is a serious question whether that power should be retained—if the time has not come when professional merit alone should regulate the distribution of professional honours. We think that it has—that the abandonment of it would operate equally for the benefit of the political and of the legal world. Parliament would be relieved from the throng of Lawyers who now go there because it is the easiest path to professional advancement, and who too often earn their honours at the expense of the public welfare; and the Bar would have the benefit of its best members devoting themselves wholly to their professions, and the best abilities promoted to the right places, instead of favouritism in the distribution of rewards, and places filled by the wrong men. And how might this change be accomplished? Very easily. By enacting that no member of Parliament shall be eligible for any judicial office, nor for two years after he shall have ceased to be a member. The other evil would then cure itself."

DIVISION COURT DIRECTORY.

The County Judges from whom we have not yet received the lists of the limits of the Divisions of their Counties and the names of the Officers, would confer a very great favour on us by forwarding the necessary information as soon as they conveniently can: we are most anxious to obtain these lists, as the completion of the Directory will necessarily be delayed until we have from all the Counties reliable returns completed. We repeat, a very great favour will be conferred on us by early attention to this.

MERCANTILE LAW REFORM IN ENGLAND.

The Bills for assimilating the Mercantile Law of England and Scotland have passed through committee of the Lords. The first Bill alters the English law and assimilates it to the Scotch law, in some particulars in which the Scotch law was deemed to be preferable. The second, *vice versa*, alters the Scotch law upon points in which the English law was preferred. In answer to the objections which had been made to the repeal of the provision in the Statute of Frauds, that requires contracts to be in writing, Lord Campbell explained that the law at present made several exceptions to

the rule, as where earnest had been given, where there had been part payment or part acceptance, or where any portion of the goods had been delivered. He added, truly, "that these exceptions made the clause mischievous instead of beneficial, and gave opportunities for using it for fraudulent purposes. He was quite ashamed of the subtleties which had been resorted to before him and his learned brothers in consequence of this discreditable state of the law." The Lord Chancellor said that the clause, "instead of preventing frauds, was often made the means of committing frauds."

The repeal of this famous clause was then agreed to without a division.—*Law Times.*

COUNTY COURTS, U. C.

(In the County Court of the County of Simcoe—J. R. GOWAN, Judge.)

T. R. FERGUSON v. J. STEWART.

(*Reported by H. Bernard, Esquire.*)

Overdue promissory note, transfer of—Subsequent payment to payee by maker without notice of transfer—Held on demurrer to plea setting up this defence—No answer to the plaintiff's action as transferee of note.

Transferree of an overdue note takes subject to *then existing* equities affecting the note *itself*: but his right to sue is not subject to be defeated by any after act of the person who had the first right to sue, and no notice of transfer is necessary to perfect title of transferree.

Assumpsit on Promissory Note.

DECLARATION.—*First Count.*—That the defendant on the 16th of May, A.D. 1853, made his promissory note in writing, and thereby promised to pay to A.L., or bearer, the sum of £25, three months after the date thereof for value received, which period had elapsed before the commencement of this suit, and the said A. L. then delivered, transferred and assigned the said note to the plaintiff; and he then became, and was, and is the lawful bearer thereof: and the defendant in consideration of the premises, then promised to pay the amount of the said note to the plaintiff according to the tenor and effect thereof, &c.

Fifth Plea, to First Count.—The defendant says that after the said note became and was due and payable, and before the commencement of this suit on to wit the first of February, A.D. 1855, he, the said defendant there paid a large sum of money, to wit, the sum of £50 to the said A. L., and the said A. L. then accepted and received the same from the defendant in full satisfaction and discharge of all the principal and interest then due on the said promissory note, and of all causes and rights of action then accrued to the said A.L. in respect thereof; and the defendant further saith that at the time of the said payment of the said note by him this defendant as last aforesaid, he, this defendant, had not then nor at any time theretofore had had notice that the said note was then or at any time before then had been delivered, transferred and assigned by the said A. L. to any third party, or was then or ever theretofore had been in the possession of any third party; and this defendant further saith that at the said time when the said note was first assigned, transferred and delivered to the said plaintiff, and when the said plaintiff first became and was the holder thereof the said note was then overdue and payable, whereof the said plaintiff had notice: and this, &c.

