DIARY FOR MARCH.

1. Wed ... *Ash Wednesday. St. David.*
5. SUN ... *1st Sunday in Lent.* [for County Court.
6. Mon ... Recorder's Court sits. Last day for notice of trial
12. SUN ... *2nd Sunday in Lent.* [for York & Peel.
14. Tues ... Qr. S. & Co. Ct. sit. in each Co. Last day for ser.
16. Thur... Sittings Court of Error and Appeal.
17. Frid.... *St. Patrick.*
19. SUN ... *3rd Sunday in Lent.*
24. Frid.... Declare for York and Peel.
25. Sat .... *Lady Day. Annunciation V. M.*
26. SUN ... *4th Sunday in Lent.*

NOTICE.

Owing to the delay that has unavoidably taken place in the issue of the two last numbers and of this number of Law Journal *and* Local Courts' Gazette, *the time within which payments must be made to secure the benefits of* cash *payments is extended to 1st April next.*

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 Local Courts' AND MUNICIPAL GAZETTE.

MARCH, 1865.

POUND-KEEPERS.

We return to this subject from our last number.

As we before remarked, the provisions of section 360 of the Municipal Institutions Act may be varied, or other provisions made, by municipal by-laws passed for that purpose. Under that section, however, we find the subject of our enquiries very generally and sufficiently provided for.

(1) As to the receipt of the animal intended to be impounded. Sub-section 2 does not require the pound-keeper himself to be on the look out for and take to the pound any cattle running at large, but it does require him to receive and impound any horse, bull, ox, cow, sheep, goat, pig, or other cattle delivered to him for that purpose by any person resident within his division who brings such animal to him and states that it has been distrained for running at large or for trespassing and doing damage.

(2) If the person who brings the animal to be impounded desires to make a claim for any damage done by such animal, he must, at the time he impounds it, or within twenty-four hours thereafter, deliver to the pound-keeper duplicate statements in writing of his demands against the owner for any damages, not exceeding twenty dollars, which may have been done by such animal: (sub-sec. 4.) Unless this statement is given to the pound-keeper within the time mentioned, he has no power to allow the impounder any sum for such damages on the sale of the animal. To prevent mistakes, therefore, he should endorse on the demand and the agreement mentioned in the same sub-section, the date he receives them.

(3) The form of this agreement is given in the act, and must be in writing, under seal. The pound-keeper may in his discretion insist upon a surety, and it would be advisable for him as a general rule to avail himself of this right. He must remember that this agreement is for the benefit of the owner of the cattle or animal impounded, and that he stands in the position of a trustee for the owner, and is bound to see that proper security is given.

(4) The pound-keeper must be very careful to see that all matters antecedent to and connected with the sale of impounded cattle are properly attended to. In the first place he must properly feed and shelter them so long as they are in his charge. If at any time before sale a sheriff's officer or a Division Court bailiff demands possession, under a writ of replevin, of any animal that may be impounded, the pound-keeper is bound at once to deliver it to him. Again, if the owner tenders him the proper costs and charges that have been incurred, and the amount claimed for damages (if any) he is also bound to receive it and deliver the animal to its rightful owner. But if the latter disputes the amount so claimed for damages, he must await the award of the fence-viewers, whose duty it is, under sub-secs. 18 and 19, to appraise the damages.

Within forty-eight hours after the animal is impounded, the pound-keeper must prepare three notices of sale, which must specify the time and place at which the animal (describing it) will be publicly sold, if not sooner replevied or redeemed by the owner or some one on his behalf paying the penalty imposed by law (if any), the amount of the injury (if any), together with the expenses of the fence-viewers (if any) and the expenses of keeping the animal. These notices must be affixed and continued for three successive days at least, in three public places in the municipality.

