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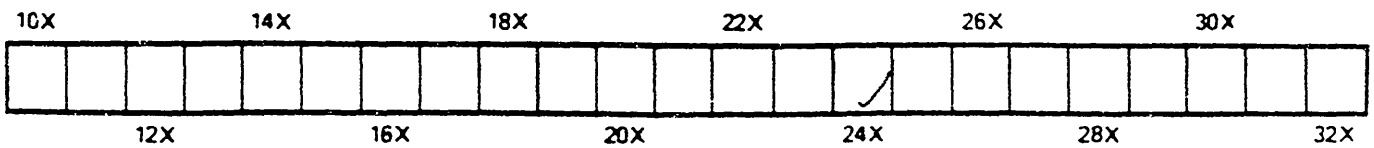

DIARY FOR AUGUST.

1. Tues... *Lammas.*
6. SUN ... *8th Sunday after Trinity.*
10. Thurs. *St Lawrence.*
12. Sat .... Articles, &c, to be left with Sec. Law Society.
13. SUN ... *9th Sunday after Trinity.*
16. Wed... Last day for service for County Court.
20. SUN... *10th Sunday after Trinity.*
21. Mon ... Long Vacation ends.
24. Thurs. *St. Bartholomew.*
26. Sat .... Declare for County Court.
27. SUN ... *11th Sunday after Trinity.*
28. Mon ... Trinity Term begins.

NOTICE.

Owing to the very large demand for the Law Journal *and* Local Courts' Gazette, *subscribers not desiring to take* both *publications are particularly requested at once to return the back numbers of that one for which they do not wish to subscribe.*

THE

Upper Canada Law Journal.

AUGUST, 1865.

THE LORD CHANCELLOR OF ENGLAND.

The events that sullied and at the same time added lustre to the pages of English history some two hundred and forty odd years ago, appear to have been in some measure re-enacted in England during the past few months. The keeper of the King's conscience, holding precedence over all temporal lords, the disposer of vast patronage and above all presiding over the very fountain of equity and good conscience, has been tainted with, to say the least of it, the suspicion of improper conduct, and this very suspicion of one, who, like Cæsar's wife, should be "above suspicion," has led to what cannot be considered to be otherwise than the fall and temporary disgrace at least of a most brilliant man and able lawyer.

For hundreds of years, it might almost be said from the commencement of English history, the judiciary of England has been free from the taint of corruption. The case of Lord Bacon seems to stand alone as an example to the contrary. Men of his day stood aghast not only at the enormity of his fault, both in itself and its consequences, but at the sight of the most subtle intellect that probably was ever made, "the high priest of nature," "the wisest, brightest," but as he proved himself to be "the meanest of mankind," condescending to acts which the lowest officer of his court would despise. Englishmen of the present day look with shame at the reproach which has lately been cast upon the nation at large and upon the almost spotless integrity of English statesmen in particular.

The first charge against Lord Westbury, the late Chancellor, was in reference to what has been termed the "Edmunds' scandal." A Mr. Edmunds, who had for seventeen years served the House of Lords as reading clerk and clerk of the private committees was also connected pecuniarily with the patent office. There were certain defalcations and irregularities in his connection with that office, owing partly, as he rather coolly complained, to the want of a public audit. These defalcations and irregularities were known to, but perhaps not remediable by the Chancellor. Mr. Edmunds resigned his appointment and presented a petition to the House for a retiring pension, which was recommended to be paid to him by the report of a committee, not aware of the facts known to the Chancellor, except from some rumours which were considered too vague to be noticed. It is alleged that at the time this resignation was on the *tapis* a promise was made by the Chancellor "that if Mr. Edmunds would resign he would throw no obstacle in the way of his pension." Whether these were his exact words is not certain, but they were doubtless to that effect. The gravamen of the charge was that the Chancellor, well knowing of these defalcations and irregularities on the part of Mr. Edmunds, but not disclosing his knowledge, had recommended, or at all events not opposed the retiring pension, with the supposed intention of filling the vacant office with one of his sons. A select committee was appointed to enquire into the matter. This committee acquitted the Chancellor of any unworthy motives, but thought he had committed a grave error in judgment and taken a wrong view of his duty. Of this there can be no doubt, but a solicitor of first rate standing in London has gone further than this, and whilst hinting at unworthy motives, directly charges the Chancellor with an untruth, apparent on the face of his own letters and statements. This is another unpleasant feature in the case which has not yet, that we are aware of, been explained or contradicted.

Following closely upon these transactions comes the question of Lord Westbury's connection with the Leeds Bankruptcy Court. It

was asserted that a Mr. Wilde, when registrar of this court, was called upon to resign his office, owing to some irregularities therein, but that he refused to do so; upon which he was first of all threatened, and then informed that if he would resign at once and obtain a medical certificate, he should have a pension of £600 a year, although he was then in a good state of health. This he was induced to do, and the Chancellor signed an order for the pension. A Mr. Welch, said to be in a precarious state of health, succeeded Mr. Wilde, and appears to have paid for the office, to Mr. Richard Bethell, the Chancellor's son, one thousand pounds. It was further alleged, that it was agreed between these men that Mr. Welch should hold the office until the reversal of the outlawry of Richard Bethell, and then receive another appointment in London, which city he preferred to Leeds. The most damaging feature of the case was, that Mr. Miller, the chief registrar of the Court of Bankruptcy, a friend of the family, had prepared appointments to these two offices,—for Mr. Bethell at Leeds and Mr. Welch at London; and it added to the suspicions, that such a practice in filling up these appointments had never before prevailed. The documents, however, never were signed, as the Lord Chancellor, hearing of some misconduct of his son in in Paris, or perhaps alarmed at the strong feeling which was evinced by the public with reference to the disclosures made in the "Edmunds case," which was increased by the indiscreet conduct of Richard Bethell, in stating at Leeds that he had received the appointment, absolutely refused to do so.

The Chancellor of course denied any knowledge of any bargain which might possibly have been made by Mr. Richard Bethell, (a disreputable character enough apparently,) with Mr. Wilde or Mr. Welch; but the desire for investigation was so strong that the government were obliged to acquiesce in a motion for a committee of enquiry, which was appointed, and subsequently brought in a report acquitting Lord Westbury from all charge in the matter except that of haste and want of caution in granting a pension to Mr. Wilde.

The public, however, were not satisfied, and the matter was again brought up on a motion of Mr. Hunt, which, with a condensed report of the discussion upon it, we copy from the public prints:—

"That the evidence taken before the committee of this House on the Leeds Bankruptcy Court discloses that a great facility exists for obtaining public appointments by corrupt means; that such evidence, also that taken before a committee of the House of Lords in the case of Leonard Edmunds and laid before this House, shows a laxity of practice and want of caution on the part of the Lord Chancellor in sanctioning the grant of retiring pensions in public officers over whose heads grave charges are impending, and in filling up the vacancies made by the retirement of such officers, whereby great encouragement has been to corrupt practices; and that such laxity and want of caution, even in the absence of any improper motive, are, in the opinion of this House, highly reprehensible, and calculated to throw discredit on the administration of the high officers of state."

The Lord Advocate contended that there was nothing in the case to warrant the severe censures which had been passed upon the Lord Chancellor, and moved an amendment to the effect that the House agreed with the report of the committee, but thought that a check should be put by law on the granting of pensions to persons holding legal offices.

Mr. Hennessey contended that this did not touch the Edmunds' case, which was embraced in Mr. Hunt's motion. Mr. Bouverie had given notice of an amendment, which he could not now move. If, however, the original motion were negatived, he should move his amendment on that of the Lord Advocate. He had no confidence in the Lord Chancellor.

Mr. Hunt offered to substitute for his own motion the amendment of Mr. Bouverie, which was as follows:—

"This House, having considered the report of the committee on the Leeds Bankruptcy Court are of opinion that, while the evidence discloses the existence of corrupt practices with reference to the appointment of Patrick Robert Welch to the office of Registrar of the Leeds Bankruptcy Court, they are satlsfied that no imputation can be fairly made against the Lord Chancellor with regard to that appointment; and that such evidence, and also that taken before a committee of the Lords to enquire into the circumstances connected with the resignation by Mr. Edmunds of the offices held by him, and laid before this House, show a laxity of practice and a want of caution with regard to the public interest on the part of the Lord Chancellor, in sanctioning the grant of retiring pensions to public officers against whom grave charges were pending, which, in the opinion of this House, are calculated to discredit the administration of his great office."

Lord Palmerston, observing that the House had negatived any charge of corruption against the Lord Chancellor, recommended and moved that the debate be adjourned till Tuesday.

Mr. Disraeli opposed this motion, which was negatived, upon a division, by 177 to 163.

The Lord Advocate's motion having been negatived—

Mr. Bouverie moved his amendment as a substantive motion, which was agreed to without a division.

It was well understood that Lord Palmerston's motion was for the purpose of gaining time and giving the Chancellor an opportunity to resign, it was therefore accepted as a test, and voted upon accordingly.

The result of the debate was therefore that a very strong vote of censure was passed upon the Chancellor, in consequence of which he immediately sent in his resignation, which was at once accepted, and Lord Cranworth, better known as Baron Rolfe, has since been appointed to the vacant seat on the woolsack.

In his farewell address to the House of Lords, the Lord Chancellor spoke with much moderation and good feeling. After saying that it had been his desire to resign the seals of office many months before, he said—

"My lords, I believe that the holder of the Great Seal ought never to be in the position of an accused person, and such, unfortunately, being the case, for my own part I felt it due to the great office that I hold that I should retire from it and meet any accusation in the character of a private person. But my noble friend at the head of the Government combated that view, and, I think, with great justice. He said it would not do to admit this as a rule of political conduct, for the consequence would be that whoever brought up an accusation would at once succeed in driving the Lord Chancellor from office."

He then stated that he had since, on three several occasions, desired to resign, but was again urgently requested not to do so. He then continued—

"I have made this statement, my lords, simply in the hope that you will believe and that the public will believe that I have not clung to office, much less that I have been influenced by any baser or more unworthy motive. With regard to the opinion which the House of Commons has pronounced I do not presume to say a word. I am bound to accept the decision. I may, however, express the hope that after an interval of time calmer thoughts will prevail, and a more favorable view be taken of my conduct. I am thankful for the opportunity which my tenure of office has afforded me to propose and pass measures which have received your lordships' approbation, and which I believe, nay, I will venture from experience to predict, will be productive of great benefit to the country. With these measures I hope my name will be associated. I regret deeply that a great measure which I had at heart —I refer to the formation of a digest of the whole law—I have been unable to inaugurate; for it was not until this session that the means were afforded by Parliament for that purpose. That great scheme, my lords, I bequeath already prepared to the hands of my successor. As to the future, I can only venture to promise that it will be my anxious endeavour, in the character of a private member of your lordships' House, to promote and assist in the accomplishment of all those reforms and improvements in the administration of justice which I feel yet remain to be carried out. I may add, in reference to the appellate of your lordships' House, that I am happy to say it is left in a state which will I think be found to be satisfactory. There will not be at the close of the session a single judgment in arrear, save one in which the arguments, after occupying several days, were brought to a conclusion only the day before yesterday. In the Court of Chancery I am glad to be able to inform your lordships I do not think there will remain at the end of this week one appeal unheard or one judgment undelivered. I mention these things simply to show that it has been my earnest desire from the moment I assumed the seals of office to devote all the energies I possessed and all the industry of which I was capable to the public service. My lords, it only remains for me to thank you, which I do most sincerely, for the kindness which I have uniformly received at your hands. It is very possible that by some word inadvertently used—some abruptness of manner—I may have given pain or exposed myself to your unfavorable opinion. If that be so, I beg of you to accept the sincere expression of my regret, while I indulge in the hope that the circumstance may be erased from your memories. I have no more to say, my lords, except to thank you for the kindness with which you have listened to these observations. (Loud cheers.)

As to the merits of the case it must be remembered that there is no proof of guilty knowledge on the part of Lord Westbury, and there appears to be a growing impression that many of the suspicious circumstances which have been so much dwelt upon, are capable of explanation, and do not fairly bear the construction that have been put upon them. It

is well known that he has had a host of enemies, some envious of his talents and success, others made so by the gigantic reforms which he has successfully carried out in the Ecclesiastical, Probate, and Divorce Courts, and particularly in reforming the abuses of the Bankruptcy laws. He is cursed, moreover, with about as bad a son as ever fell to the lot of an unfortunate father, and it is no amelioration of his sorrows that this reckless unprincipled scapegrace is almost wholly the author of his father's misfortunes.

He is, moreover, a man that is personally unpopular, a man of stern and unyielding exterior; but as it appears of too little strength of mind, or too careless to resist persistent appeals to his organ of benevolence. He also trusted too much, like nearly all public men, to the representations of those who were in positions of confidence about him, and whose duty it was to guard him from the devices of hungry applicants for office.

We are aware that these excuses, as applied to a man of the well known character and disposition of Sir Richard Bethell, are scoffed at by certain of the press in England, who, in the slashing manner so taking to the general reader, but so often devoid of sound thought, write in this way:—

"From what the world knows of the Chancellor, either at the Chancery bar or on the woolsack it hardly suspects his placability, his easy temper so capable of being imposed upon, his softness of heart and excessive amiability, his liability to disregard caution, his readiness to be made a tool of by the designing and corrupt, his constitutional incapacity to detect, or even to suspect, jobs, intrigue, and double-dealing. The world has taken the Chancellor to be possessed of the keenest of tempers, the hardest of heads, and the most searching of judgments; and it has thought that his success in his calling is to be attributed to these gifts of character. * * * If, as we are told, he is so good and guileless as to become so frequently (twice in a twelvemonth) the unsuspecting victim of the designing and the corrupt, then, to speak coarsely, we want somebody with more devil in him—less pliable, more suspicious, less gentle, less easy to be got over and got round, and taken in by vulgar rogues, less 'hasty,' and more 'cautious.' We want somebody more suspicious of human nature, with 'motives' equally unassailable and conduct less 'calculated to excite the gravest suspicions.' We want some one whom we can understand, whose character can be brought under common types, and can be judged by an ordinary standard. We can understand the man of oil, and we can understand the man of vinegar, and we can in his way respect either; but the oil-and-vinegar man puzzles cammon folks—the man who keeps all his oil for his own family purposes and his own apparent interest, and all his vinegar for the public. In anybody but Lord Westbury, we should be tempted to say that either his private virtues were a sham, or his public character for sharpness an imposture. This the two select committees declined to believe; they can understand and appreciate Lord Westbury. It is, of course, the world's fault, or it may be the world's misfortune, if it fails to estimate this complex and certainly rare ideal."*

But, strange as it may seem to the writer of that article, more curious compounds of human nature have existed than have appeared in Lord Westbury. It cannot be denied, moreover, that political influence had something to do with the vote on the question. The party opposed to the Government took advantage of the strong feeling which had, rightly or wrongly, been raised against the Lord Chancellor, or rather against the system of nepotism which has been lately brought to light. But it does not follow that because this corrupt system has been brought before the public during the official career of the late Lord Chancellor, that he is to be held personally responsible for all the evils of that system. Is he not in fact the first victim of the improved tone of public feeling with reference to that system? Is there not much truth in the assertion made in another periodical,† that

"The House of Commons affirmed the vote of censure because the country is tired of seeing all the best Church livings in the hands of the sons and sons-in-law of bishops; every snug mastership filled by the son or nephew of a chief justice; every well-paid and non-responsible office of every kind in the possession of the family or friends of the patron?"

Whilst however heartily hoping that time will prove that he was more "sinned against than sinning," it cannot be denied that the course which the House thought fit to take in the premises, is strong evidence of the wholesome view taken of the subject by public men in England.

The loss to the country of such a man at such a time, is incalculable. He was in the

* *Saturday Review*, July 1, 1865.

† 9 *Solicitor's Journal*, p. 793.

midst of plans for various reforms that had for years baffled the resources of less able men. He is said not to have his equal in Great Britain in forensic or legal ability, and is in the meridian of his vigorous intellect. But neither his intellectual superiority nor the high office which he held, could avail to give him that firmness of character, which should have rendered him deaf to any voice but that of duty and the public welfare—regardless alike of fear, favour, or affection—above the weaknesses of misplaced confidence—vigilant and acute in detecting frauds upon the public, and superior to allurements of a vicious system, which it would have been his glory to overthrow.