Demurrer to Fifth Plea—Causes.—For that the said fifth plea is no answer to the said first count, inasmuch as it does not state or set forth that the sum of £50 was paid in manner and form as in that plea is alleged, before the assignment of the said promissory note to the said plaintiff, whereas the said plea ought to have alleged that the said sum of £50 was paid as aforesaid before the said assignment; also, for that the said fifth plea tenders an immaterial issue; also, for that the said fifth plea traverses that which has not been before alleged, or which is not necessarily implied; also, for that the said fifth plea offers to put in issue and to deny a matter not affirmed by the plaintiff, namely, "that at the time of the said payment of "the said note by him, this defendant as last aforesaid, he this "defendant, had not then, nor at any time theretofore had had "notice that the said note was then, or at any time before then, "had been delivered, transferred or assigned by the said A. L. "to any third party, or was then or ever theretofore had been "in the possession of any third party"; also, for that the fact of the said defendant not having had such notice as is in the said fifth plea mentioned, is no answer to the said first count, and for that said fifth plea is in other respects, &c.

The defendant joined in demurrer.

The demurrer was argued by *Mr. Strathy* for the plaintiff; *Mr. Cosens* for the defendant: and in March Term (1856) the following judgment was given by the Court:—

HIS HONOUR.—The plea demurred to appears to have been framed on the presumption, that in case of the transfer (*bona fide*) of an *over* due promissory note the maker may, at any time, if ignorant of the transfer, pay the original creditor, (the payee), and is thereby discharged.

In support of the plea it is argued, that the taking the note after maturity, and omitting to give notice of the transfer is gross negligence on the part of the transferee, and renders the promissory note in his hands liable not only to antecedent equities, but also to those that might arise on after dealings between the original parties. That a party thus taking a promissory note stands then as the payee stood, and as he may at any time thereafter stand as respects the maker, and that a payment, after transfer without notice, to payee, binds even a *bona fide* holder. This seems contrary to all settled notions, and is not, in my judgment, law.

Where a debt, not secured by bill or note, (a pure chose in action—a naked right to sue for money due) is assigned, the title of the assignee is certainly not complete until he has given notice to the debtor of the assignment, but *negotiable securities* are exceptions to the rule—obviously so for convenience and security in commercial transactions; and delivery in the case of a note payable to bearer, passes all the interest and rights of the payee therein, and no notice is necessary to perfect the title of the transferee, and he can at once maintain an action upon it in his own name.

The custom of merchants, countervailing the strictness of the common law respecting choses in action, gave to bills of exchange the ordinary incidents of property, and the statute of Anne gave also to promissory notes the capability of being transferred in the same manner as bills of exchange.

It is true that on an over due note only such right of action as the payee has at the time of delivery passes—that the transferee takes subject to then existing equities affecting the note *itself*—but if the matter urged in support of this plea would constitute a defence in law, debts secured by bills or note would be in the same condition as ordinary choses in action; whereas the simple delivery passes the legal right to the property secured by them as fully—so far as concerns the point in this case—as in case of choses in possession. I think the transferee's right to sue, absolute when he receives the note, and not subject to be defeated by any after act of the person who had the first right action.

Such of the American cases cited, as I have been able to examine, do not support the position contended for by the defendant—but if they did, I would hesitate, acting in an Inferior Court, to decide against what I believe has always been esteemed law taken for granted.

There is one point more which may be referred to. The argument of negligence is of no value in this case, for bad faith is not imputed, and comes with ill grace from the debtor who makes a note payable to any and every bearer—who

fails to retire it when due, and afterwards pays without seeing or receiving the evidence of debt—he is certainly guilty of very gross negligence. Who ought to bear the consequences, the party who honestly acquired the note for valuable consideration, or the party who ignorantly or negligently paid without the production of his note? I have seen no reason to alter the opinion expressed at the argument. I think the plaintiff is entitled to judgment on the demurrer.