Before proceeding to a sale, which in the case of pigs and poultry must not be till after four clear days, nor in the case of horses or other cattle till after eight clear days from the time of the impounding, the pound-keeper must prove by affidavit, to the satisfaction of a justice of the peace, that proper notice of the intended sale has been given; upon which it is the duty of such justice of the peace to determine the amount (if not otherwise fixed by law, and adhering, so far as applicable, to the tariff of fees for pound-keepers that may be established by by-law of the municipality) to be awarded to the pound-keeper for his expenses and trouble. And if the owner does not, within forty-eight hours from the time of the impounding, dispute the amount claimed for damages, according to the duplicate statements given to the pound-keeper, the latter is to consider the amount there claimed as the amount of damages actually sustained (under twenty dollars), which the owner is entitled to receive from him, out of the proceeds of the sale.

These preliminaries having been observed, the pound-keeper shall, on the day and at the time named in the notices (if not replevied or redeemed), sell the animal for cash to the highest bidder. With the proceeds he is to pay all expenses, and the balance (if any) is to be handed to the person (if any) to whom the damage has been done, so far as it goes, or if there is a balance after paying expenses or damages, the surplus (if any) shall be paid to the original owner of the animal, or if not claimed by him within three months after the sale, must be handed over to the treasurer or chamberlain for the use of the municipality.

The pound-keeper may, however, if he prefer it, use the summary remedy prescribed by sub-sections 14 and 15, for recovering by the judgment of a justice of the peace from the owner the value of the food and shelter given to the animal, together with a reasonable allowance for his time and trouble.

The most important questions that arise under the law relating to pound-keepers are those where cattle are impounded for damages done to neighbouring crops and pastures, &c., and here comes up the all important question of "lawful fences." Every farmer knows what is meant by these words in his own locality, but he may not know how far he may, as it were, take the law into his own hands when suffering damage from *breachy* cattle, or, on the other hand, what remedies he is entitled to, to recover possession of his cattle, if they happen to be impounded.

When speaking on this subject Lord Mansfield says:—"Distraining cattle doing damage is a summary execution in the first instance. The distrainor must take care to be formally correct; he must seize them in the act, upon the spot." Although a particular by-law may obviate the necessity for such strictness as this, still the words quoted are useful in shewing the necessity of the greatest caution for fear of mistakes. The questions as to whether fences are sufficient, and as to what damage has been sustained by the distrainor, are to be decided by three arbitrators, who are to be fence-viewers of the township, one to be appointed by the owner, one by the person suffering damage, and one by the pound-keeper. Their award (which should be in writing) should shew: 1. That they have viewed the fences and found them lawful or unlawful (as the case might be), according to the statutes or by-laws of the township in that behalf at the time of the trespass; and, 2. If the fence was a lawful one, what amount of damages have been done to the distrainor's property. They should then deliver this award to the pound keeper with a statement of their fees and charges. Any omission, however, of any necessary statement in the award cannot affect the position of the pound-keeper, so long as he does his duty.

Lord Mansfield continues by stating the remedies that the proprietor of the cattle has to recover possession of them: 1st. He may replevy. 2nd. If he does not choose to replevy, but is desirous of having his cattle immediately re-delivered, he may make amends (under protest, we presume) and pay all lawful fees and charges, and then bring an action of trespass for taking his cattle, and particularly charge the money so paid by way of amends, as an aggravation of the damage occasioned by the trespass. He has no remedy against the pound-keeper, unless, as we said before, the latter goes out of the line of his duty, or becomes a party to some illegal act of the distrainor.

SERVICES IN FOREIGN DIVISIONS.

We hear many complaints of neglect regarding the service and return of summonses sent to "Foreign Divisions." In some cases

the bailiff fails to make service in sufficient time, in others the clerk is negligent, and the papers are not returned to the "Home Division" in time for action by the court. In both cases the officer in default is liable in damages to the party injured by his misconduct.