All these minor points of this melancholy subject, will however soon be forgotten, and it behoves us now to turn as well to the bright side of the picture, a view not we think brought as prominently forward as it deserves. History tells us that when Lord Bacon stood self-convicted of great crimes, the nation as one man demanded that he should be punished according to his deserts, without reference to his exalted rank and the fame of his marvellous intellect. He was sentenced to a fine of forty thousand pounds (an immense sum in those days), to be imprisoned in the tower during the king's pleasure, to be incapable of holding any public office, and of sitting in Parliament or coming within the verge of the Court. The same hatred to corruption in high places that effected this, and has made Great Britain conspicuous among the nations of the world, and which has been as it were the salt that kept her pure, still remains. It is a thing to be proud of that even the *suspicion* of impropriety is sufficient to drive from his position the highest and most favoured servant of the Crown, backed up by the prestige of his services and his abilities, and all the influence of the Government.

Thus for the second time has England purged herself from the stain that lay upon her, and that to the ruin of a man worthy, we think, of a better fate. Few countries, if any, can make the same truthful boast. Let it be our endeavour to follow in her footsteps.

INSOLVENCY—CONFLICTING ASSIGNEES.

A much debated point has just been decided in the Court of Chancery under this act, with reference to the respective force and validity of a voluntary assignment made since the act, but not under its provisions, and proceedings under the act for compulsory liquidation.

Sec. 3, 1 (*i*) of the act provides that a debtor shall be deemed insolvent, and his estate subject to compulsory liquidation, if, amongst other things, he has made any general conveyance or assignment of his property for the benefit of his creditors, otherwise than in the manner prescribed by the act. This provision was generally considered (and it was so held in *Hogge's* case by the learned judge of the County Corrt of York and Peel) not to apply to assignments made previous to the time the Insolvent Act came into force, and which were valid, under the law as it then stood, as general assignments for the benefit of creditors; from which it would follow that assignees appointed under them are still liable and compellable to wind up and distribute the estates entrusted to their care. It would also seem to follow that if an assignment made before the act were bad in point of law as against creditors, it could not prevail against subsequent proceedings under the Insolvent Act; and in discussing this it would be material to consider whether the assignee under the act would have a *locus standi* to contest it, there being no special provision in the act which would make him stand in the stead of the creditors generally.

If making an assignment contrary to the provisions of the act is an act of insolvency, it would seem to follow as a natural consequence that such an assignment could not be permitted to stand in the way of proceedings taken under and in accordance with the act, unless indeed three months should elapse from the time of committing this act of insolvency before the commencement of such proceedings: (Sec. 3, subsec. 5.)

His Lordship Vice-Chancellor Mowat, in giving judgment in *Willson* v. *Cramp*, the case in which the point came up,* considered that any construction of the act which would prevent an assignee appointed under the act from receiving and administering the property of the insolvent, would render futile the enact-

* Reported in full on page 217.

ment which makes such an assignment an act of insolvency, and would deprive the creditors of the advantages which the statute gives them for the winding up of the estate of an insolvent debtor. His Lordship also thought that it would be objectionable to let the assignment stand, as it put the debtor's property under a different course of distribution amongst his creditors from that which is contemplated and provided by the act—as, for example, in not giving any priority to the claims of clerks and other servants of the insolvent.

The scope of section 8, with reference to impeding and delaying the creditors of the insolvent, was also referred to as in itself sufficient to warrant the decision of the Vice-Chancellor, that such an assignment as that referred to was of no avail against subsequent proceedings under the act, and on this point he cited cases in England under analagous statutes there.

The law on this point having now been judicially determined, it will be necessary for all assignees of voluntary assignments since the act, but not under it, to govern themselves accordingly; and should any such refuse to comply with a proper request to deliver up the books and property of the estate, they would become personally responsible for the costs of any suit that might be brought against them to compel them to do so.

NEW EDITION OF HARRISON'S COMMON LAW PROCEDURE ACT.

Our readers will be glad to learn that Mr. Harrison is now engaged in preparing for the press a new edition of his "Common Law Procedure Act," and other Acts connected with the civil administration of justice, as appearing in the Consolidated Statutes of Upper Canada, including notes of decided cases, English and Canadian, up to the time of the work going to press. The value of this work is so well known to the profession, as to need no commendation from us. The first edition drew from the *London Jurist* and other leading periodicals in the Old World, most favorable criticisms, and has (though a large edition) been completely exhausted. It is, we understand, Mr. Harrison's intention to place the work in the hands of the printer during the present month, and to have it published with the least possible delay.

SELECTIONS.

THE ORIGIN OF MAGNA CHARTA.

It is one of the curious phenomena of history, that in an age of feudal barbarism and debasement, one of the most unprincipled, false, and cowardly of all the English kings, should have promulgated, in a systematic form, a declaration of personal rights to his subjects, which is regarded with so much reverence in the light and liberty of the nineteenth century. And it is equally a matter of surprise that a body of rough, unlettered barons, surrounded by bodies of slaves, to whose minds personal freedom was as strange as the luxuries of modern civilization, engaged in incessant broils and petty wars with each other, and with the crown, who knew little law beyond the might of the strongest, and the only restraint upon whose morals was a slavish fear of the church, should have come together and have deliberately dictated or accepted a declaration which affected not merely their own privileges and immunities, but those of the future citizens of a constitutional monarchy, having its essential foundation in the then powerless and unheeded commonalty of England.

The Chronicles of England furnish us the fact that an instrument bearing date on Trinity Monday, June 15th, 1215, was executed by King John, and that that instrument was called *the Charter;* but it requires us to go back anterior to that date, if we would learn the causes which led to such a step, or the sources from which its provisions were derived, as well as to study the condition of the people of England at the time it was granted.

The English common law, which forms, also, a principal element of our own, is a piece of Mosaic, in which the Saxon laws and institutions form an essential constituent. It is very remarkable that after four hundred years' occupancy of the island, the Romans left so few traces of their laws and costumes. And though the Danes, during the twenty-four years while they occupied the kingdom, introduced many of their laws, some of which found their way into the English law, its substratum was, after all, deeply and permanently laid in the laws, sentiments, habits and opinions of the Saxon race, who held the kingdom for six hundred years prior to the Norman Conquest.

In a period and among a people when commerce, beyond that of the freebooters of the sea, was unknown, and almost the only property recognized was lands and implements of husbandry, with the beasts of the field, and the slaves attached to the soil, and whose only business of life, moreover, was war or agriculture, we should look in vain for the varied rules and systems of law to which modern commerce and civilization have given rise. And it is a matter of surprise now, that no one can tell, at this day, how far the feudal system had obtained a foothold among the Saxons before the Norman Conquest. But in

some things there were characteristic rules recognized by the Saxon law which were justly held in high favor; lands were freely alienable, and might be devised by the owners by last will. Justice was cheaply and conveniently administered, and a pervading, though perhaps not well-defined sense of personal right and freedom was diffused among the people, which answered to the more modern and refined notions of *civil liberty*. There was, moreover, an instinctive love of their own local laws and institutions, to which they clung under every reverse, and returned to, as soon as the adverse circumstances which had suspended the enjoyment of these had been overcome. The moment the Danes were expelled, the natives resumed their former laws, while they retained some of the Danish customs which had been found congenial to the national taste. This respect for their laws must, of course, have been chiefly traditional, since the capacity of reading and writing was too rare to be regarded as a national trait. One of the most popular acts on the part of the great and wise Afred was the framing out of these a code which, from that day, has been regarded by the English with veneration, with the exception of the period while the Danes held the power, and after the arrival of the Normans, till they became amalgamated into the nationality of England. The work begun, but left unfinished by Alfred, was completed by Edward the Confessor, in the body of laws which he compiled, and to which the Saxons were in the habit of recurring on all occasions, after the introduction of the feudal law of Normandy, in contrast with the slavish and oppressive institutions which their conquerors had imposed upon them, till a respect for these ancient laws became a prevailing sentiment in the kingdom; and on more than one occasion the reigning monarch sought to win the favor of the people, by recognizing these as a part of the laws of England.

The feudal system came in, in full force and vigor, with the Conquest; it nowhere prevailed in a more absolute form than in Normandy, and was enforced with the greatest rigor by William and his followers, who took the name of *barons*, the Norman term which was applied to those who were his *men*. He seized upon the lands of Harold and his followers, under the pretence that they were subjects of confiscation for their treason towards him. He sought out all the *Land-Bocs* or records of titles on which he could lay his hands, and caused them to be destroyed, and, by forcing the leading Saxon land-holders into insurrection and rebellion, by his outrages and oppressions, he made it a pretence for seizing upon their lands, and in these ways converted most of the kingdom, with the exception of Kent, and some other smaller portions of it, into a state of feudal subordination and dependence upon himself, as the Lord Paramount of the realm. These lands he granted out, in return, to his cheif barons, giving to some more, and others fewer manors in number, according to his favor or caprice, requiring from them the services which a feudal vassal owed to his lord; and they, in turn, divided these lands to their own vassals, from whom they exacted a similar return in services.

The whole system of feuds was one of arbitrary and irresponsible despotism. The State, as a body politic, with its State laws, and its general system of protection for the many against the arbitrary power of the few, was all but ignored. Instead of this, the kingdom was divided into a multitude of little baronies, each with its own court, and its own system of justice, without any appeal, in ordinary cases, from the domination of some petty lord to any immediate superior, for protection or relief. While it left the mass of the people in a state of villanage, which was another name for slavery, the freeholders of the land were themselves subordinate to an immediate or remote superior, to whom they owed fealty and homage. Add to this, the hatred and jealousy with which the Saxons regarded their feudal masters, and the contempt and apprehension which the Normans entertained towards the Saxons, and we are not at a loss for the causes of those incessant outbreaks, insurrections, and domestic wars which fill up the chapters of English history for so long a period after the Norman Conquest. The Saxons were not strong enough to control the policy or laws of the kingdom, and yet they were strong enough to make themselves of sufficient consequence in any of these outbreaks, to be taken into account in measuring the power of any faction or party. There was a steady persistency on their part, in insisting that the laws of Edward should be restored; and so strong were they felt to be, that in the fourth year of William's reign, he solemnly swore to grant this request. But the enormous burdens of feudal tenures still continued; and the simple forms of Saxon judicature gave place to the Aula Regis, with the despotic powers of a Chief Justiciary, imported from Normandy, with Norman notions of law and justice. The lands of the kingdom were declared inalienable, except by the assent of the superior lord, and upon paying him therefor a heavy sum under the name of a *fine*, they could not be devised by last will, and upon the death of the owner his estate descended to his eldest son, by the law of primogeniture, which had come in with the Normans; and, all over the kingdom, the people were reminded of the presence of their masters, every night, by the tolling of the *curfew* bell, whose very name "*couver-feu*," was borrowed from the Normans, at which every fire and light were to be extinguished. William, and his son Rufus, were able to keep down the restless spirit to which those causes of irritation gave rise, by the force which they had at their command, and Henry I., by marrying a descendant from the Saxon line of kings, did much to allay the jealousy of the races. No

material change took place in the three succeeding reigns, except a gradual assimilation of Norman and Saxon, which would naturally arise from being natives of the same localities, and from occasional inter-marriages, and from the habit of traditional reverence which grew up, in time, for the ancient liberties and institutions of the Saxon period. John, as successor to these kings, came to the throne in 1199. Mean, treacherous and cowardly to the last degree, his reign was one continued struggle between himself and his subjects; on his part to deceive, oppress and tyrannize over them, and on their part to interpose a barrier against his abuse of power, and disregard of law. In 1213 he was absolved from the excommunication under which he had laid, by Archbishop Langton, and then made solemn oath that he would restore the laws of Edward. In the August of the same year, there was a meeting of the prelates and nobility of the kingdom at St. Paul's, when the archbishop informed them that he had discovered a charter granted by Henry I., under which they could re-establish their ancient liberties. The barons heard this with delight, and bound themselves, before the archbishop, by oath, to contend for these liberties, even to death itself, whenever opportunity presented. At a meeting of the earls and barons held at St. Edmundsbury, twelve months afterwards, this charter was produced, and they renewed their oath, at the high altar, to make war upon the king, if he refused to grant the liberties therein contained. They accordingly demanded a confirmation of that charter. The king asked a respite in which to decide, and also desired to be informed what the liberties were which they required him to grant. Whereupon they sent him a schedule consisting partly of what were found in Henry's charter, and partly of the laws of Edward.

This traditional account of the incipient steps towards obtaining the great charter, we are informed by Blackstone, comes from Matthew Paris, but has been adopted as true by modern historians.—(2 *Black. Trut.* vii..)

One thing is true, there was a charter granted by Henry I. which embraced many of the articles which afterwards found a place in Magna Charta, and the reverence for the laws of Edward was an ever active principle in the minds of the English people, who associated these laws with a state of freedom, in marked contrast with the feudal bondage in which they were then held; although it is not so easy to perceive why the barons should favor opinions more or less directly hostile to their own power, unless it was a means of enlisting the public favor upon their side, in the struggle which they were carrying on with the crown.

Blackstone, indeed, doubts the fact that this charter of Henry I. had been thus forgotten, and considers it more probable that its having been granted was rather a hint to the barons to require a charter from John, than that it furnished the materials for the charter which he did grant. But all historians agree in this, and it is the only point I wish to establish here, that the great charter of John was, for the most part, *compiled* from the ancient customs of the realm, or the laws of King Edward the Confessor, by which they mean the old common law, which was established under the Saxons, and before the feudal law had been introduced.—(2 *Bl. Tr.* xii.; *Co. Lit.* 81 a.) And I may add, what is known to every one familiar with the history of the common law, there has been in every stage of its progress an element of personal freedom, guaranteeing personal rights, and the security of person and prorerty, which no other code could ever pretend to. The civil or Roman law was the emanation of imperial power, the canon, the dogmas of a self-constituted hiearchy; while the common law partook of the character of the sturdy, self-reliant men who sprung up in England after the overthrow of the Roman power, and were never wholly subdued till their influence culminated in the Puritanism of the Commonwealth, and the national emancipation from the tyranny of the Stuarts at the revolution of '88. The charter of John, then, was not a deliberate and voluntary grant from a king of liberties and privileges to a confiding or even a suffering people. Nor, on the other hand, was it an original statement or declaration of a body of wise statesmen, profound thinkers, or learned and sagacious lawyers or politicians. What he yielded was done from fear, with a bad grace, a treacherous spirit, and in a cowardly manner; while the thing that he granted was a singular medley of personal and selfish purposes of the military leaders who dictated it, and of rights and privileges which the people, with whom they had little sympathy, had long regarded as something worth making any sacrifice to regain.

When, how, and where this charter was obtained, may be briefly stated, for in this history seems to be clear.

On the 20th Nov., 1214, the barons met at St. Edmunsbury and formed a league, swearing upon the high altar to wage war upon the king, and withdraw themselves from his fealty, till he should *confirm* by charter, under seal, the several liberties which they demanded. They accordingly came to London and made this demand. John at last agreed to answer by Easter. He immediately went to work to enlist the church on his side, and both parties appealed to the Pope. John moreover took him upon the cross, and vowed to undertake an expedition against the infidels in the Holy Land. But he accomplished little by this hollow-hearted appeal to the superstition of his subjects, inasmuch as Archbishop Langton was at the head of the confederacy against him.