Grant *v.* Vaughan, 3 Burr. 1516; Peacock *v.* Rhodes, 2 Doug. 333: Clark *v.* Shee, Cowp. 197; Foster *v.* Pearson, 5 Tyrw. 255; Goodman *v.* Harvey, 4 Ad. & El. 870; and see, 1 Smith Leading cas. 250, *and notes.*

American cases bearing on demurrer, referred to by Mr. Cosens:—

Rowley *v.* Ball, 3 Cowen 312, 313; Chitty on Bills, p. 173, Ed. of 1817; Pintard *v.* Tackington, 10 Johnson's Rep. 101; Bullet *v.* B. of Pennsylvania, 2 Washington Civ. Rep. 173; Martin *v.* B. U.S., 4 Wash. Civ. Rep. 255; Jones *v.* Falls, 5 Mass. Rep. 101.

(In the County Court of the County of Essex—A. Crewitt, Judge.)

RIDSDALE *v.* ST. AMOUR.

Certificate—Verdict £10 8s. 9d.

Assumpsit on common counts.
Pleas: General Issue and payment.
Particulars claimed, balance of £32 10.

In evidence the whole account was for	....	£131 10
Reduced by payments credited in particulars.		99 0
		£32 10

The evidence of plaintiff showed further payments which reduced it to £21 10s., and a disputed payment of £10 was left to the jury, who gave verdict of £10 8s. 9d. Certificate moved for on ground that it was an unsettled account over £50, (see 26 sec.) Certificate refused, as though it was *apparently* an unsettled account over £50, yet it was reduced by fragments, all within the plaintiff's knowledge, to an amount within the jurisdiction of the Division Court; and there was nothing special in the nature of the suit which required it to be withdrawn from Division Court and commenced in the County Court.

(In the County Court of the County of Essex.)

BELL *v.* HOLCOMB.

Certificate—Verdict £15.

Assumpsit against common carrier for not forwarding and delivering a mowing machine by the first safe vessel which offered from Kingston to Amherstburgh, in time to use in the hay harvest, having been kept back for defendant's own vessel, by which greater expense incurred in getting in a large quantity of hay.

Plea 1st. General Issue; 2nd. Not delivered to defendant for the purpose, &c.; 3rd. Did use due diligence, &c.

Certificate granted—the special value of the case from the evidence warranting it. The suit was commenced before the passing of the last Division Court Extension Act—though it might have been brought where defendant resides, at Kingston, and subpœnas issued, if *necessary*, from Superior Court, under the 48th sec. of the Act of 1850. It is said to have been usual in such case to sue in County Court (L. J. 151) and get certificate, plaintiff living in one County and defendant in another; I suppose from something special in each suit, as in the present case, in which latter the contract or *cause* of action (decided in England to mean the *whole* cause of action—*U. C. Law Journal* 176) arose partly in each County, making it necessary to sue in a Court of general jurisdiction, (U. C. L. J. 53, 4, 5; 118; 134); if not obliged to sue in a Division Court where defendant resided, which he must do if the nature of the case was not such as to render it fit to be withdrawn from Division Court.

(In the County Court of the County of Essex.)

MCLEOD *v.* MCDOUGALL.

Certificate—Verdict £21 12s. 6d.

Assumpsit: General Issue, set-off and payment.