The duty is prescribed by the 73rd section of the statute and Rule 21. The clerk, on receiving the papers, with the necessary fees, is *forthwith* to deliver them to the bailiff of his court for service, and the bailiff's duty is to serve the same, and *forthwith* make return thereof to the clerk of his court (in manner required by Rule 11), and the latter it is provided "shall *forthwith* transmit the papers by mail" to the clerk of the home court.

It will be observed that the bailiff is to make return, not in the *time* but in the *manner* required by Rule 11. It is suggested to us that bailiffs, from the reference to Rule 11, suppose the duty done if a return be made four days before the court. This is a most mistaken view, and, if delayed so long, the papers would not, in the great majority of cases, reach the home clerk's office till after the return day. Every bailiff ought to know that the summonses sent from other courts must be served from fifteen to twenty days before the return day thereof (sec. 76). And he should use due diligence to effect service in good time, and promptly make the necessary affidavit before his clerk. In some of the rural divisions there is only a weekly or bi-weekly mail, and hence the importance of the clerk, in the words of the act, "forthwith" transmitting the papers by mail "to the home court."

When papers do not come to hand in time for action by the court in consequence of the foreign clerk's neglect, it is quite clear that the fees for service, &c., as against the plaintiff are not earned, and if prepaid may be recovered back by the plaintiff with damages and costs from the delinquent officer.

SAVING EXPENSE IN PROOF.

When a plaintiff enters a suit in a Division Court, whether upon an account, a promissory note, or upon any other demand, he usually comes to the Court prepared with witnesses to prove his account, the signing of the note, or other facts—in a word, he has *all* the witnesses necesssary to sustain his demand, for if he fails to have them at court, and the defendant denies the claim, there must be an adjournment, or the plaintiff is nonsuited with needless costs in either case. In the other view, when the cause comes on for trial, the defendant probably objects only to one or two items in the account, or admits the making of the note or other fact necessary to be proved, but takes other ground of defence, for example, payment, satisfaction, set-off; and so it is unnecessary to call the plaintiff's witnesses; but all have been brought to Court and must be paid. And yet it is such a simple proceeding, before the trial, to narrow a case down to the points really in dispute. If people must have their differences settled by law, let it be done as cheaply as may be. Why allow needless expenses to be heaped up?

It is a matter of surprise to those who attend Division Courts to notice how rarely people avail themselves of the excellent provisions of Rule 30, the substance of which, as respects defendants, is as follows: To save unnecessary expense in proof, the defendant may give the plaintiff notice in writing that he will admit on the trial any part of the claim or any facts that would otherwise require proof, and after such notice the plaintiff will not be allowed expenses incurred for such proof.

A form of notice is given, but as the Rules are in the hands of but a few, and the book now out of print, we subjoin a form that will answer the purpose:

In the —— Division Court for the county of ——, between —— plaintiff, and —— defendant.

The plaintiff is required to take notice that the defendant will admit at the trial of this cause (*here insert what is intended to be admitted, as*—"the following items, viz. —— in the account sued on," *or* "all except —— in the account sued on," *or* "the signing of the note sued on," *or as the case may be*). Dated, &c. —— defendant.

If the defendant has also a set-off, he should annex a copy, adding to the notice, "and the defendant will, on the trial, set off the claim hereto annexed." This notice must be served on the plaintiff, or left at his usual place of abode, six days before the trial, either by the bailiff or by any literate person.

When it is remembered that the expense of witnesses to prove a long account may be from five to ten dollars, it is well worth while to the defendant to give the notice suggested;

and thus keep down costs by confining the proofs to the items or facts really disputed. People often complain that costs mount up rapidly, and complain of the law, when the fault lies at their own doors.

SUNDAY TRAVELLERS—THE TEMPERANCE ACT.

In our January number we discussed the question as to who are *bona fide* "travellers," and when intoxicating liquors may not be sold to persons not coming within that denomination. We return to the subject in connection with the Act passed last session for the prevention of drunkenness, or as it is more generally called, "Dunkin's Act."