The Pope favored the king's appeal to him, and wrote a letter to the barons and bishops, disapproving of any attempt to extort favors by force from the king; but, fortunately, this letter did not reach England till after the time at which John was to make his answer to the

baron's demands. Preparatory to this, the barons assembled with some two thousand knights of their retainer in their train, and marched to Brackely, about fifteen miles from Oxford, where the king was. This was on the 27th April, 1215. The king thereupon sent to them to ascertain precisely what liberties they claimed, and they sent him back a schedule, with a threat that if he did not grant them they would seize his castles; and they referred again to the character of Henry I. The king was greatly indignant at the demand, and replied to them by an oath that he never would grant their demands, and the barons thereupon took measures to enforce them. In May they disclaimed their allegiance to John, and obtained absolution therefrom by the favor of one of the canons of Durham; and, in the end, took possession of London on the 24th of that month. The king found himself abandoned by his followers, and all his lords but seven, and concluded to yield to the requirements of the barons, and proposed a meeting for that purpose. The 9th June was fixed for the meeting, but they did not come together till the 15th. The conference then opened, and was continued till the 19th, when the heads of the agreement, to which the king consented to acede, were reduced to the form of a charter, and sealed with his great seal. Original duplicates of this were prepared and deposited in every diocese in the kingdom, several of which are still extant, and two of them are now in the British Museum.

This, in brief, is the history of this famous instrument, which has from that day been regarded as the *great charter* of English liberties, and held in the highest veneration by every Englishman, wherever he was to be found. The English colonists brought with them this sentiment in all its freshness and vitality; and, through the long struggle with the mother country, constantly referred to it as the great palladium of their rights as Englshmen. It enters largely into the declaration of their rights in the constitution of Massachusetts and other of the States, and furnished the elements of thought, if not the forms of expression, which sprung up in so many shapes in the earlier declarations of American liberties.

Its effect in England was important and immediate in one respect, which is noticed by Mr. Macaulay in his history. It united and merged the hitherto discordant elements of Saxon and Norman races into one nationalty. A common suffering under the tyranny of a king who had proved himself false to all his subjects united them into a common struggle for redress; and the constant vigilance which was still requisite to guard the boon which they had thus won against the ill-concealed treachery of the king, operated to cement the now English *people*, nobles and commoners, Normans and Saxons, together, into what ere long became a homogeneous whole.

The work, seems to have been but half accomplished in the minds of the men of power in England when they had the signature and seal of only one king. They do not seem to have regarded his act as necessarily binding upon his successors; and we accordingly find that within a fortnight after the successor of John, Henry III., was crowned, although he was but then nine years of age, he ratified and renewed this charter with great solemnity, but with sundry modifications which the circumstances of the time seemed to require. This was repeated several times during the reign of Henry III., and by successive sovereigns, till the same had been gravely and solemnly confirmed more than thirty times down to the time of Henry V.; there being a disposition on the one side to evade, and on the other, as they had the king sufficiently in their power to insist upon his republishing or re-affirming the binding obligation of an instrument which took a variety of significant names, such as "Charta Libertatum," and "Communis, Libertas Angliæ," or "Libertatis Angliæ," "Charta de Libertatibus," "Magna Charta," and the like. (Coke Lit. 81 a.)

The copy of the charter commonly found in our law books purports to be that which Henry III. granted in the ninth year of his reign, and is sufficiently identical with that of John to be referred to for an explanation of its provisions. Before doing that, however, I ought to speak more fully of the place at which the original was signed, now so famous in history, known as *Runnymede*. It is said to have taken its name from "*Rune*," the Saxon for council, and "*Mede*," or, "the council meadow," where formerly the Saxons had held their councils. It is a meadow of about one hundred and sixty acres, lying along the Thames, upon the Surrey side of the river, about eighteen miles from London, near Egham, Staines, and Windsor Park. In the history of Surrey it is described as still being a meadow, which is turned into racing ground in August of each year. In the Thames there is a little island which is the traditional spot upon which the charter was actually signed; and upon the bank of the stream, upon its opposite side, stood the famous tree called the "Ankerwyke Yew," which is still green and fresh after the lapse of six hundred and fifty years. (3 Hist. Surrey, 224, 1 Knight's Hist. Eng. 347, 351.)—*Law Reporter.*

EVADING TOLLS.

A very ingenous mode of evading the payment of toll at Whalley-bridge-gate, has been turned to a profit by a certain innkeeper, who made use of the evasion for the purpose of attracting customers to his house. It appears that the keeper of the White Hart has a field adjoining the inn, and between the inn and the entrance to the field, stands the Whalley-bridge-gate. Mellor, the appellant, who is a farmer, was driving 120 sheep from Tedding-

ton to Stockport along this turnpike-road, and the sheep were driven into the field in question before passing through the gates. Mellor passed the night at the White Hart, and next day drove the sheep out of the field at the opposite end and over other land, and into the turnpike-road at a point nearer the Stockport, so that no toll was paid.

The Stockport magistrate convicted Mellor of the offence of evading toll, and the appeal came on before the Court of Queen's Bench sitting in banco, on the 31st ult. The landlord was compelled to admit that he used to stay at his house all night in order to save the toll. "I tell my customers," he said, "that if they stay all night they can get over this land without paying toll."

The judges were unanimous in their opinion that the magistrates were right in convicting the appellant of an intention to evade toll. And if the only point in the case were that which the judges assumed to be so – namely, the intention of the appellant to evade, it is surprising that he should have had the audacity to appeal. We are not satisfied, however, that the case is within the letter of the Turnpike Acts, and, if not, every subject has a right to evade an impost if he can.

The Lord Chief Justice was probably correct in his suspicion that the landlord was the real appellant, and that relying on the uncertainty of the law, he chose rather to incur the expense of litigation with the possibility of retaining his lucrative calling, than by submitting to the decision of the magistrates to undergo the certain and positive loss of a large amount of custom.—*Solicitor's Journal.*

UPPER CANADA REPORTS.

COMMON PLEAS.

(*Reported by* S. J. VanKoughnet, Esq., M.A., *Barrister-at-Law, Reporter to the Court.*)

The Chief Superintendent of Education in re Hogg v. Rogers.

School Trustees—Power to levy school rate at any time.

Under the acts relating to common schools, school trustees may *at any time* impose and levy a rate for school purposes: they are not bound to wait until a copy of the revised assessment roll for the particular year has been transmitted to the clerk of the municipality, but may and can only use the existing revised assessment roll.

[C. P., E. T., 1865.]

This was an appeal from a judgement of the Judge of the Fourth Division Court of the county of Grey. The action was trespass against the defendant, a collector of school rates for Union school section number one, in the township of St. Vincent, for unlawfully seizing and detaining a horse, the property of the plaintiff. The warrant under which the seizure took place was under the seal of the corporation of the school trustees of Union school section number one, in the said township of St. Vincent. It was dated February 22, 1864. Annexed to the warrant was a rate bill or list taken from the assessment roll of St. Vincent for the year 1863, dated February 20, 1864, but endorsed, Rate bill 1863. Plaintiff refused to pay the rate, whereupon defendant seized the horse upon the premises assessed. About four or five days afterwards, plaintiff paid the amount for which he had been assessed, and the horse was restord to him. The learned judge held that the trustees ought to have waited for the making and completion of the assessment roll for 1864, before issuing their warrant to the collector to levy the rate, and that the collector receiving in February a warrant for the collection of such a rate based upon the assessment roll for 1863, the year preceding, was not legally authorized to excute such warrant; that the only roll which a township collector is authorized to receive and act upon is the roll made up, finally revised and certified, and delivered to him on or before the 1st October in the year in and for which the taxes mentioned in the roll are to be collected, and the collector's power under his roll ceases on the 14th December following, unless prolonged by express by-law or resolution of the county council; and that a school collector has no greater power than a township collector, and must proceed under the same restrictions as to time and authority in the exercise of his duties. He therefore directed a verdict for plaintiff.

From this judgement the Chief Superintendent for Education in Upper Canada appealed. The case was first set down in the paper in Michaelmas term last, when *Hodgins* appeared for the appellant, and cited Con. Stats. U. C., ch. 64, sec. 27, sub-secs. 2, 11, 20; secs. 83, 109, 125; *Craig* v. *Rankin*, 18 U. C. C. P. 186; *Vance* v. *King*, 21 U. C. Q. B. 187; *McMillan* v. *Rankin*, 19 U. C. Q. B. 356, *Gillies* v. *Wood*, 13 U. C. Q B. 357; *Chief Superintendent of Schools re McLean* v. *Farrell*, 21 U. C. Q B. 441; *Doe* v. *McRae*, 12 U. C. Q. B. 525; *Doe re McGill & Jackson*, 14 U. C. Q. B. 113; *Spry* v. *Mumby*, 11 U. C. C. P. 285.

On a subsequent day during the same term, *D. A. Sampson* appeared for the respondent, and the case was on his application allowed to stand over till the following (Hilary) term, when he again appeared, and cited *Timon* v. *Stubbs*, 1 U. C. Q. B. 347; Rob. & H's. Dig "Notice of Action;" *Haight* v. *Ballard*, 2 U. C. Q. B. 29; *Donaldson* v. *Haley*, 13 U. C. C. P. 81; *Bross* v. *Huber*, 18 U. C. Q B 282; *Dunwich* v. *McBeth*, 4 U. C. C. P. 228; *Wilson* v. *Thompson*, 9 U. C. C.P. 364; Con. Stats. U. C., ch. 64, secs. 10, 16, sub-secs. 4, 34; ch. 49, sec. 13.

Hodgins, contra, cited *Newbury* v. *Stevens*, 16 U. C. Q. B. 65.

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

The sole question in this case is, whether school trustees have authority in any year, before a copy of the revised assessment roll of that year has been transmitted to the clerk of the municipality, to impose and levy a rate for school purposes, upon the assessment roll of the preceding year.

The learned judge in the court below has taken great pains to review the common school acts in his judgment, but with great deference to his opinion, we have been unable to adopt his conclusions.

We think the error into which he fell arose from making the analogy between municipalities

and trustees, and township collectors and collectors under warrants of trustees identical, thus restricting the common school acts by acts not necessarily affecting them.

It is clear that school trustees may themselves, or through the intervention of the municipality, provide for the salaries of teachers and all other expenses of the school, in such a manner as may be desired by a majority of the freeholders and householders of the section at their annual meeting, and shall levy by assessment upon taxable property in the section such sums as may be required; and should the sums thus provided be insufficient they may assess and collect any additional rate for the purpose; and that any school rate imposed by trustees may be made payable monthly, quarterly, half-yearly, or yearly, as they may think expedient.

Many of the requirements of a school admit of no delay. The peculiar provisions respecting teachers demand great promptness in the payment of their salaries: repairs to school houses must be made when required. These may be sudden and unexpected. To oblige trustees, or those entitled to payment, to wait till the rolls of the year were made up, would be productive of great inconvenience, and if the law had been less clear than it is, we should not have felt justified in putting a stop to a practice which has, we learn, hitherto obtained, unless on grounds admitting of no doubt.

The general principle is, that levies for municipal purposes shall be made upon the revised assessment of the year in which they are made. It is true that one rate for the year is only struck by the municipal authorities; but suppose a sheriff got an execution either at the suit of the Crown or of a municipality in the month of January, would he be justified in delaying to levy until the revised assessment roll of that year was completed and a certified copy given to the municipality?

So if the requirements of a school section created a necessity for levying a rate, would the trustees be excused from performing their duty by saying we must wait till the assessment roll of the year is completed before we can act? The obvious answer would be, there is the last revised assessment roll, it is available for all purposes until the new one is made.

On reading the 36th section we find that no township council shall levy and collect in any section during one year more than one school section rate, except for the purchase of a school site or the erection of a school house, and no council shall give effect to any application of trustees for the levying or collecting of rates for school purposes unless they make the application to such council at or before its meeting in August of the year in which such application is made.

But the 12th sub-sec. of sec. 27 authorises the school trustees to employ their own lawful authority as they may judge expedient for the levying and collecting by rate all sums for the support of their school, for the purchase of school sites, and the erection of school houses, and for all other purposes authorised by the act to be collected.

It is to be noted, that the legislature did not confer on the trustees the power to apply to the township council at any time they chose to levy rates; but at or before its meeting in August, and then only for one rate, except *for the purchase of a site*, or the *erection of a school house*. Suppose a second rate for a site or a school house were applied for in a part of the year from January to August, would not the council be bound to levy it? During this period there would be but the existing roll to use for the assessing of this rate.

The restriction to one rate, and the exceptions in regard to the rates authorised to be levied by the municipality for school purposes, lead us to infer that when the trustees chose to exercise their own authority to levy, they were not restricted, and might levy oftener than once for the payment of teachers and for the other purposes mentioned in the 27th section.

In the case of an arbitration between the trustees and a teacher, the arbitrators may levy, but the trustees are bound to do so; for by the 23 Vic. cap. 49, in case they wilfully refuse or neglect, for one month after publication of award, to comply with, or give effect to the award, they shall be held personally responsible for the amount awarded, which may be enforced against them individually by the warrant of the arbitrators. But if they are thus bound at any time to exercise their power to levy, it must necessarily be done upon the existing assessment roll. None of the authorities cited touch this question as raised; but looking at the scope of the acts relating to common schools, the duties imposed upon trustees, the exigencies of schools, and the powers conferred upon trustees to levy rates, we are of opinion that trustees are not restricted to making one levy, but may levy at any time as need requires it; and may use, and can only use, the last existing revised assesment roll for imposing the required rate. The appeal will therefore be allowed.

Appeal allowed.

Crooks v. Dickson.

Covenant for rent—Interest—Reference to master—Defendant resident abroad—Con. Stat. U. C. c. 22, sec. 161.

Held, that under Con. Stats. U. C. ch. 22. sec. 161. the master is empowered to ascertain the amount for which final judgmet is to be entered not only in cases in which he could, but in cases which he could not before that act have computed what was due; and that the fact of the defendant being resident out of the jurisdiction is no objection to a reference being directed for such purpose.

Held, also, that in an action of covenant for rent, and order by a judge in Chambers, directing the master to allow the plaintiff interest on the amount claimed on the writ of summons, not specially indorsed from the date of said writ, was properly made, although no interest was claimed in the declaration.

[C. P. E. T. 1865.]

E. Crombie moved for a *rule nisi* to set aside an amended order made by Mr. Justice Adam Wilson, in the words following:*

"Upon reading the summons in this cause and hearing the parties, I do order that the master of his honourable court, on the entering of the judgment in this cause, do, on the computation of the amount due the plaintiff, allow him interest on the amount of his claim endorsed on the writ of summons in this cause; and I do further

* See page 211 for Chamber decision.

order that all further proceedings in this cause, from the date of the said writ of summons be stayed until an application can be made to this honourable court to rescind or vary this order, such application to be made this day, or as soon as counsel can be heard."

The original summons was served in this cause on the defendant as a British subject residing out of the Province, and he appeared to the writ. A declaration was filed and served on his attorney.

The declaration was in covenant on a lease of land in the City of Toronto: Breach, the non-payment of five year's rent and taxes, the yearly rent being £210, free from all taxes. The defendant pleaded to the declaration. To the plea the plaintiff demurred, and judgment was given for the plaintiff on the demurrer.

Richards, C. J. — When the learned judge made the order in question he understood that the whole matter in dispute between the parties was, whether the plaintiff was entitled to have interest added to the rent payable under the covenant set out in the declaration in entering final judgment against the defendant, and under that impression he made the order. The defendant's counsel, however, in moving his rule, contended that the plaintiff was not in a position to enter final judgment, not having signed interlocutory judgment, and not having had it referred to the master to see what was due the plaintiff. He further urged that as the writ was not a specially endorsed writ, and the proceeding was against the defendant as a British subject residing out of the jurisdiction, the damages must be assessed by a jury, and it could not be referred to the master to ascertain the amount for which final judgment was to be entered.

The motion was for a rule *nisi* to rescind the amended order, on the ground that the learned judge had no power to make it on the materials which were before him, and on the ground that, as the plaintiff after having made the application elected to give notice of assessment of damages, he was not, under the judgment of the learned judge, entitled to the order. If anything turns on the last point, he should first apply to the learned judge who made the order to rescind it.