The plaintiff claims certificate because it was an unsettled account over £50; and it so appears in particulars, and there is ground to believe it is so stated *in good faith*, as they were for £97 8s. 9d., reduced by credits for payments to £51 8s. 9d. defendant's particulars of set-off is for cash £19 10s. and returned barrels £9. At the trial the defendant convinced plaintiff that £15 10s. more, stated in defendant's particulars, not credited in plaintiff's particulars should be allowed, which reduced plaintiff's accout to £38 15s.; also a barrel of malt whiskey forwarded to defendant but proceeds not received £5 15s., and a difference in the interest account in favour of defendant of £2 15s. The defendant then produced a receipt of £7 10s. not stated in his particulars as the other cash payments were, (perhaps unnecessarily) leaving plaintiff to believe that the latter were all the credits claimed; and plaintiff contended with great reason that this £7 10s. receipt was part of the cash in defendant's particulars already credited—the jury in their verdict of £21 12s. 6d. allowed it, being the result of the unsettled account of over £50. Now, the returned barrels, £9 in defendant's set-off, part of the deduction which led to this verdict of £21 12s. 6d. was not a payment, but a cross demand, and £9 added to verdict would make plaintiff's demand £33 12s. 6d., so that on this footing (independent of its being reasonably considered an unsettled account over £50) plaintiff would be entitled to certificate, as the plaintiff could not be considered as suing for a balance under £25, having in effect recovered more, *i.e.* £33 12s. 6d. as above, but reduced by a cross demand on set-off to £21 12s. 6d.

This suit, as in *Bell & Holcomb*, was commenced before the Extension Act passed, and the cause of action arose partly in Essex and partly in Lambton, defendant residing in Lambton, and the same *reasoning* applies in this case on these grounds.

DIVISION COURTS, U. C.

(Reports in relation to.)

(In the Second Division Court for the County of Essex—A. Crewitt, Judge.)

PARK & Co. *v.* MCKENNY.

This was a suit on note for $87 50, dated 27th August, made payable "in the month of January next," commenced 2nd February, which it was contended was premature.

THE JUDGE.—I think the form of the note gives the *whole* of the month of January to pay it in—the same as a note payable on a particular day *ex. gra.* (31st) gives that day in business hours to pay it in. It is not payable at the first hour or fore part of the day, but has the days of grace added to it; so here in my opinion it was not payable in the beginning or middle of January, but on the last day of January, being something like a *usance* from the 1st to the last of January inclusive, stipulated for between the *parties*, and the days of grace were always allowed after a customary usance—(said to be formerly in England a month or 30 days) in the language of merchants.

In this case it is the same as saying, in 5 months and 4 days, or in 157 days, or at an usance of the duration of the month of

January. I promise to pay, &c.—in either of which forms the days of grace would be added. Chitty says, days grace are to be added to time stated for payment, or to the time when the *event* is certainly to happen on which note is made payable, £374 5s. The event was the expiration of January—as in the other case it *might* be paid early on the 31st or early in January.

But the holder could not be compelled to receive payment *before* the 31st January, without perhaps such words as "on or before," or the like, as it might be inconvenient.

In one case payment is *stipulated* to be received during the 31st, and the law *gives* 3 days more; in the other, the stipulation is to receive it during *all* the month of January, and the law allows also 3 days more: I *think* it was sued on the 2nd February, prematurely.

I did at first think it might be like making note due on 1st January, and by express words agreeing for 30 days of grace instead of 3, so that the days of grace would be out on last of January; but I find nothing to support this view: the other is the only safe construction, as the former is after all only *equivalent* to an usance during January—and the days of grace follow any *usance*. *Chit.* 374-5.

MONTHLY REPERTORY.

(Notes of English Cases.)

COMMON LAW.

EX. GUARDING v. BROWN. *April* 15.

The sickness of a person who desires to set aside an award is not a sufficient excuse for postponing the application to the Court beyond the term next after the publication; he should move to have the time enlarged.

Q.B. REG. v. HARROP. *April* 19.

Appeal—Party aggrieved—Assent of appellant to act complained of.

By a local act an appeal to the Quarter Sessions was given to any person thinking himself aggrieved by any order or decision of the commissioners under that act.

Held, that a person who would otherwise have been entitled to appeal against an order of the commissioners, directing payment out of a certain fund of expenses not properly chargeable thereon, was precluded from appealing by having originally assented to that application of the fund.

C.B. LITT v. MARTINDALE. *April* 18.