The learned counsel in moving the rule stated he could find no authority for holding that it could not be referred to the master to ascertain the amount for which final judgment was to be ascertained, because the proceeding had been commenced against the defendant as an absent defendant. In Day's Common Law Procedure act, pp. 79, 80 & 81, it is laid down, that when the defendant is within the jurisdiction, in actions on bills, notes, awards, actions of covenant for rent (2 Wms. Saunders 107 N. 2), for mortgage money, or arrears of annuity, the writ may be specially endorsed. If the defendant resides out of the jurisdiction, there must always be an enquiry. Interlocutory judgment must still be signed in cases not within sec. 25, &c., of the English Common Law Procedure Act. The order to refer is obtained on an affidavit of the cause of action, and stating that interlocutory judgment has been signed The same course seems pointed out by Chitty's Archd. 11 ed. 922.

In note to *Holdipp* v. *Otway*, 2 W. Saunders, 107, it is laid down, that the court may, if they please, assess damages upon an interlocutory judgment, and give final judgment thereon, and inquisition is only a matter of course taken to inform the conscience of the court. Buller, J., in *Thellusson* v. *Fletcher*, Dougl. 316; *Gould* v. *Hammersley*, 4 Taunton, 148, is said to have observed, that writs of enquiry are often sued out in cases wherein they are not necessary, as, for instance, in actions on covenants for payment of a sum certain.

In the same note to Williams Saunders, it is stated that Lawrence, J., in *Blackmoor* v. *Flemyng*, referred to *Holdipp* v. *Otway*, with respect to the prothontary's taxing interest by way of damages, and that it was at the plaintiff's option either to refer it to the prothonotary to do so, or have a writ of inquiry of damages.

In *Roe* v *Aplsey*, 1 Sid. 452, judgment was obtained in default upon a judgment, and it was moved for the plaintiff that the court should tax the damages, *namely interest*, without a writ of enquiry, and after some doubt it was referred to the secondry to tax the damages. The court will not only refer, it to the proper officer to compute what is due on bills of exchange and promissory notes, but also in covenant for rent, or for mortgage money, or for arrears of accounts: (page 107 *a*, Wms. Saunders, note *c*).

In Wms. Saunders (Vol. i. page 109 note 1), it is laid down, that "when the demurrer is determined, and the plaintiff is content to take damages only on the judgment on the demurrer, he may execute a writ of enquiry on the judgment, and enter a *nolle prosequi* as to the issues, which may be done at the time of entering final judgment." Upon the same principle, when one of the counts in the declaration is on a bill of exchange or promissory note, and there is a demurrer to that count and judgment for the plaintiff, and issues are joined on the other counts, the plaintiff may, according to the modern practice in cases of judgment by default on bills of exchange and promissory notes, which is substituted in lieu of a writ of enquiry, refer it to the officer to compute what is due for principal and interest on the bill of exchange, &c., on that count, before a *nolle prosequi* is entered as to the issues.

I have no doubt under the 161st sec. of the Con. Stat. U. C. ch 22, similar to sec. 143 of 19 Vic ch. 43, and sec 94 of Eng. Act, 15 & 16 Vic. ch. 76, that in all cases where a matter could be referred to the master to compute what was due in a cause before the passing of the Common Law Procedure Act, it can now be referred to the master to ascertain the amount for which final judgment is to be entered. I also think this power extends much further, and under the statute the courts will now direct the damages to be ascertained by the master in cases where they would not have done so before the passing of the statute. If the matter is properly before the master for his decision as to the amount for which final judgment is to be entered, I see no reason why interest to the full amount directed by the order may not be allowed to the plaintiff in the nature of damages: the authorities seem to warrant it. As to the reference not being regular when the defendant

resides out of the province, the statute seems to authorise and require a reference of this kind; and I see no reason for interfering on that ground.

The plaintiff, I presume, before he has his damages ascertained or enters his judgment, will see that he is in a proper position under the practice to have those steps in the cause taken. When the judgment is entered, I see no reason why the interest directed to be allowed by the learned judge should not be computed. The order does not in itself direct or permit the entry of the judgment at any particular time, and does not imply that the judgment will be entered when the plaintiff is not in a position to take that step. All the judge assumes to decide is the right of the master to allow interest. We think he has not on this point decided too favourably to the plaintiff, and we decline to grant the rule sought for.

Rule refused.

PRACTICE COURT.

(*Reported by* Robert A. Harrison, Esq., *Barrister-at-Law.*)

Baby v. Langlois.

Terms notice—When unnecessary—Service of notice of trial—Legal partnership—New and old business.

A terms notice of intention to prooceed is not necessary if the proceedings in the cause have been suspended by injunction, or delayed by consent or at defendant's request.

The same rule applies where, on the application for the injunction at the instance of defendant, plaintiff, during the pendency of the application, is placed under terms not to proceed with the action.

Where an attorney residing and practising in the county where the action is brought appeared there for defendant, formed a partnership with another attorney carrying on business there in their joint names, and then changed his actual residence to another county, leaving his name in the proper books in Toronto as still of the former county, and occasionally afterwards attended and did business in the former county, service of notice of trial on his partner there was held to be good service notwithstanding a private arrangement between the parties that the partner should only attend to new business.

[Hilary Term, 1865.]

This was an action of ejectment tried at the last Fall Essex assizes, no one appearing for defendant.

In Michaelmas Term, *O'Connor* obtained a rule to set plaintiffs verdict aside for irregularity with costs, 1st, on the ground that over a year had elapsed without any proceeding next before notice of trial, and no term's notice given; and, 2ndly, that no sufficient notice was served.

Scott shewed cause.

Hagarty, J.—As to the first ground, it appears on the affidavits that the last proceeding at law prior to notice of trial complained of was a notice of trial for the anterior assizes of 1862. Defendant commenced a suit in equity against plaintiff to restrain the ejectment, and for a conveyance on 3rd October, 1862, and notice of motion for injunction returnable 3rd November following. On return of the motion, at the suggestion of the court, it stood over to the hearing, and the now plaintiff was placed under conditions not to proceed pending the application, and the suit, consequently, was not proceeded with. Judgment was not given in Chancery till the end of August or beginning of September last, and then plaintiff proceeded by giving notice of trial.

The practice is thus stated in 1 Chitty's Archbold, 166 (1862): "It seems that the notice is not necessary if the proceedings in the cause were suspended by injunction or delayed by consent or at the defendant's request." In 1 Tidd's Practice, 468, 9th ed., cited in *Doe Vernon* v. *Roe*. 7 A. & E., page 14, it is said, "The rule was established for the purpose of preventing any surprise on defendant after plaintiff has lain by four Terms without proceeding in his action, and therefore it does not apply when proceedings have been delayed at defendant's request."

The rule seems clearly recognised in the cases cited in the text books, especially *Bland* v. *Darley*. 3 T. R. 530 (per Buller, J.); *Bosworth* v. *Philips*, 2 W. Bl. 784; *Stockton, &c., R W. Co.* v. *Fox*, 6 Ex. 127; *Watkins* v. *Haydon*, 2 W. Bl. 762.

Indeed, in the case in 6 Ex. it would seem that, at all events in a Term cause, when a cause was stayed by injunction, on its being dissolved plaintiff might proceed without fresh notice of trial. There the cause had stood over as a remanet.

I see no difference between being stayed by injunction, and by the plaintiff at law having to come under terms not to proceed at defendant's instance.

I therefore think this ground of objection fails.

Then, as to the second ground of objection. The commission day for Essex was 6th October, 1864. Mr. O'Connor was defendant's attorney, residing at Windsor, in Essex, the county where the land is situate, and so resided till after the motion for injunction. He subsequently came to Toronto, having formed a law partnership with Mr. Worthington, an attorney at Windsor, and business was carried on in the name of O'Connor & Worthington. Mr. O'Connor alleges that this partnership was merely for new business, and had nothing to do with any old suits in which he had been concerned alone, and that the fact of his removal to Toronto was very well known. The plaintiff swears that he knew nothing of any such distinctions between old and suits, and that Mr. O'Connor frequently attended at said office and did business there since his removal to Toronto. The notice was served on the 28th September on Mr. Worthington at his office in Windsor. It was left on the table before him, he at the time declining to receive it. On the commission day, Mr. O'Connor notified plaintiff that if he proceeded he would move for irregularity. It is also sworn that Mr. O'Connor had been practising at Windsor in partnership with Worthington for some months prior to the former removing to Toronto, and that the business appeared to be carried on after the removal in the same way as before. It is also sworn that in each of the books kept at Toronto under rules 136, 137, up to December last Mr. O'Connor's residence appears to be at Windsor, not Toronto.

I am not aware of any authority governing this case.

The case is that of an attorney residing and practising in the county where the action is properly brought and appearing there for defendant, and then forming a legal partnership with another attorney carrying on business there in their joint names, and then changing his actual residence to another county, leaving his name in the proper

books at Toronto as still of Windsor and occasionally attending and doing business in Windsor.

I am of opinion that I cannot hold service in Windsor office insufficient.

Any private arrangement between him and his co-partners as to new and old business ought not I think to make any difference.

The C. L. P. Act, sec. 61 provides for serving an attorney not residing or having a duly authorised agent in the county when suit was commenced, service then should be on his duly authorised agent at Toronto or upon himself wherever he resides; or if he has no authorised agent, then by leaving a copy for him in the office where suit was commenced marked as for him.

I think it would be a very hard construction to place upon the practice to set aside this service. The office at Windsor was Mr. O'Connor's office when the notice was served just as it was when he entered the appearance. He was there at intervals attending to local business, and the mere fact of his residing elsewhere ought not, I think, under the circumstances, to make the service void. Rule discharged with costs.

Keenan v. Fallon.

Rule enlarged before a judge in Chambers—How far a stay of proceedings when not acted upon—Waiver.

Where a summons obtained in an action of ejectment to set aside a judgment for part of the premises, was discharged by the judge in Chambers, a rule, during Easter Term, 1864, obtained to set aside the judges order discharging the summons, was enlarged by consent before a judge in Chambers, not acted upon either during the vacation between Easter and Trinity or during Trinity Term, and plaintiff in the vacation after Trinity Term, served issue book and notice of trial for the ensuing Fall Assizes, which were accepted without objection by defendant's attorney, who also at the time agreed to waive the attaching to the issue book of any orders made by the court or judge, and agreed that the same might be added to the record, it was held that the verdict taken at the Fall Assizes, was, under the circumstances, regular and could not be set aside.

[Hilary Term, 1865.]

This was an application to set aside proceedings for irregularity in an action of ejectment.

The point for decision was simply this, whether the *nisi prius* record was entered and verdict for plaintiff taken on 8th November last, at Lindsay, irregularly, on the alleged ground that a rule of Practice Court of May, 1864, enlarged into Chambers by consent of parties, was in force, causing a stay of proceedings.

This rule was to rescind a judge's order discharging a summons to set aside the judgment entered by plaintiff for part of the premises, on a question of practice.

On the last day of Easter Term, the rule was enlarged by consent, endorsed to the effect that it was to stand enlarged in vacation, before Mr. Justice A. Wilson, on a day left blank.

It was said the intention was, that either party might give two days notice thereof; but the memorandum endorsed to that effect was never signed.

Nothing was done during all the ensuing vacation, nor during the following Trinity Term, and plaintiff gave notice of trial for the November Assizes, at Lindsay.

S. Richards, Q. C., for plaintiff. *H. Cameron* for defendant.

Hagarty, J.—I think plaintiff was entitled to treat the rule of Easter Term, 1864, as lapsed and abandoned by the defendant, on whom alone lay the burden of keeping it alive.

On 31st October last, the plaintiff's attorney served notice of trial on defendant's attorney, in Lindsay. The latter said nothing as to any obstacle existing, but on the contrary, at plaintiff's request, endorsed on the notice that he admitted the service of notice and issue book, and waived the attaching thereto any order made by the court or judge, that same might be added to the record, and he accepted the issue book as if said rules or orders were added.

On the commission day (it is contested whether before or after the record was entered) counsel for defendant told the plaintiff's attorney that he would move to set aside the proceedings for irregularity, on the ground of the old rule being still pending. A verdict notwithstanding was taken for plaintiff.

I have no doubt in my own mind, that the parties, after Easter Term, forgot all about the rule; and it is clear that defendant's attorney, when he endorsed the consent on the notice of trial, acted as if no such rule was pending.

I am of opinion that when notice of trial was so given, that rule should not be considered in any way a bar to plaintiff's right to proceed.

I therefore think his verdict was regularly taken, and must stand.

The case has been kept before the court on technical matters for many terms, and I think it can now be disposed of on clear and satisfactory grounds.

Defendant's rule must be discharged with costs.

Per cur.—Rule discharged with costs.

Field v. Livingstone.

Enlargement of summons subsequently abandoned—Effect thereof as a stay of proceedings—Verdict in the meantime—Regularity thereof.

Where in an action of ejectment, defendant on 15th September obtained an order for landlord to appear and defend, inadvertently containing a stay of proceedings; on 29th September defendant wrote for delay, and promised that plaintiff should not be effected thereby; on 6th October wrote to say he would require to put in a double defence, and probably apply to put off the trial; on 7th October obtained a summons for that purpose, which was served in Toronto and enlarged till 10th October, "without a stay of proceedings," and was on 11th October, the commission day of the assizes, again enlarged till 15th October and subsequently abandoned, *held* that it was the same under the circumstances as if never obtained, and that a verdict obtained by plaintiff during the pendency of the stay was regular. But leave, on terms, was given to defendant to defend on the merits.

[Hilary Term, 1865.]

This was an action of ejectment. On application made to set aside a verdict taken for the plaintiff at the last Fall Chatham Assizes, on the ground that no notice of trial was served, or regularly served, or served in sufficient time on defendant Wightman, and that the record was entered and verdict taken, pending a stay of proceedings on the merits.

On 15th September an order was made in Chambers on consent, admitting defendant Wightman to defend as landlord, and that in the meantime proceedings should be stayed.

It was admitted that this stay of proceedings should not have been in the order.

The assizes began on Tuesday, October 11th, 1864. On 29th September, 1864, Mr. Hector

Cameron, Wightman's attorney, wrote to Mr. Douglass, plaintiff's attorney, saying that he had not been able to prepare the notices of title, and that he could not let him have it till early the next week, but agreeing to place him in the same position as if no extra time had been allowed him.

On 7th October, Mr. Cameron's agent gave the required appearanc to Mr. Douglass, who same day gave them notice of trial, and they admitted service as agents.

On same day Mr. Douglass received a letter from Mr. Cameron, dated 6th October, saying that he had sent up appearance but found it necessary to apply for leave to defend on length of possession, and to put off trial till the next assizes, as defence could not be got ready, &c. He says, "I consider notice of trial served and shall apply for summons in the morning as if it were;" and asking if Mr. Douglass would consent to its lying over, and if so, to telegraph, and that he would not proceed with the application.

A summons was granted in Chambers, dated 7th October, to shew cause why the double defence should not be allowed, and to stay proceedings in the meantime. This was served in Toronto on 8th October, on Mr. Douglass' agents. It bore the endorsement signed by the judge, dated 10th October, "Enlarged till to-morrow *without* stay of proceedings."

On the 11th October, being the commission day at Chatham, Mr. Douglass' agents attended, and had it enlarged till the following Saturday.

Immediately after this enlargement the agents remembering that the assizes were commenced, asked Mr. Cameron to let the enlargement be to the 12th, instead of Saturday 15th. This he declined; and the judge being applied to, declined in the absence of Mr. Cameron, to alter the enlargement.

This summons was afterwards allowed by Mr. Cameron to lapse—as he alleges thinking it useless, as he heard that the verdict was taken for the plaintiff, on Tuesday, the 11th October.

W. Douglass, for plaintiff. *H. Cameron*, for defendant.

Hagarty, J.—I am of opinion that after reading Mr. Cameron's letter of October 6th, received 7th October, declaring that he considered notice of trial as served, and also what had previously occurred, I must hold that notice of trial was duly served in sufficient time, and I think the statement in his letter, already quoted, must have escaped his recollection. If so, it remains to be considered whether Mr. Douglass regularly entered his record on Tuesday, 11th October, and took his verdict. The objection to this is, that the enlargement of the summons to allow the double defence on that day at his agents request, so stayed the proceedings as to tie his hands.

Had this summons been pressed on to a final disposition, there might have been a difficulty, but the defendant who obtained it allowed it to lapse, and it therefore appears to me that he cannot now be heard claiming any benefit from it. A different rule might have a mischievous and unjust effect. For mere purpose of delay in a suit about being entered at a distant assize, a defendant might obtain a summons which plaintiffs town agents, not knowing how to answer, might have to ask to be enlarged. The applicants subsequent abandonment of the summons, in my opinion, leaves the case and its progress as if the summons had never issued.

I cannot therefore say that the plaintiffs' verdict was irregularly obtained. Had the defendant's attorney desired to carry out the intention expressed in his letter of October 6th, viz, to put in the double defence and apply to postpone the trial, I think he might have taken a very different course. He made no mention in his summons served on Saturday in Toronto, and returnable on Monday, of any desire to put off the trial of a cause coming on the ensuing Tuesday, at Chatham. Had he obtained an order on its return to add this defence, he would still, according to his own shewing, have had to apply to postpone the trial. He could have applied on Tuesday at *nisi prius*, to have done so.

A careful perusal of all the papers leads me to the conclusion that the defendant preferred attempting to throw the plaintiff over the assizes, or to entangle him in some slip in practice, to taking that course which his letters indicated he intended to adopt.

The letter written on the 6th of October, and received on the 7th by Mr. Douglass, was calculated to disarm any apprehensions that a difficulty could arise, as to notice of trial. The enlargement, on the commission day of the assizes, of the subsequently abandoned summons, ought not, I think, under the circumstances, be allowed to defeat plaintiffs proceedings.

I have read the affidavits of defendant and his attorney, as to a meritorious defence—and assuming them to be true, I think after a possession of many years, an opportunity may be permitted to defend the title on the merits. But after what has passed, I think the defendant must be required to act promptly.

If within two weeks from the service of the order to be now issued, the defendant Wightman pay to plaintiff all his costs from notice of trial to the present time, including the costs of this application, the verdict may be set aside, and a new trial had. If he do not do so, then let the rule *nisi* be set aside and verdict discharged with costs.

Rule accordingly.

COMMON LAW CHAMBERS.

(*Reported by* Robt. A. Harrison, Esq., *Barrister-at-law.*)

Crooks v. Dickson.

Covenant for rent—Right to interest—Computation by master—Judge's order.

Held, that a plaintiff may claim interest on a demand for money rent made payable by a covenant contained in the lease executed by defendant.

But *quære* as to his right to recover interest on each instalment of rent as it falls due, without shewing a previous demand or other warning to defendant of an intention to demand interest in the event of non-payment.

In this case an order was made for the allowance of interest from the commencement of the suit.

Semble, the master ought not to allow interest on computation in such a case without a judge's order to that effect.

[Chambers, March 2, 1865.]

Crooks obtained a summons calling on the defendant to shew cause why the master should

not enter judgment for the plaintiff in this cause, and on computation of the amount due why he should not allow the plaintiff legal interest from the respective times the rent fell due, and the costs of this application.

Crombie shewed cause. The interest claimed by the plaintiff cannot be computed by the master; and there is no objection to the entry of the judgment for the principal sum of rent so soon as the plaintiff abandons his claim for interest and enters a *nolle prosequi* to a claim for taxes which is contained in his declaration The plaintiff's writ is not a specially endorsed writ claiming interest, nor is there any count in the declaration for its interest. He referred to *Westlake* v. *Crooks*,, 4 U. C. L. J. 46; *Conolly* v. *Teeling*, 12 Ir. C. L. Rep. Appx 29.

Crooks, contra. The plaintiff in his notice of claim endorsed a demand for interest. The damages in the declaration are large enough to cover the claim for interest, and no count is necessary. The master can compute the principal sum in this case, because the action is brought on a deed for rent certain, payable at stated times; and he can also compute the interest. He referred to Bagley's Prac. 222; *Byrom* v. *Johnson*, 8 T. R. 410; *Campion* v. *Crawshay*, 6 Taunt. 355; *Wingfield* v. *Cleverly*, 13 Price, 53; Con. Stat. U. C., cap. 22, s. 161.

Adam Wilson, J.—The master may, I think, compute in a case of this kind. The jury may also allow interest upon such a demand for rent. The master always allows interest on bills of exchange and promissory notes, and on bonds and mortgages and other instruments of the like kind payable with interest.

The court has also allowed interest after affirmance of judgment on a claim for goods sold and delivered which were payable by a bill, but for which no bill had been given from the time the bill would, if it had been given, have fallen due. *Becher* v. *Jones*, 2 Camp 428, note. The count in that case was upon the special facts and agreement. See also *Farr* v. *Ward*, 3 M. & W 25.

But the court will not allow interest claimed by a special endorsement on the writ, except on bills of exchange and promissory notes, unless the contract either expressly or impliedly entitles the plaintiff to interest. *Rodway* v. *Lucas*, 10 Exchr. 674.

The Court of Chancery allows interest upon a legal debt, as on a covenant of a testatrix that her trustees should, within one month after her death, pay a sum of £1,500. *Knapp* v. *Burnaby*, 9 W. R, 765.

In *Randall* v. *Lopez*, 11 W. R., 652, the declaration contained a count for interest, the principal being for goods sold and delivered. Before action, the plaintiff had rendered a bill to the defendant, stating that interest would be charged on sums not paid within a twelvemonth, and charging on that bill 9 months interest from the end of the twelvemonth No particulars of demand had been delivered in the action further than an endorsement on the writ of summons that the claim was for goods sold and delivered, full particulars of which had been already delivered. The judge at the trial directed the jury they must not take into their consideration the claim for interest. Wightman, J., was about to make the rule absolute for a new trial, because the judge had not left the question of interest to the jury, but on being referred to *Chapman* v. *Becke*, 3 D & L. 351, he said he would allow an appeal against his judgment, unless the plaintiff agreed to a *stet processus*.

The case of *Chapman* v. *Becke*, it appears to me, had very little to do with the case one way or the other

In *The Hull and Selby Railway Co.* v. *The N. E Railway Co*, and *The Lancashire and Yorkshire Railway Co.*, 5 DeGex, Mac & G, 872, the defendants gave notice of payment of rent into court. The plaintiffs gave them notice to pay the rent to them, and that if they did not do so, they (plaintiffs) would claim interest. The defendants paid the money into court. The plaintiffs applied to be allowed interest upon it, and it was allowed to them, both by the Vice-Chancellor and the Lords Justices on appeal. Lord Justice Turner, in giving judgment, said:—The defendants have paid the money into court without authority By so doing they have at all events impeded, if they have not defeated the right to recover the interest at law, and I take it that this court has jurisdiction in cases where parties by taking advantage of its process have interfered with legal rights. I think this court has jurisdiction; and about the justice of the order there can I think be no dispute.

In this case this plaintiff might have distrained at law for anything I know to the contrary, although he did not do it No doubt too, a jury might have allowed interest to him at the trial. But I cannot say conclusively that rent, the same as money for a debt which is due by a written instrument, impliedly carries interest; and yet it is but reasonable interest should be allowed upon it from the time it becomes payable, for it is a debt, and of a specific sum of money, payable at a certain day, and if not paid at that time the plaintiff is a loser by the defendant's neglect.

Upon consideration, I must say that I cannot see any absolute distinction between a bond or covenant to pay so much money in different instalments and a lease to pay so much rent at certain stipulated days, and if the one is to bear interest I do not see any satisfactory reason why the other should not bear it also.

I am, therefore, disposed to place both such cases on the same footing, so as to have as few distinctions as possible where the rule and principle are really the same. Yet I am by no means prepared to say that the master was wrong in not allowing it, or even that he should have allowed it without a judge's order to that effect, for perhaps it should not be allowed in every case, although it may be proper to allow it in some cases.

But as the plaintiff claimed it as attaching upon the several payments from the times they respectively fell due, I think the master was quite right in not allowing it, for I am not disposed to do so myself. I will allow it, however, from the commencement of the suit, at which time the plaintiff, by his notice of claim, gave what I think may be considered as sufficient warning in this case to the defendant that he would be held responsible for interest.

I should have had no hesitation about it if the plaintiff had also claimed it in his particulars of

demand. Beyond this I do not think it proper to go. If the plaintiff is dissatisfied with this, he may either take his case to a jury, and run the risk of getting more, or he may appeal to the court for its decision.

Some of the cases I have referred to, warrant I think the exercise of the power upon such a claim

If the defendant desire it I shall restrain the levy of the interest until the ensuing term to afford him an opportunity of moving against my order

The order will go for the allowance of interest upon the rent due from the commencement of this suit, but not to be levied for until after the fifth day of next term.

Order accordingly.*

In re Davy, One, &c.

Attorney—Delivery of several bills for same services—Which to govern—Duty of master—Taxation how conducted.

An attorney having once rendered his bill, is not at liberty after steps have been taken to have it taxed to add to it, or to deduct from it, without leave of the court.

If he has rendered his bill making charges in a lump sum, though he may perhaps make up items to show that the lump sum is correct as to the amount, yet he will not be allowed to recover or tax more than the amount so charged.

If through mistake, he has delivered a bill which is erroneous, he may, by a special application showing clearly how the mistake has arisen, be allowed to amend his bill or deliver another, but not of his own mere motion

The master may, where a general bill has been rendered and the same bill in detail, refer to the items in detail to tax up to the amount first charged, but not to exceed it; and if the aggregate be less, the master may tax less, but not more.

The bill is one entire matter, and in taxation the client cannot separate certain charges for taxation and ask that they alone be referred.

[Chambers, April 4, 1865.]

This was an application to refer an attorney's bill to taxation

Messrs. Foulds & Hodgson, of Montreal, having employed Mr. Davy to take proceedings to set aside certain judgments against one Lord, or to bring actions for them and other creditors of Lord, to recover their claims against Lord's estate, he having absconded. Mr. Davy did set aside certain judgments, and recover from Lord's estate a considerable sum of money. In July, 1864, Mr. Davy rendered his account current, to Messrs Foulds & Hodgson, crediting himself with taxed costs in seven of the suits brought by him against Lord's estate, and as to two other items, charging to the following effect:— Amount of costs as per bill *White* v. *Lord*, $87 54; amount of costs as per bill in *Re Lord*, $374.

The bills were entitled as follows:—

In the court of Common Pleas—*John R. White* v. *Eli Harvey Lord* and *David A. Rose*, costs of application to set aside plaintiffs judgment. Then follows the items usually charged, commencing with instructions, $2, and ending with bill and copy and term fees; the whole being added up $87 54.

The other bill was headed in *Re Harvey Lord*, retainers for Montreal creditors, instructions $2; retainer as per agreement, $30. Then follow various charges for costs, expenses, consultations, letters and opinions, fees paid, retainers to counsel, various charges. The three last being as follows:—Attending at Kingston to see Mr. Foulds, $10; paid Mr. Wilkes expenses to States to find Lord, $75; eighteen days time, $5 per day, $90. The whole adding up $366. On turning over the leaf there were the further items. 4 letters and paid and attending to forward, $4 50; bill and copy, $1 50; term fees, $2; total, $374. On the back was endorsed, "In *Re Lord*, bill of costs, $374;" and at the bottom, "B. C. Davy, Napanee," apparently in the same hand-writing as the body of the bill.

The other which was endorsed "C P., *White* v. *Lord*, bill of costs, $87 54," "B C. Davy," was apparently in the same hand-writing.

On the 30th November, Messrs. Foulds & Hodgson caused a summons to be issued, calling on Mr. Davy to shew cause why his bills of cost delivered to them, should not be referred to the master to be taxed, and why he should not give credit for all sums of money received by him from or on account of the plaintiffs in the said several suits referred to in the bills and each and every one of them in respect of any of the matters in the bills contained and from and on account of *Foulds & Hodgson; and why he should not* refund to them what (if anything) may upon taxation appear to have been over paid; and why the master should not tax the costs of such reference, and certify what shall be found due from either party; and why Davy should not be restrained from commencing any action touching such demand pending the reference; and why on payment, Davy should not deliver over all papers, &c.

On the same day another summons was obtained, at the instance of the same parties, calling on Mr. Davy to shew cause why he should not deliver a bill of costs, with the title of the court, style of cause and items, and amounts in detail referred to in the account current, in the causes and amounts following:—

Lauvier v. *Lord*	——	.....	$57 50
Martin v. "	——	.....	86 38
Thayer v. "	——	.....	42 85
White v. "	——	.....	87 84
Foulds v. "	——	.....	99 05
Thurber v. "	——	.....	113 44
In re v. "	——	.....	20 00

and give credits therein for all monies received from or on account of the plaintiffs in the several matters or suits, or from or on account of Foulds and Hodgson, respecting the same. These summonses were from time to time enlarged, and came on for argument before the Chief Justice of the Common Pleas.

Mr. Davy produced an account of about sixteen pages, commencing Messrs. Foulds & Hodgson To Benjamin C. Davy Drs costs as between attorney and client, *In re Eli Harvey Lord & Co.* He then proceeded to give the items in that matter. It was not added up, but on being added up at what appears to be the closing charges in relation to that particular proceeding, it made the sum of £110 18s 7d —$443 72, *instead of* $366 in the former bill of items rendered. Then followed *White* v. *Lord*, the charges in which amounted to £23—$92—instead of $87 54, as in the former bill. Next followed the items in

* Plaintiff, in the ensuing term, moved the Court of Common Pleas to rescind the order, but it was sustained by the full Court, and plaintiff's rule discharged as appears by the report on page 207.

Foulds v. *Lord*, amounting apparently to £31 19s —$127 80—instead of $99 05, as in first account; *Thurber* v. *Ward*, £34 12s. 5d —$138 48—in former charged as costs taxed, $113 44; *Thurber* v. *Ward*, another suit, £11 18s. 8d.—$47 73—in first account charged as costs taxed, $42 95; *Linton* v *Ward*, £12 18s. 7d.—$51 72 —in former charged costs taxed, $42 95; *Lauvier* v. *Lord*, £17 5s. 8d.—$69 13—in former account charged costs taxed $57 50; *Martin* v. *Lord*, £25 2s. 11d.—$100 48—charged in former bill as costs taxed, $86 38.

The sheriff's fees on the foregoing executions were charged in the first account separately, and they were added into each suit by the bills last rendered.

There was in the last bill items of charges in the suit of *Fraser* v. *Lord*, amounting to £22 2s. 5d., of which no mention was made in the first account rendered. The whole amount with which Mr Davy credits himself in first account, is $1,069 80, and charges himself with $969 80, leaving a balance due him of $100. In the last account, he charged against his clients, £311 19s. 5d., and credits them with £267 7s. 3d., leaving £44 12s. 2d. due him.

Mr. Davy filed an affidavit, dated 12th December, 1864, which gave a statement of his being employed in these matters by Messrs. Foulds & Hodgson, and that they were to be answerable for his costs; then stated that the bills referred to in the two several applications now pending in this matter, are parts of his bill for business transacted by him for Foulds & Hodgson, in respect of said claims by the Montreal creditors, against Lord's estate. That he was advised that the several bills of costs incurred by him, in respect of the several claims so placed in his hands as aforesaid, and for which Foulds and Hodgson are liable to him, are in fact, and ought to be treated as an indivisible bill, as between him and Foulds & Hodgson; that he was perfectly willing to have the whole of his said bill referred to taxation, if Foulds & Hodgson so desire it; but objected to Foulds & Hodgson obtaining a reference as to such particular parts of the bill as they may select, on the grounds that the same is unfair to him and unwarranted by the practice of the court; that since the application in this matter was made, (the applicants never having made any previous application to him for delivery of his bills) he had caused his said bill to be made out in full, and had forwarded the same to his agent in Toronto, for service on the agents or attorneys of the said Foulds & Hodgson, which was the bill secondly delivered and which taxed the bill first delivered, as already mentioned.

J. B. Read, for the application.

Gwynne, Q.C., contra.

Richards, C J.—The first question is, whether an attorney's bill delivered by him to his client, though not signed, can be taxed? I think the authorities establish that it may be taxed. The statement of account rendered by the attorney here to his clients, as to the cases in which judgments were entered, in effect charges them with the costs taxed in each suit, and in the proceedings in which the costs were taxed, he sends them the items in the form of regular bills of costs in each proceeding. He credits his clients with money received, and claims a balance yet due, of $100. He does not intimate that he has any farther charges against them in these matters, or any further bills to render. I think the clients had a right to consider these were the charges their attorney had deliberately determined on making against them, and that he is bound by the bill or account so rendered.