The plaintiff, in London, sent instructions to one Gladders, in Liverpool, to buy a bond for him, and sent him a letter of credit for £2,010 for that purpose. Gladders was at the time indebted to the defendant in the sum of £1,940. The defendant, hearing of Gladders having this letter of credit, went to him, and pressed him to let him have £2,000 to buy some goods with. Gladders said he had nothing but the letter of credit, which was to enable him to purchase the bond for the plaintiff. The defendant then persuaded him to let him have the money, stating that he would repay it in a few days—time enough to pay for the bond. He afterwards refused to repay it to Gladders, on the ground of his being his debtor.

The jury gave a verdict for the plaintiff. Upon motion to set aside the verdict:

Held, that the jury were at liberty to think that the conduct of the defendant was fraudulent—that he never intended to return the money to Gladders—and that there was no loan, but that the defendant got the plaintiff's money upon the pretence of returning it—and that the plaintiff might recover it under such circumstances, in an action for money had and received.

Q.B. BOWES v. CROLL. *April* 25.

Contract—Construction—Condition precedent.

A. contracted with B. to procure land for a communication between a railway and gas-works, and to grant B. a lease of same for the term of five years, B. to pay a certain rent, and the first payment to be made six months after possession of the land should be given to B.; and upon the termination of the said term of five years, by effluxion of time or by notice, A. to pay to B. the sum expended by him for the purpose of laying down sidings and building coal-sheds, &c., on the said land.

In an action by B., after the expiration of five years from his being put into possession of the land, to recover money so expended by him:

Held, that the granting of a lease by A. was not a condition precedent to the right of B. to maintain that action.

Q.B. (*Ireland.*) MACGREGOR v. RHODES. *April* 25.

Bill of exchange—Indorsee against indorser—Plea denying title of defendant as alleged—Estoppel.

To a declaration by the indorsee of a bill against an indorser, which alleges an endorsement by the payee to the defendant, and by the defendant to to the plaintiff, it is a bad plea to deny the indorsement by the payee to the defendant. (CROMPTON, J. *dissentiente*, on the ground that the defendant was entitled to traverse the way in which the plaintiff stated his title.)

Q.B. INTERNATIONAL TELEGRAPH COM'Y v. REUTER. *May* 2.

Agreement—Construction—Packed telegraph messages.

The defendant agreed with plaintiffs to transmit all his despatches, and such other messages as he could collect or influence, through the plaintiffs' telegraph, and the plaintiffs agreed to allow a commission on the amount received by the company for their charge for the transmission, the maximum to be £500 per annum, and the minimum £300.

Held, that under this agreement the defendant was not at liberty to pack several messages into one, charging for them separately, and yet as between himself and the company only treating it as a single message.

CHANCERY.

R.C. RE CHANDLER. *April* 16.

Solicitor—Striking off the rolls.

A solicitor, who was trustee of a marriage settlement, struck off the rolls for breach of trust in selling out the trust fund and appling the proceeds to his own use.

LAWFORD v. SPICER (*Re* a Solicitor of the Court.)

V.C.S. *April* 26 & 28.

Contempt—Breach of undertaking embodied in an order of the court—Costs.

By an undertaking which was embodied in an order of the Court, defendant (whose wife was another defendant) and his

solicitor, undertook that no attempt should be made directly or indirectly by reason of the production of the wife before the examiner to discover her residence, or in any way molest her. The husband and his solicitor signed the registrar's book at the foot of the undertaktng. When the wife attended before the examiner, the husband's solicitor, upon the conclusion of her examination, served her with a writ of subpœna to attend as a witness in another cause.

On motion to commit the solicitor to the Queen's prison for breach of the undertaking, the solicitor appearing in person and stating that he did not intend to commit any contempt of Court or any breach of the undertaking, the Court would not commit the solicitor, but made him pay the costs of the application:

Semble, the wife was not bound to obey the subpœna.

C.P., *Ireland.*] GRADY v. HUNT. *Nov.* 16, 17.

*Action against a Justice of the Peace—False imprisonment—Illegality—Warrant—Probable cause—Malice—Jurisdiction—Bail to keep the peace—*12 *Vic., cap.* 16.