The doctrine established by the modern cases, as I understand them, is, that an attorney having once rendered his bill, is not at liberty after steps have been taken to have it taxed to add to it or deduct from it, without leave of the court; and if he has rendered his bill, making charges in a lump sum, he may perhaps make up items to shew that the lump sum is correct as to amount, yet he will not be allowed to recover or tax more than the amount so charged. If, through a mistake, the attorney has delivered a bill which is erroneous, he may by a special application, showing clearly how the mistake has arisen, be allowed to amend his bill or deliver another, but not of his own mere motion.

I am inclined to think that the bill or account of an attorney is one entire matter, and in taxation the client cannot separate certain charges for taxation, and ask that they alone shall be referred. If they desire to have the bill as rendered taxed, I think they are entitled to their order. If they do not wish the items of the bill considered before the master, and are willing to allow them as correct, they need not trouble the master with them. If they dispute the amount which is charged, I think that under the circumstances it would be right to allow the master to refer to the items in detail as furnished by the attorney, to tax up to the amount charged, but not exceed it, and if the aggregate be less, the master can tax less. As to the bills delivered in which the items were made up, they must be taxed as delivered.

I refer to the following cases:—*Billing* v. *Coppock*, 1 Ex. 14; *In re Carven*, 8 Beav. 436; *In re Walters*, 9 Beav. 299; *In re Wells*, 8 Beav. 416; *In re Catlin*, 18 Beav. 508; *Re Blakesley & Beswick*, 32 Beav. 379; *In re Telleard*, 32 Beav. 476; *Ivimey* v. *Marks*, 16 M. & W. 843; *In re Salt*, 31 Beav. 488; *Pigott* v. *Cadman*, 1 Ex. 837; *In re Chambers*, 11 L. T. N. S. 726.

Order accordingly.

ELECTION CASES.

(*Reported by* R. A. Harrison, Esq., *Barrister-at-Law.*)

The Queen ex rel. Ford v. Cottingham

Assessment roll—Conclusive as to property—Franchise to be favored—Residence—Onus of proof—Con. Stat. U. C. cap. 54, s. 75 and 97, sub-sec. 9.

Held, that the revised assessment roll is as to property qualification binding and conclusive as to the several persons therein rated

Held also, that the inclination of the courts is to favor the franchise.

Where the votes of householders were attacked as not being householders resident for one month next before the election, and the fact of non-residence was not clearly shown, the votes were sustained.

[Common Law Chambers, March 1, 1865.]

Hector Cameron, on the 6th of February, 1865, obtained a writ of summons in the nature of a

quo warranto, directed to the defendant, to show by what authority he exercised the office of councillor for ward number one of the township of Emily, and why he should not be removed from the same, and the relator declared duly elected in his place.

The statement of the relator set forth that he had an interest in the election as a candidate for councilman, and the objections were—1st. That the election was not conducted according to law, the returning officer having refused to administer the oaths of qualifications required by the statute to certain persons who voted, although duly requested by the relator so to do. 2nd. That the defendant did not receive a majority of votes of persons duly and legally entitled to vote thereat 3rd. That he, the relator, received a majority of legal votes polled, and was duly and legally elected.

The application was supported by the affidavit of the relator, which stated that the returning officer refused to administer the oaths required by law to John McNeily and Alexander Shannon, two electors, who voted for the defendant, and having refused to administer the oaths to these electors, he considered it useless to ask the returning officer to administer the oaths to others of the voters to whom he had objections. That he was advised and believed that the votes of twelve persons whom he named, including the two above named, and all of whom voted for the defendant, were bad and ought to be struck off. 1st. John McNeily, who voted in place of his son, who in truth was the person assessed, and whose name was on the roll. 2nd. Wm. Clarke, who although assessed in ward number one, for a shop, resided in ward number four, using only the shop for his business during the day. 3rd. Thomas Baldwin, who was not assessed on the last assessment roll, in respect of real property, but only in respect of personal property, and only occupies a house as a squatter supposed to be on the road allowance. 4th. Robert White, a like objection. 5th and 6th. Wm. and James Anderson, who were jointly assessed as freeholders, but he had reason to believe that they are freeholders. 7th. Jas. Balfour, also assessed as a freeholder, but he believed that he had no interest in the property assessed. 8th. David Balfour, same objection. 9th. Matthew Larmer, assessed as a householder, the defendant being landlord, but relator was informed that the premises are a school-house and belong to the trustees of the school section. 10th. Alex. Scott, assessed as a householder, and to the best of relator's knowledge had no interest in lot as tenant or proprietor, nor did he live on the lot; he being a miller in the employment of defendant, and the house for which Scott was assessed being occupied by another. 11th. Wm. Cottingham, assessed as a freeholder, but relator believed he had no deed for the lot and no interest in it. 12th. Alex. Shannon, assessed as a householder, objected to as not residing in Emily for two months next before the election, being then residing at Port Hope. The relator further stated that the returning officer, although he (the relator) required him to administer to Alex. Shannon each of the oaths required by law, the returning officer only administered that portion of the bribery oath whereby Shannon was made to declare that he had not been bribed directly or indirectly at the election.

The relator, in support of the application, filed affidavits of other parties referring to each of the votes objected to, and testifying to the grounds alleged by the relator against the legality of the votes.

C. S. Patterson shewed cause, reading and filing, on the part of the defendant, several affidavits.

Gabriel Balfour, the returning officer, testified to a list of votes attached to his affidavit as being the one used at the election, and which was sworn to by the clerk of the municipality as a correct list of the voters for the ward, taken from the last revised assessment roll of the township. That the said list was used by him at the election, and was seen and handled by both the candidates and other electors and referred to by them, and that no objection was made to it As to the voter, John McNeily, when he tendered his vote the relator, or some one on his behalf, asked the returning-officer to swear him as being the person assessed, it being alleged that it was his son whose name was on the assessment roll, when the assessor being present explained that it was the voter who was assessed, and that the objection was then withdrawn and the demand to swear him waived. He stated that he was also asked to administer the oath to Shannon, as to his residence in the municipality; that he put the book into Shannon's hands, and was about administering it, having read over the oath preparatory thereto, when the relator or those acting with him insisted on the officer administering the whole oath or series of oaths in section 97, subsec. 9, of the Municipal Act, including that which referred only to the case of a new municipality, and that it was not from any unwillingness, but only from the excessive demand that the oath was not administered to Shannon.

John McNeily, referred to, swore that he was the person who voted for defendant, and that he is the person who was assessed on the last assessment roll. That his son, also named John McNeily, who resided with him was not assessed.

James English, the assessor of the township for 1864, swore that John McNeily the elder was assessed and not his son. He also swore that the voters Robert White and Thomas Baldwin, who were respectively assessed at $35 and $45, were so assessed for the respective houses occupied by them, and that he placed their assessments in the column for the value of personal property under the impression that householders were not rated as for real property, marking each assessment with the word "house," indicating that it was in respect of the said houses that they were assessed. A copy of so much of the last revised assessment roll as related to the persons who voted in ward No. 1 was put in, and which was sworn to as being true and correct by the clerk of the township.

Thomas Baldwin swore as to having voted for defendant, being assessed on the last revised roll as a householder. That the house in which he resided was a part of lot six in the first concession. That he had resided there for eleven years past as tenant to one David Balfour, and that he paid $18 rent a year and had done so for the last eleven years.

Morrison, J.—With reference to the alleged misconduct of the returning officer in the case of John McNeily, it is I think disposed of by the returning officer's affidavit as well as the affidavit of the assessor and the voter himself, which places it beyond dispute that the elector was entitled to vote.

Then as to the case of Shannon, the relator swears that he required the returning officer to administer each of the oaths required by law to the voter as he states, to test the truth as to the place of residence of Shannon prior to said election, as well as other matters connected with his right to vote. What the other matters were that the relator refers to is not stated. When I look at the explanation given by the returning officer and the series of oaths enumerated in sec 97, subsec. 9, I am rather led to think that the relator's object was merely to annoy the voter and not for any *bona fide* object, and we can well understand when a candidate resorts to such a proceeding that confusion and misunderstanding as to the circumstances will likely arise. I notice that the relator swears that in consequence of the returning officer refusing to administer the oaths to McNeily and Shannon he considered it useless to administer the oaths to others against whom he had objections, but by the copy of the poll book filed by the relator it appears that Shannon was the ninety-fourth person who voted, ninety-eight being the whole number, and of the last four, two voted for the relator.

Under the 75th clause of the Municipal Act, the electors of every municipality, &c, shall be the male freeholders thereof, and such of the householders thereof as have been resident therein for one month next before the election, who are natural born subjects, &c., of Her Majesty, of the full age of twenty-one years and *who were severally rated on the revised assessment rolls* for real property in the municipality, &c., held in their own right as proprietor or tenants. With regard to nine of the votes objected to by the relator, viz., number three to eleven inclusive, on account of the voters not having a property qualification, it appears that they are all rated on the last revised assessment roll, and were returned and entered in the list delivered to the returning officer.

Mr. Patterson, on the part of the defendant, objected to going behind the assessment roll, contending that the roll itself as to the property qualification is binding and conclusive. It is very apparent upon a reference to the various clauses in the municipal and assessment acts, both of which statutes are intimately connected with and depending upon the enactments of the other, that every care has been taken by the legislature to ensure a true and correct assessment and rating of property. Provision has been made for giving to the assessment rolls full publicity, and the right of objection by any elector to any matters appearing therein; among others, "if any person has been wrongfully inserted on it," and a mode of procedure is laid down affording ample opportunity to hear and determine all complaints and to revise all errors, &c., with a view to accuracy and finality, and we cannot but suppose that one of the objects of the legislature was to ascertain and determine who were entitled to vote. The 61st sec. of the Assessment Act enacts that the roll as finally passed, &c, shall be valid, and bind all parties concerned, notwithstanding any defect or error committed in or with regard to such roll, except in so far as the same may be amended in appeal to the judge of the county court.

A consideration of the 75th clause of the Municipal Act, declaring who are entitled to vote with the 9th sub-sec. of the 97th clause, which enacts what oaths shall be administered to electors, provisions being only made in the latter for matters *dehors* the assessment roll, in my judgment, strongly evince that the intention of the legislature was to make the roll conclusive as regards property qualification, and this view is strengthened by the words at the end of the 9th sub-sec., enacting that no enquiry shall be made of the voter, except with respect to the facts specified in the oaths.

No case was cited to me on the argument supporting the view taken by the relator's counsel, and I am not disposed, were it open for me to do so in the absence of anything to give effect to objections leading to the obvious inconveniences which would necessarily arise if held good. Were I to do so in my judgment one of the most important objects of our municipal system would be defeated. I am therefore of opinion that the objections made to the nine votes referred to are not valid and ought not to be allowed.

The only votes objected to remaining to be disposed of are those of Clarke and Shannon, who are objected to as being non-residents. With regard to Clarke it is known that he is assessed for property in two wards—No. 4 and the one in question; in the latter that he is assessed for a shop in which he carries on his business, being there during the day, while it is said that he sleeps and resides in the house of a family named English in the 4th ward, and that he is entitled to vote in that ward and consequently he is not entitled to vote in ward No. 1. It is not alleged that he voted in ward No. 4. The question of residence is a good deal discussed in *Reg ex. rel. Forward* v. *Bartell*, 9 U. C. C. P. 533, and in the cases therein cited. What is meant by residence is by no means a clear settled point. From the affidavits filed on the part of the relator, I cannot ascertain distinctly the facts of Clarke's position. It is not stated whether Clarke has a family or under what circumstances he sleeps in the house referred to, or whether he has done so for any period, or was he there at the time of the election. Erle, J., in 7 El. & B. p. 9, says:—"The fact of sleeping at a place indeed by no means constitutes a residence, though on the other hand it may not be necessary for the purpose of constituting a residence in any places to sleep there at all." I see nothing to satisfy me that the voter had a right to vote in ward No. 4, and considering as Richards, C. J., remarks, in the case *Reg. ex rel. Forward* v. *Bartell*, above cited, the inclination of the courts is to hold in favor of the franchise, I will hold that the vote is valid.

It is not necessary to dispose of the remaining vote, for if bad, which I think it is, the defendant would still have a majority of one, which would enable him to retain his office.

I am of opinion, therefore, that the office of councillor for ward number one of the township of Emily should be allowed and adjudged to the

defendant, and that he be dismissed and discharged from the premises against him, and do recover his costs of defence *

CHANCERY.

(*Reported by* Henry O'Brien, *Esq., Barrister-at-Law.*)

Willson v. Cramp.

Insolvent Act of 1864, *sec.* 3, *sub-sec.* i.—*Voluntary assignment not under act—Act of insolvency—Subsequent writ of attachment—Which to prevail.*

Where an insolvent debtor, subsequently to the coming into force of the Insolvent Act of 1864, makes an assignment to trustees for the benefit of creditors, not however under, or pretending to be under the Act, and upon which as an act of insolvency, proceedings are afterwards taken under the Act, such an assignment is void as against the assignee in insolvency.

[June 8th & 20th, 1865.]

On the 11th January, 1865, J. D. Mackay, then being insolvent, made an assignment to Thomas Cramp and Andrew Milroy, two of the defendants, for the benefit of creditors upon certain trusts, which assignment was not and did not purport to have been made under the provisions of the Insolvent Act of 1864.

Proceedings were subsequently taken under the Act, and an attachment issued upon the ground that this assignment was in itself an act of insolvency, and that the estate of J. D. Mackay became liable to compulsory liquidation. One William Powis was appointed official assignee of the estate, but upon his death the present plaintiff, another official assignee, was appointed in his place. As this was the first case of the kind, the defendants, Cramp and Milroy, refused to hand over to the plaintiff the books of account and property of the insolvent's estate, without the direction of the court. Upon this the plaintiff filed a bill against Cramp and Milroy, and David and John Torrance, creditors of Mackay, setting out the facts and charging that the defendants Cramp and Milroy would, unless restrained by the injunction of the court, proceed to sell the said property and collect the debts due to the estate: that the said assignment hindered and obstructed the plaintiff in the collection of the said debts, and that the said assignment is by reason of its having been registered in several counties wherein the lands belonging to the said estate are situate, and for other reasons, a cloud upon the title of the plaintiff, and that the defendants David Torrance and John Torrance and Thomas Cramp were co-partners in business, and were the largest creditors of the said James Daniel Mackay, and were *cestuis que trustent* under the said deed, and for that reason made defendants to this suit The plaintiff therefore prayed that the said assignment to the said Thomas Cramp and Andrew Milroy might be declared to be void as against the plaintiff, and that the said Thomas Cramp and Andrew Milroy might be ordered to deliver up to the plaintiff all the books of account, vouchers, deeds, papers and documents, and all the goods and chattels belonging to the said estate, and to convey to the plaintiff the lands and premises conveyed to them by the said Mackay, and that the said Thomas Cramp and Andrew Milroy might be restrained by the order and injunction of this honorable court from intermeddling with the said estate and effects and from collecting the debts due to the said Mackay, and from retaining the possession of any of the goods and chattels belonging thereto, and from selling or disposing of any of the property real or personal, and that they might account to the plaintiff for such portion of the said property as had been converted into money and pay the same to the plaintiff.

The answer of the defendants admitted the matters of fact stated in the bill, and submitted to the judgment of the court as to whether the assignment to Cramp and Milroy was or was not void.

The cause came on for hearing on bill and answer.

Roaf, Q. C., for the plaintiff.

Blake, Q. C., for the defendants, Cramp and Milroy.

S. H. Blake, for David and John Torrance.

Mowat, V. C.—The question argued in this cause was whether an assignment for the benefit of creditors, on which, as an act of insolvency, proceedings are afterwards taken in insolvency, is void as against the assignees appointed under the act.

I am clear that it is. I think this apparent from the whole scope of the act. It is impossible to suppose that when the legislature made such an assignment an act of insolvency, it was intended that the assignee appointed under the act should receive none of the property of the insolvent, and that notwithstanding their appointment the estate of the insolvent should be administered by the trustees whom the insolvent had himself chosen to name. Such a construction would render futile the enactment which makes such an assignment an act of insolvency and would practically deprive the creditors of the advantages which the statute gives them, for the winding up of the estate of an insolvent debtor. If in addition to the clear evidence of the intention of the legislature, which the scope and object of the act supply, a direct enactment declaring such assignment invalid against assignees under the act were necessary, I think sec. 8 contains enough for this purpose. Take for example the third sub-section of that clause which expressly renders null all contracts or conveyances made and acts done by a debtor with the intent fraudulently to impede obstruct or delay his creditors in their remedies against him, or with intent to defraud his creditors or any of them, and which have the effect of impeding, obstructing or delaying the creditors or of injuring them. The deed of assignment impedes and obstructs creditors in those remedies which the Insolvency Act affords, and on this ground similar clauses in the English Bankruptcy Act, 1 Jac. 1, ch. 15, sec. 2, and 6 Geo. IV. ch. 16, sec. 3, were decided in England to include voluntary assignments for the benefit of creditors: *Stewart* v. *Moody*, 1 C. M. & R. 777. As Lord Ellenborough observed in *Simpson* v. *Sikes*, 6 Maule & Selwyn, 312. "such a deed subjects the debtor's property to distribu-.

* The ruling on the principal point decided as to the conclusiveness of the assessment roll was subsequently sustained by Mr. Justice Adam Wilson in two cases, viz., *Reg. ex rel Johnson* v. *Price*, and *Reg. ex rel. Milligan* v. *Johnston* (not reported); and by Mr. Justice John Wilson, in *Reg. ex rel. Chambers* v. *Allison* (to be reported)

tion without the safeguards and assistance which the bankrupt laws provide."

The assignment in question also attempts in some respects to put the debtor's property under a different course of application and distribution among his creditors from that which would take place under the insolvency law: *Dutton* v. *Morrison*, 17 Ves. 199. Thus it does not give the priority secured by the Insolvency Act to the clerks and other employeés of the insolvent.

Decree for plaintiff.

The following decree was thereupon made, the order as to the costs being by consent of the parties:—

"* * This court doth declare that the assignment from James D. Mackay, in the pleadings mentioned to the defendants Thomas Cramp and Andrew Milroy, became, on the appointment of the plaintiff as assignee in insolvency of the said James D. Mackay, void as against the plaintiff as such assignee, and doth order and decree the same accordingly; and it is ordered that the said defendants Thomas Cramp and Andrew Milroy do by proper instruments, to be settled by the accountant of this court in case the parties differ about the same, transfer and assure to the said plaintiff, as such assignee, the estate and effects which are now vested in them under the said assignment to them, and it is ordered that the costs, charges and expenses of all parties, as between solicitor and client, be taxed by the said accountant and paid by the said plaintiff out of the said estate, and liberty is hereby given to any of the said parties to apply to this court as and when occasion may require."

ENGLSIH REPORTS.

Pristwick and Another v. Poley.

Attorney—Authority to compromise an action.

An attorney was instructed to bring an action for the price of a piano sold to the defendant, and was not forbidden to compromise the action, and his managing clerk agreed with the defendant to settle the action on the defendant's restoring the piano and paying costs, which arrangement was approved of by the attorney. The plaintiffs refused to assent to the arrangement.

Held, on a rule to stay all further proceedings in the action, that the plaintiffs were bound by the compromise, as it was within the scope of the attorney's authority, and that therefore, the defendant was entitled to a stay of proceedings.

Semble.—In ordinary cases, an attorney entrusted with the general management of a cause, has power to compromise it unless expressly forbidden to do so.

[C. P. May 9, 1865.]

This action was brought to recover £38, the price of a pianoforte sold and delivered by the plaintiffs to the defendant. Previous to the trial, Swan, who was the managing clerk of the plaintiff's attorney, had an interview with the defendant on April 6th, 1865 and entered into an agreement with him to settle the action on these terms:—"The piano to be given up in full discharge of the debt in the action, and costs agreed at £9, to be paid by the following instalments: £5 to-morrow, and balance in a month from that date." Swan informed his principal (the plaintiffs' attorney) of this arrangement, who then directed him to carry it out. On April 7th the defendant's attorney sent to the plaintiff's attorney a cheque for £5. The plaintiffs, on being informed of the arrangement, declined to ratify it, and on April 8th, the plaintiffs' attorney wrote to the defendant's attorney stating that the plaintiffs were not inclined to accept the terms proposed, and inclosing in the letter the cheque for £5. The defendant then tendered to the plaintiffs the piano and £5, but the plaintiffs refused to accept them, and insisted on the action being proceeded with, or the price of the piano being paid, which latter not being done, the action went on.

The defendant then took out a summons to stay all proceedings in the action, the matter having been settled; this was heard before Keating, J., at chambers, and he declined to make an order, but stated he did so without prejudice to an application to the Court.

Needham having in this term, on affidavits setting out the above facts, obtained a rule calling on the plaintiffs to show cause why all further proceedings in the cause should not be stayed, the action having been settled.

Prentice now showed cause, and contended that the plaintiff's attorney had no power to make this compromise, having been only instructed to recover the price of the piano, which was a different thing from taking back the piano itself; and that, if any attorney were instructed to recover an estate, it would be going a great way to say that he might take money instead. [Keating, J.—Might the attorney have referred the case of an arbitrator, and then the arbitrator have directed that the piano should be given back.] No. He referred on this point to *Swinfen* v. *Swinfen*, 27 L. J. Ch. 491; *Swinfen* v. *Lord Chelmsford*, 29 L. J. Ex 382. [Byles, J., referred to *Fraw* v. *Vowles*, 1 E. & E. 839.] He further contended that, even if the plaintiff's attorney had power to make this arrangement, his clerk had not, as there were many things which, if done by or to an attorney, would bind his client, though they would not if done by or to the attorney's clerk; for instance, a tender to an attorney is good as against his client, but it is not if made to the attorney's clerk; so, also, notice of an act of bankruptcy to an attorney is notice to his client, but notice to the attorney's clerk is not. He cited on this point *Bingham* v. *Allport*, 1 N. & M. 398; *Pennell* v. *Stephens*, 7 C. B 987.

Needham, in support of the rule, contended that the plaintiff's attorney had full power to effect this compromise. He cited *Swinfen* v. *Swinfen*, 25 L. J. C. P. 303; 26 L. J. C. P. 97; *Thomas* v. *Harris*, 27 L. J. Ex. 353; *Chowne* v. *Parrott*, 32 L. J. C. P. 197; 11 W. R. 668. [He was then stopped by the Court.]

Erle, C. J.—I am of opinion that this rule should be made absolute. This was an action by the plaintiffs against the defendants to recover the price of a piano; a compromise was effected, under which the piano was to be restored to the plaintiffs, and certain costs were to be paid to them; the plaintiffs denied the attorney's authority to make the compromise, and proceeded with the action, which was an action for damages. This is a question between third parties, and not between attorney and client. It is clear that no express prohibition was given by the plain-

tiffs to their attorney not to compromise, but they employed him simply to recover the debt, and we have to say whether, in the employment as attorney to conduct the suit, he had a general authority to make such a compromise as this. It is admitted that he had authority over all ordinary proceedings, and that he might compromise the action by taking a sum of money more or less; but it is said that he could not compromise it by taking the goods back instead of money. I think there is no difference between the two, for, if the action had proceeded and the plaintiffs had obtained judgment, the sheriff might have taken the piano, and sold it to satisfy the judgment. The piano, which the planitiffs were to receive back under the compromise, might be turned into money. It seems to me that he did not go beyond his authority in any respect. The case of *Chowne* v. *Parrott* lays down principles wide enough to include this case, and contains such a statement of the law as I am laying down now. In *Fray* v. *Vowles*, the action was brought against an attorney for compromising two actions, contrary to the express directions of his client; and it was held that the plaintiff could recover against him; but in that case the compromise was contrary to the plaintiff's express directions. The case of *Swinfen* v. *Swinfen* was a very remarkable case in many respects, and is, in my opinion, a singular case, and does not lay down a general rule for guiding other cases; and the Master of the Rolls in his judgment, which was affirmed by the Lords Justices, was very much of that opinion. In that case, there was an extraordinary departure from the authority which was given, for the action was to recover an estate, and the compromise effected was to give up all claim to the estate, and to take an annuity for life instead of the estate, which, it was contended, went beyond the ordinary scope of a counsel's or an attorney's authority.

Byles, J.—I am of the same opinion. If an attorney, entrusted with the general management of a cause, had not power, while acting *bonâ fide*, and with reasonable skill and care for his client's interest, to make a compromise, it would be most injurious to the client. No authority has been brought before us showing that an attorney has not the power to effect the compromise. In the case of *Swinfen* v. *Swinfen*, 18 C. B 485, the first discussion was whether counsel had authority to make the arrangement which he did make, and Cresswell, J., says, at p. 503 —"But if counsel, duly instructed, take upon himself to consent to a compromise, which he, in the exercise of a sound discretion, judges to be for the interest of his client, the Court will not inquire into the existance or the extent of his authority." And Williams, J., says, at p. 505 —"I entirely concur with my brother Cresswell in holding that Mrs. Swinfen is bound by the compact," and Willes, J., says, at the same page, "as to the authority of counsel to bind the client by arrangements entered into in Court, I agree entirely with what has fallen from my brother Cresswell." Afterwards, when the case came before this Court again, the question arose as to whether Mrs. Swinfen had been guilty of a contempt of Court, for which the Court would grant an attachment against her, and Crowder, J., says, at p. 393 of the 1 C. B. N. S., "I have the misfortune to differ from the opinion expressed by my learned brothers when the former rule was discharged, and to which opinion they still adhere." So far, therefore, as the proceedings in the common law courts go, the authority of counsel to compromise is stated in the widest terms, indeed, in far wider terms than this case requires. The case in equity must be taken as a singular one.

Keating, J.—I am of the same opinion. If the rule that an attorney has authority to compromise an action were not to be established, great inconvenience and protracted litigation might be the consequence. I am far from saying that any goods might be taken to compromise the action, having nothing to do with it, but here the goods were the subject of the action, and therefore the taking them was quite within the most limited extent of the authority given to the attorney. I may say that the case of *Swinfen* v. *Swinfen* caused considerable sensation at the time it was decided, and as far as it was decided in this court it was not fully understood, for not only had Cresswell, Williams, and Willes, JJ., expressed opinions, but, on the second time of its coming before the Court, my brother Willes not being present, Cresswell and Williams, JJ., adhered to their former opinions that the compromise was within the scope of the authority of counsel, and they constituted a majority of the Court; but from the nature of the application which was for an attachment, and one member of the Court thinking that it was not right that an attachment should issue, the rule for an attachment was discharged. The case of *Swinfen* v. *Swinfen* rested on a peculiar state of facts, and is not to be put forward as any authority for limiting the power of counsel or attorney in a cause to compromise it.

Montague Smith, J.—I am of the same opinion. An attorney is the general agent of his client in all matters which may reasonably be expected to arise in the course of the case. It is most proper and usual and very frequently necessary, to effect a compromise, and the decisions establish that an attorney has authority to compromise. The question is whether the compromise, which an attorney makes, is within the authority. I think that this one was clearly within his authority. If, as was said by my lord, the plaintiff had been ultimately successful in the cause, and the damages had been assessed, he could only have an execution against the defendant's goods, and the sherriff would have taken the piano or some other goods, and the costs would have been greatly increased; the attorney therefore judiciously thought it would be better to settle the action If an attorney had not the power to compromise it would be an unfortunate thing for clients, for protracted litigitation would be the consequence. Opportunities for effecting a compromise may arise in the course of a case which may never occur again, and if an attorney had not the power of compromising, then it would tend greatly to protract litigation. It is within the course of authorities that such a compromise as this is within the scope of an attorney's authority.—*Week'ly Reporter.*

Rule absolute.

Ex parte Beddoe, an Articled Clerk.

Attorney—Articled clerk—Service interrupted by illness.

A rule was granted that an articled clerk, who for two years had been prevented from serving by illness, but who, during that time had pursued his legal studies as well as his health would permit, should be allowed to be examined, and if found sufficient, admitted at the expiration of the five years from the date of his articles

[B. C., June 14, 1865.]

Day made an application that an articled clerk might be allowed to be examined, and thereupon admitted at the expiration of five years from the date of his articles, if found sufficient.

It appeared upon the affidavits that the clerk had been articled on the 8th of June, 1860, and that he had served under them till 24th December in that year, when he was attacked by a dangerous illness from which he suffered for two years, till 5th January, 1863, and during his illness he had been confined to his house. In January, 1863, he resumed his services under the master to whom he had been articled.

It also appeared that during his illness he had pursued his legal studies as well as the circumstances would admit.

He referred to *Anonymous*, 9 L. T. N. S. 324, decided 9th November, 1863; *Ex parte Hodge*, 2 Jur. 989; *Ex parte Matthews*, 1 B. & Ad. 169.

Crompton, J.—Two years seem to be a long time, but the case comes quite within the *Anonymous case*, which refers to *Ex parte Hodge* and *Ex parte Matthews*. In *Ex parte Hodge* Mr. Justice Littledale takes the same view that I do. If the absence had been for less time than a year, I should not have felt any difficulty; but as the time is not longer than in the *Anonymous case*, I think I may grant the rule.

Rule accordingly.

—*Weekly Reporter.*

GENERAL CORRESPONDENCE.

County Courts—Original Judgment Rolls as Evidence.

To the Editors of the Law Journal.

Gentlemen,—With reference to the judgment reported in this present July number of the *Law Journal*, in *Patterson* v. *Todd*, is a *subpœna duces tecum* from a Superior Court, requiring the production by the clerk of an Inferior Court of a record of his Court, to be regarded as "*higher authority.*" If not, why should the clerk of an Inferior Court be be placed in the position of refusing obedience to a writ running in the Queen's name, which charges a penalty for disobedience to Her commands. See rule 31 (Reg. Gen. T. T. 1856) H. C. & P. Act, 611.

Yours, &c.,

County Court.

[Rule 31 reads as follows: "No subpœna for the production of an original record, or of an original memorial from any regstry office, shall be issued, unless a rule of court, or the order of a judge, shall be produced to the officer issuing the same, and filed with him, and unless the writ shall be made conformable to the description of the document mentioned in such rule or order." The "higher authority" intended by the Court of Queen's Bench, is evidently the judge of the County Court. Why, in the absence of such a decision as *Patterson* v. *Clark*, a clerk who in good faith obeyed the writ of a Superior Court, commanding him to produce the rolls of his Court at a Court being held in the same building, and in good faith obeyed the writ, "acted improperly and deserved censure" we are at a loss to understand. He was we think, under the circumstances, in the absence of authority to the contrary, warranted in looking upon the subpœna as "higher authority," and free from censure. He is not, that we know of, bound to enquire whether or not the order referred to in the rule was produced to the officer issuing the subpœna. He had to presume that the subpœna was issued in accordance with the rule, and was, we think, in the absence of any law to the contrary, bound to obey the subpœna, or be in contempt.—Eds. L. J.]

Articled clerks—Preliminary examination—Salary question.

To the Editors of the Law Journal.

Gentlemen,—In the last issue of your journal I saw a letter from a correspondent suggesting that articled clerks should be required to pass an examination before being articled, a very excellent idea, and if properly carried out would certainly raise the standard, and in a short time materially decrease the number.

Do you not think, Messrs. Editors, that this would be more likely to effect the desired end, and with much more justice to clerks at present under articles, than the method which I understand the Benchers of the Law Society intend to adopt, viz., not permitting the time of those clerks who receive a salary, during the time that they receive the same, to count as good service under articles, since many clerks, with small means, who have been articled *during* the last five years (never anticipating such a by-law as the one proposed to be introduced), will thereby lose the time and money already spent in studying their profession, and otherwise suffer material inconvenience.

General Correspondence.