To an action for false imprisonment, (against a Magistrate, but not so described in the summons and plaint) the defendant pleaded that he was a Justice of the Peace; that a certain person had sworn an information before him—that the plaintiff had struck him with a stone—and that he feared that the plaintiff would do him further bodily harm; that the defendant as such Justice, and "acting in the execution of his duty as such Justice, in respect of the premises being a matter within his jurisdiction," duly issued his warrant directing the police officers of, &c., to apprehend the plaintiff and bring him before the defendant, or some other justice, to answer the above charge; that the plaintiff was accordingly apprehended and brought before him, and was then required to find bail to keep the peace for three years; that he refused to do so, whereupon the defendant in execution of his duty as such justice in respect of a matter within his jurisdiction, duly made his warrant directing a constable to lodge the plaintiff in gaol, there to be detained until he should find two sufficient sureties to keep the peace for the space of three years; that the defendant committed the supposed trespass for the purpose of compelling the plaintiff to keep the peace, and not maliciously, nor without reasonable or probable cause.

Held, that a warrant by a justice of the peace authorizing the imprisonment of a party until he should find bail, without specifying the term of his imprisonment, is illegal.

Held, also, that the defendant having issued such a warrant, had not in so doing, acted "within his jurisdiction" under the provisions of 12 Vic., cap. 16.

[The sec. 1 of U. C. Act 16 Vic., cap. 179, is the same as the Irish Act 12 Vic., cap. 16.—ED. L. J.]

CORRESPONDENCE.

CAMPBELLFORD, April 29, 1856.

To the Editors of the U. C. Law Journal.

GENTLEMEN,—

Being a Bailiff, and also a subscriber to your Journal, I notice it mentioned that many of those Bailiffs to whom the first No. for the current year was sent, did not subscribe, but returned the number. For my part, I am at a loss to know why they should thus deprive themselves of a periodical containing so much useful information;—and at the same time affording counsel so cheap and ready obtained. I think that the *Journal* is just what every officer connected with Division Courts requires. For my own part, during the past year I have had one or two very trying and difficult cases; and residing as I do at least 40 miles from Cobourg, and 30 from the nearest frontier—therefore, having no legal man near at hand on whom to call for advice, and yet desirous of committing no mistakes, I am aware I should have in several instances run into gross blunders, had it not have been for the *Journal* to guide me; but with it, I found I possessed a friend at hand with which to proceed without danger: that is comparatively, for I think no matter how much caution we use, with so many eyes upon us, we are never free from either danger or misrepresentation. I frankly confess, however, I found and still find the *Journal* to be *my right hand man;* and I do confess, without it I should not know what to do, or where to look frequently for information.

I admire the "Manual" you have commenced; in judging from the first and second numbers, I think it will save us from asking a great many questions of attorneys, or taking the almost necessary alternative of running into mistakes; had it not been for it, (the Manual) I, no doubt, should have annoyed you with several enquiries: but I doubt not they will be all answered in the same.

Hoping, for the sake of the better enlightenment of the public men of our Canada, as well for the encouragement of those who spare no trouble or counsel in effecting this purpose, that every Bailiff, as well as every other officer connected with the carrying the purposes of law into just and proper effect—your Journal will receive and retain all the encouragement and support it justly deserves,

I am, Gentlemen, respectfully yours,

CHARLES JONES,
Bailiff First Division Court,
Northumberland & Durham.

NOTICES OF NEW LAW BOOKS.

COMMENTARIES ON THE CRIM. LAW—*by* JOEL PRENTIS BISHOP. *Little, Brown & Co., Boston, U. S.*

We again revert to this work, subjoining according to our promise further extracts, the better to inform our readers of the character of the Commentaries. Having gone over the whole book, we again repeat, the work is one from the perusal of which much pleasure, as well as much information may be derived; every lawyer here and in the United States should possess it: as a book of reference merely, apart from its intrinsic excellence, it cannot be too highly spoken of.