Trusting that the Benchers, in passing any such by-law as the above, will give due consideratian to the position in which clerks at present under articles will thereby be placed,

I am, yours truly,

An Articled Clerk.

Toronto, July 12, 1865.

[We think the suggestion as to a preliminary examination of persons intending to article themselves for the study of the law, an excellent one. It is required in the case of students of the Law Society intending to become barristers, and should be required in the case of clerks intending to become attorneys.

We cannot say that it would, however, have all the effect desired by the profession and the Benchers. But we do not endorse the money standard as a safe one.

The fact that a young man is so circumstanced as to require to draw a salary during his clerkship, is no argument either against his ability or his learning; nor is the fact that he is affluent enough to live without such aid, any proof that he is possessed of either ability or learning. Should the Benchers adopt the money standard, they will not, we apprehend, make it *ex post facto* in its operation. Such a course would be cruel to many who can ill afford to lose a day, a week, or a month, while prosecuting the study of the profession which they have deliberately chosen.

Men who by their talents have acquired a position in the profession and comparative affluence, should not forget that some men have begun in poverty and reached a position equal to their own, which they never could have done under sumptuary laws such as said to be intended. But if such laws must be enacted for the good of the profession, they certainly should not be made retroactively to operate upon those who in good faith have commenced the study of the profession and perhaps spent years of the best part of their lives under a different state of things. Indeed we much doubt the wisdom of making the new regulations, if any intended, at all applicable to those articled before the passing thereof.—Eds. L. J.]

To the Editors of the Law Journal.

Gentlemen,—Allow me to explain what I think your correspondent, "One of Them," means in his query in the July number of your Journal, which I shall endeavour to do by putting the same question in a different shape on my own behalf:

A. duly serves five years, but within that time only keeps one of the prescribed terms. He, however, re-articles himself afterwards for a further period, and keeps the term he had omitted under his first service. Is this a sufficient compliance with the statute, or is A. disqualified for admission?

Another of Them.

July 17th, 1865.

[We think that this is a sufficient compliance with the statute, and that A. would be qualified for admission.—Eds. L. J.]

Attorneys acting as Insurance Agents—Validity of Service of the Clerks.

To the Editors of the Law Journal.

Gentlemen,—One of the questions to be answered by a clerk, at the expiration of his articles, is, whether he has been engaged or concerned in any profession, business, or employment, other than that as clerk to the attorney or attorneys, to whom he was articled or assigned

Now, in case a clerk is articled to an attorney who is also an insurance agent, or secretary of some society or other, and performs a part, or the whole of the business of such attorney, as such agent or secretaey, as well as his professional business, will it, in any way, affect his service under his articles, or rather would the Law Society, on an affirmative answer to the above question, refuse to allow the time so served.

By answering the above, at your earliest convenience, you will much oblige.

A Law Student.

25th July, 1865.

[No person shall be admitted an attorney, unless he has, during the term specified in his contract of service, *duly* served thereunder, and has, during the *whole* of such term been *actually* engaged in the *proper* practice or business of an attorney, &c. (Con. Stat. U.C. cap. 35, sec. 3, sub-sec. 1.)

We cannot say that accepting insurance risks is the "proper practice or business" of an attorney, and therefore cannot say that an articled clerk who devotes any part of his time to such business, "duly serves" "the whole of his term" in the proper practice of an

attorney, or been "actually engaged," *i.e.* during the whole of the term, in the proper practice of an attorney.

Where an articled clerk held the office of surveyor of taxes, during the time for which he was bound, although it appeared this occupied but an eighth part of his time, and that the remainder was devoted to the study of his profession, yet the court held this was not a service of his "whole time," and struck him off the rolls. (*Re Taylor*, 5 B. & Ald, 538.)—Eds. L. J.]

REVIEWS.

The Magistrate's Manual; by John McNab, Barrister-at-Law. Toronto: W C. Chewett & Co., 1865.

The scope of this work is explained on the title page as being "a compilation of the law relating to the duties of Justices of the Peace in Upper Canada, with a complete set of Forms, and a copious Index,"—a most acceptable addition to the sources of information open to the magistrates of the country.

The book commences with a short sketch of the office of a Justice of the Peace, which is partly composed of an extract from an article in the December number of the *Law Journal* for 1863. The author complains that the remarks there made, though worthy of attentive consideration, are written in too condemnatory a spirit, and hints that the remedies proposed, with the exception of the first, would be of doubtful advantage. The first suggestion alluded to was, to amend the law by establishing an uniform mode of procedure in all cases of summary conviction, and giving a full set of forms, &c. The second was to transfer the jurisdiction in certain cases to Division Courts, leaving to magistrates the ministerial duties of the office, including the arrest of offenders. The third, taken from a suggestion by an English law periodical, was, the appointment of a clerk, a barrister of five years standing, in each petty sessional division.

The great difficulty in a new country like this, and there is no use in trying to disguise the fact, much as our author may condemn plain talking, is this, that there are so few men, comparatively, in country places, who have the education necessary, not, to understand and judge fairly and impartially of the matter brought before them, but to be conversant with and apply the general rules and statutes laid down for their guidance, and to draw the papers required in the conduct of the complaint they have to adjudicate upon. How can it be otherwise in a country like this? Why, even in England, where there is almost a limitless choice amongst men of first-rate education, with nothing else to do, and with much greater experience, the same difficulty is felt.

The second suggestion is, we still think, a valuable one, the one great difficulty being that it would throw much more work upon our already over-tasked county judges. The effect of it, however, would be, we think, to lessen the number of cases in which petty assaults and other trifling complaints, often much better allowed to die a natural death than be fomented and increased by a resort to the common expedient of "having the law of him." This course would to a great extent do away with the *fee* system; and we do not think that many of our readers, not even excepting our magisterial friends, would consider that any very great loss. Ugly stories have been told about this same system, which the large and respectable majority of the magistracy deplore as much as we do, and probably more, as any such irregularities are a direct reflection upon them as a body.

Enough, however, of the introduction. We are next given a practical sketch of the procedure of a magistrate's court, followed by a form of commission of the peace.

The statutes relating to the duties of magistrates with reference to indictable offences and to summary convictions (Con. Stat. U. C. caps. 102 & 103), are given in full, with explanatory notes on doubtful points.

The principal part of the "Manual," both with reference to the space it occupies and to the amount of information it contains, is the digest of the criminal law of Upper Canada. It is arranged on the principle of Burns' Justice, the matter being placed under the various heads in alphabetical order. A great mass of useful information is given in this way, which will make the work of great value to all desirous of ascertaining the law with reference to the whole criminal law of Upper Canada, as well as to magistrates. As an example of the style, we may notice the heading, "Cheating." It commences by giving, under the sub-head "False Pretences," the various sections of the statute, stating generally what those words signify, and the punishment awarded. Then, under the head, "Persons indicted for larceny may be found guilty of obtaining under false pretences," is given the section referring to that point, and then similarly the converse proposition. Then some general remarks on the subject of false pretences, and what is the legal meaning of the expression, "false pretences," with a reference to a case where the subject was elaborately discussed. Then, under the heads, "Offences within the statute," and "Offences not within the statute," short notes of decided cases as to what were and what were not considered as offences against the statute. It is not pretended, of course, in this part of the work, to give a distinct heading for every point that a person might wish to refer to; for instance, there is no heading, "False pretences," as one might expect; but any difficulty of that kind is obviated by

reference to the very full, complete and well arranged Index, which is given at the end of the book. We should have thought, as a matter of convenience, that it would have been better to have placed at the head of each page the name of the subject treated of in the page beneath, but the Index makes this a matter of no great consequence.

The Addenda contains further matter of information, on points not directly connected with the criminal law of the country, besides a chapter on evidence, which, though of necessity short, embraces all the principal points that a magistrate should be acquainted with in conducting an investigation.

Upon the whole we must congratulate Mr. McNab upon having produced a very useful book, and one, we doubt not, that will find a ready sale among magistrates and others concerned in the administration of justice. The experience of the author, in his office of County Attorney, must have been a great assistance in the preparation of the book, and would enable him to point out many things that might escape the attention of a merely professional man, however competent otherwise for the task.

The "Magistrate's Manual" is got up in Messrs. Chewett & Co.'s best style, the paper and binding being good and substantial, and the type evidently new. The price is $4.

The Lower Canada Law Journal. Conducted by James Kirby, M. A., B. C. L. Printed and published by Penny, Wilx & Co., Notre Dame Street, Montreal.

We welcome the first number of this new publication. It is designed to supply a want for a long time felt in Lower Canada. While the profession there had the Lower Canada reports and the *Jurist*, affording all requisite information as to decided cases, there was no channel of communication between members of the profession, no legal publication of any kind containing original articles of interest to the profession. The *Lower Canada Law Journal* is intended to supply this want, and so far as we can judge from the number before us, is well calculated to carry out the intention. There need be no rivalry between it and the *Reports* and the *Jurist*. It occupies ground that neither of them touches, and if well conducted would do those publications more good than harm. It is in size and form nearly the same as the *Upper Canada Law Journal*, which in these respects is made its model. The number before us opens with a "Proem," wherein it is stated that the first number is not as good as will be its successors. We can only say, that if its successors prove as good as the first number our brethren in Lower Canada will not have much cause of complaint. In it is contained an article on "Commission to the Bar of Lower Canada," and some remarks by George W. Stephens, advocating the establishment of a Law Reform Society in Lower Canada. Then follow some remarks on the remarkable case of Dr. Gubourin, a gentleman in good position who was prosecuted criminally for stealing a promissory note made by himself and swallowing it in order to escape detection, and who, owing to the bad character of the prosecutor as compared with his own good character, was acquitted, and other editorial matter. There are besides a review of a digested index to the reported cases in Lower Canada, which, according to the review, must be a useful publication; correspondence, selections and reports of decided cases, the whole making a number containing forty neatly printed pages of matter, each page in size equal to the page of the *Upper Canada Law Journal*. For the present the publication is to be a quarterly one. We hope soon to see it a monthly, commanding increased and increasing support. It merits success.

Godey's Lady Book, for August, is received.

The embellishments in this number are numerous, viz.: The Fair Haymaker, a line engraving; a colored fashion plate containing six figures; a Thorny Path; a humorous engraving; a promenade suit for second mourning; Robe Jardiniere, Robe and Paletot (both from the establishment of A. P. Stewart & Co. of New York); the Tagres Talma from Brodie's emporium, and about sixteen other engravings. The letter press is equally full and entertaining, viz.: Mint, Anise and Cummin, by Marion Borland; El Dorado, a poem; Charlie, or how I gained my wish, by the authoress of "Notes of Hospital Life;" How to make Home Beautiful; The Casket of Memory, a poem by Wm. E. Pubor; The Beautiful Unknown, another poem, by Harwood G. Robertson; A Day's Journey, and what came of it; Passion and Principle, by Mrs. J. V. Noel, and many other pieces of poetry and prose too numerous to mention. The number is really a superb one, and all that can in reason be desired or required by the ladies, for whose information and delight this Magazine is so well designed.

MONTHLY REPERTORY.

COMMON LAW.

Vidal v. Bank of Upper Canada.

Affidavit of merits proper form of—Must disclose defence, except in interpleader case.

The proper form of the general affidavit of merits is, that the defendant has "a good defence to the action on the merits." *Held*, therefore, that an affidavit by the attorney which stated that in his "opinion the defendants had a sure and certain defence legally and equitably" was insufficient.

Held, also, that on an application to set aside a verdict and grant a new trial, on the ground of

merits, the affidavit must disclose what the merits are. But *held*, that in an interpleader issue itself discloses what the defendant's claim is. (15 U. C., C. P., 421.)

May 13.

Q. B. O'Hanlan v. Great Western Railway Company.

Measure of damages—Carrier.

In an action against a carrier for loss of goods by negligence, the measure of the damages is the market price of the goods lost at the place of delivery; and this includes three elements—(1) cost price of the goods at the place from which a person residing at the place of delivery would reasonably order them, (2) cost of carriage, (3) ordinary importers' profits.

Therefore, where there is, at the place of delivery, a market for goods of the same kind with those lost, the measure of damages is the actual current market price; but where there is no such market, the three elements above mentioned must be taken into consideration.

It is not necessary to give any evidence as to the average of importer's profits, but if the jury gave extravagant damages the Court would correct it. (13 W. R. 741.)

EX. April 29.

Webber v. The Great Wetsern Railway Company.

Railway company—Carrier—Contract by company to carry beyond its own line.

The defendants were carriers of goods from Worcester to Chester. They forwarded goods by two different routes, first, by their own line the whole way, and secondly, by their own line to Stafford, and thence by the London and North-Western line to Chester. Goods were delivered to the defendants at Worcester, consigned to Chester, "via London and North-Western, Stafford."

Held, that there was evidence of an entire contract by the defendants to carry the whole distance. (13 W. R. 755.)

EX. Chapman v. Cottrell. [June 3.

Practice—Writ of summons—Jurisdiction—British subject residing abroad—Common Law Procedure Act, 1852, *s.* 18.

A British subject, resident abroad, there made and signed a promissory note, and sent it by post to his agent in this country, who delivered it to the payee.

Held, that the cause of action arose within the jurisdiction of the superior courts of this country within the meaning of the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), s. 18. (13 W. R. 818.)

CHANCERY.

May 31.

V.C.S. Wormald v Maitland.

Priority—Equitable mortgage—Constructive notice—Registration—Middlesex Registry Act.

Where B. deposited with C., to secure certain advances, the title deeds relating to leasehold property in Middlesex, together with a memorandum of deposit, (which was never registered) and afterwards subdemised the same property to D. and M. by an indenture, which was duly registered, but D. and M., on taking such demise, neglected to inquire after or require the production of the title deeds.

Held, that they were bound by constructive notice of the deposit of the deeds with C., who had, therefore, priority over their claim.

In such a case there is no difference in effect between actual notice and constructive notice. (13 W. R. 832.)

V.C.W Blackett v. Bates. May 9, 10.

Arbitration—Award—Specific performance—Jurisdiction—Common Law Procedure Act, 1854, *s.* 17.

The 17th section of the Common Law Procedure Act, 1854, does not take away the jurisdiction of the Court of Chancery to enforce specific performance of an award made on a reference to arbitration by the orders of one of the superior courts of law.

The circumstance that a plaintiff has unsuccessfully endeavoured to set aside an award, does not dissentitle him from afterwards asking for specific performance of it. (13 W. R. 736.)

L J. May 11.

Wakefield v. Llanelly Railway and Dock Company.

Specific performance—Award—Uncertainty.

An award which leaves some of the questions undecided, or leaves it in doubt whether some of the questions have been decided, cannot be be maintained. (13 W. R. 823.)

INSOLVENTS.

The Editors regret to notice that by some inadvertence a mistake occurred in the July number of the *Law Journal*, whereby the firm of Walter, Ross & Co., of Picton, appeared under the above heading. Walter, Ross & Co., were plaintiffs, not *defendants*, in an attachment issued under the Insolvent Act of 1864.

APPOINTMENTS TO OFFICE.

NOTARIES PUBLIC.

ALEXANDER BRUCE, Esquire, of Hamilton, Attorney-at-Law, to be a Notary Public in Upper Canada.

ALEXANDER RICHARD WARDELL, of Hamilton, Esq., Attorney at-Law, to be a Notary Public in Upper Canada. (Gazetted July 22, 1865.)

CORONERS.

ROBERT TRACEY, Esquire, Associate Coroner, County of Peterborough.

HENRY PULTZ, Esquire, Associate Coroner, United Counties of Lennox and Addington. (Gazetted July 8, 1865.)

EDMOND ANDERSON BURNS, Esquire, M. D. Associate Coroner, United Counties of Huron and Bruce. (Gazetted July 15, 1865.)

JAMES PATTERSON, Esquire, M. D., Associate Coroner, United Counties of Lanark and Renfrew (Gazetted July 22, 1865.)

TO CORRESPONDENTS.

"County Court"—"An Articled Clerk"—"Another of them"—"A Law Student"—under "General Correspondence."

"Student-at-Law," we have as yet been unable to obtain a satisfactory answer to your question.