MEANING OF PARTICULAR WORDS AND PHRASES.—No reflecting person ever arrived at years of maturity in judgment without being impressed with the vague and uncertain character of all human language. We are a part of the universe, a law of which is, that no two things, relating either to matter or spirit, are precisely alike; and so, no two thoughts, ever mirrored in the minds of different individuals, or of the same individual at different times, were exactly identical. The shades, therefore, of human apprehension, to be pencilled in articulations, are

numerous beyond all powers of computation; while the most copious language has comparatively an insignificant number of words. Therefore almost every word has a great latitude of meaning, to be determined, in each case, by reference to the subject it relates to, its connection with other words, and in various other ways. So the life of no man is long enough for the acquisition of a perfect knowledge of any one language; but persons approximate toward this object, in different degrees. Two consequences, therefore, are apparent: first, that no one ever expressed but imperfectly the thoughts of his own mind; secondly, that no one ever apprehended but imperfectly the expression of another.

Jurists and judges have done what they could to obviate this difficulty in the language of law. The result is, that many words and phrases have acquired a precise legal meaning, more or less broad than the popular one; or a particular precise meaning when used in one branch of jurisprudence, and another branch. And we shall find our progress through the later pages of this work, made easy, if we here traverse, for a little space, this technical field. We shall look as well into the common as into the statutory criminal law; for we have already seen, that words and phrases have usually the same signification in both. Both writer and reader should alike tread cautiously here; for in the midst of the general flexibility of human language, it is a bold and dangerous thing to say of any word or phrase, however technical, that such or such is its exact sense, not more nor less, in every place where it may possibly be found. Neither shall we deem it wise, in this connection, to go over the entire technical language of the criminal law; for much, and perhaps the greater part of it, is better explained as we proceed with the main subject. Some words and phrases, too, which might seem to demand a particular explanation here, are so modified by the matter to which they relate, and by the other words of the statute in which they occur, that we could not do them full justice without devoting to them more space than we can spare; while, on the other hand, it will be a help to the practitioner to be referred to the cases, which he may examine for himself.

We shall proceed to a consideration of the matter before us in the following order: I. Those words and phrases which denote the person acting; that is, violating the law. II. The time and place. III. The thing done, and its nature and quality. IV. The instrumentalities employed, and the object acted upon. V. The proceedings.

We can only make room for a couple of sections more from the chapter as to—

WHAT IS A SUFFICIENT CRIMINAL INTENT.—We now enter upon a more direct consideration of the elementary common law principles of our criminal jurisprudence. Let us here remember, what was shown at large in our introductory chapter, that law and punishment, in the broader, as well as narrower, sense of these terms, are inseparable; that they are a sort of atmosphere, penetrating and filling all human society, without which it cannot exist; that the judicial tribunals take cognizance of only a part of the law which really pervades the community, though the word, in legal writings is commonly used in the limited sense as referring to no more than such part; that one object of juridical investigations is to ascertain where lies the boundary which separates this part from the other; that when this part is separated it is itself subdivided into civil and criminal, the latte being the portion allotted to us in these commentaries; and that, therefore, our present labors, to a great degree, must be to distinguish, first, such laws as courts administer from such as they do not; and, secondly, such as belong to the criminal department from those which belong to the civil.

Criminal law relates only to crime. All crime exists, primarily, in the mind. Neither in philosophical speculation, nor in religious or moral sentiment, would any people in any age allow, that a man should be deemed guilty, unless his mind were so. It is therefore a principle of our legal system, as probably of every other, that the essence of an offence is the wrongful intent, without which it cannot exist. We find this doctrine laid down not only in the adjudged cases, but in various ancient maxims, such as:—"*Actus non facit reum nisi mens sit rea;* the act itself does not make a man guilty unless his intention were so." "*Actus me invito factus, non est meus actus;* an act done by me, against my will, is not my act;" and the like. In this particular, criminal jurisprudence differs from civil.

We would refer our readers to the advertisement of the work of R. A. HARRISON, Esq., on the New Common Law Procedure Act.

APPOINTMENTS TO OFFICE, &c.

COUNTY COURT JUDGES.

HERVEY W. PRICE, Esquire, to be Judge of the County and Surrogate Courts in the County of Welland.—[Gazetted 10th May, 1856.]

SHERIFFS.

JOHN McEWAN, Esquire, to be Sheriff of the County of Essex, in the place of William D. Baby, Esquire.—[Gazetted 10th May, 1856.]

ROBERT HOBSON, Esquire, to be Sheriff of the County of Welland.—[Gazetted 10th May, 1856.]

CLERK OF THE PEACE.

LORENZO D. RAYMOND, Esq., to be Clerk of the Peace for the County of Welland.—[Gazetted 10th May, 1856.]

CLERK OF THE COUNTY COURT.

NATHANIEL T. FINCH, Esquire, to be Clerk of the County Court for the County of Welland.—[Gazetted 10th May, 1859.]

REGISTRAR OF SURROGATE COURT.

DEXTER D'EVERARDO, Esquire, to be Registrar of the Surrogate Court for the County of Welland.—[Gazetted 10th May, 1856.]

CORONERS.

HORATIO WILLSON, ROBERT YOUNG, JOHN RANNIE, JOHN MOORE, HENRY ROLLS, M.D., ZENAS FELL, HENRY KALAR, WILLIAM A. BALD, GAVIN ROBERTSON, WILLIAM MELLANBY, PETER GIBBON, JOHN CRONYN, M.D., ALEXANDER B. CHAPMAN, and JOHN GRANT, Esquires, to be Coroners of the County of Welland.—[Gazetted 17th May, 1856.]

ASSOCIATE CORONERS.

PETER H. CLARK, Esquire, M.D., to be an Associate Coroner for the United Counties of Peterborough and Victoria.—[Gazetted 17th May, 1856.]

ROBERT DOUGLAS, Esquire, M.D., to be an Associate Coroner for the County of Haldimand.—[Gazetted 17th May, 1856.]

THOMAS EATON, WILLIAM SMITH, and ROBERT McGEE, Esquires, to be Associate Coroners for the United Counties of Leeds & Grenville.—[Gazetted 17th May, 1856.]

JAMES RICHARDSON BRYANT, JOSEPH DAVIDSON, GEORGE SEXTON, PATRICK DALEY, JAMES SPROUL, JOHN McNALLY, junior, THOMAS MERRILL, JEHIEL CLARKE, JOHN COWDY, and JAMES HARDING, Esquires, to be Associate Coroners for the United Counties of Frontenac, Lennox and Addington.—[Gazetted 23rd May, 1856.]

ABRAHAM VAN VLECK PRUYN, M.D., SAMUEL SHELLY WALBRIDGE, RICHARD MORDEN, and LEWIS HUGDEN, Esquires, to be Associate Coroners for the County of Prince Edward.—[Gazetted 23rd May, 1856.]

HORACE GROSS, JOHN B. YOUNG, PETER MACPHERSON, WILLIAM JAMES McANLEY, JAMES C. HOWELL, JOHN CIVITER, WILLIAM EASTON, NELSON INGERSOLL, THOMAS D. BOUCHER, and SIMON DAVIDSON, Esquires, to be Associate Coroners for the United Counties of Northumberland and Durham.—[Gazetted 31st May, 1856.]

GEORGE S. HEROD, Esquire, to be an Associate Coroner for the County of Wellington.—[Gazetted 7th June, 1856.]

NOTARIES PUBLIC.

WILLIAM WILLIAMS, of Hampton, Township of Darlington, Gentleman, to be a Notary Public in U. C.—[Gazetted 17th May, 1856.]

ALLEN A. DOUGALL, of Belleville, Esquire, Barrister-at-Law, to be a Notary Public in U. C.—[Gazetted 23rd May, 1856.]

ARTHUR MACDONALD, of Cobourg, Gentleman, to be a Notary Public in U. C.—[Gazetted 31st May, 1856.]

JOHN BREAKENRIDGE GLASFORD, of Toronto, Esquire, Attorney-at-Law, to be a Notary Public in U. C.—[Gazetted 7th June, 1856.]