The first part of the Act is taken up with provisions relative to the prohibition of the sale of intoxicating liquors in certain localities, and most of our readers are doubtless more or less familiar with these provisions, from information gleaned from the public prints.

Sections 39, 40, 41, 42, 43 and 44 are provisions of general interest, irrespective of local prohibition.

Section 39 refers to witnesses and evidence in prosecutions for selling liquor without license.

Section 40 is a novel enactment, but one which, we think, is calculated to work a benefit in the community, by touching the pockets of many who, utterly regardless of the consequences of their acts, make a profit out of the sins and follies of their fellow men. It provides that when any person who has drunk to excess in any tavern, or other place where liquor is sold, and whilst in a consequent state of intoxication, comes to death by suicide, or drowning, or perishing from cold, or other accident caused by such intoxication, the tavern-keeper, &c., shall be liable to an action at the suit of the legal representatives of the deceased for any sum by way of damages, of not less than one hundred, nor more than one thousand dollars. We sincerely trust that the legal representatives of all such unfortunates as are here referred to will for the sake of public morality, and as a punishment to evil doers, if not for the sake of those who may perhaps have been dependent upon the deceased for their support, without fear or favor, commence and rigorously prosecute all offenders within the meaning of the statute.

By section 41 it is provided that any person who furnishes liquor which causes the intoxication of another, who, whilst in that state, commits an assault, or injures property (if such furnishing be in violation of law), shall be liable, either by himself or jointly with the intoxicated person, to any action which might be brought against the latter.

Under section 42 husbands, wives, parents, &c., can notify sellers of liquor not to furnish it to any person addicted to drinking, and recover damages against such person if he acts contrary to such notice.

Section 44 takes the place of section 254 of the Municipal Institutions Act, and is substantially the same. There is an unimportant change made in the time within which intoxicating liquors may not be supplied to others than travellers, &c., or for medicinal purposes —the hours now being from nine o'clock on Saturday evening till six o'clock on the Monday morning thereafter.

What we have said is not to be taken as approving of more than the principle involved in these enactments, for we really fear that when the law comes to be worked much difficulty will be found in settling the exact meaning of the language used, more particularly that in section 40. We must, however, hope for the best. It is, at all events, a point gained in obtaining such a law even in its present shape.

COUNTY ATTORNEYS AND DIVISION COURT CLERKS.

We have received a communication from a County Attorney with reference to an article which appeared in the January number of the *Local Courts' Gazette*, from which we are glad to learn, that we have been misinformed as to *all* the County Attorneys having come to the understanding there alluded to. Our correspondent allows to the Division Court Clerks of his county residing out of the county town, purchasing stamps to the amount of ten dollars at a time, two and a half per cent commission, being one half of what he himself receives.

This is as it ought to be, and we are also glad to find that, as a County Attorney, he endorses our views. He says "I quite agree with you that where Division Court Clerks are compelled to lay in a stock of stamps, or to state it better, do so to obviate the necessity of the

County Attorney appointing a local agent for the sale of stamps, a suitable allowance should be made. I have already urged this view of the case upon my brother county attorneys and shall continue to do so."

We publish in another column a communication from a Division Court Clerk who has taken the trouble to prepare a statement of the amount which he calculates the recent alterations have saved to the government and taken from the pockets of the clerks. Another correspondent mentions a case where a considerable loss has arisen, which may be partly attributed to the present system.

HUSBAND AND WIFE.

There are some drawbacks to married life, which are occasionally forcibly presented to the notice of quiet people, who going on "in the even tenor of their ways," little think of the various shifts resorted to by either husband or wife to relieve himself or herself, as the case may be, from what ought to be a "help meet" and is an incubus.

The case of *Davis* v. *Harris*, reported in a late number of the *Solicitors Journal*, is an instance. The action was brought in the sheriff's court, to recover a sum of money, for the keep of the defendant's wife.

It appeared from the evidence that the defendant had been separated from his wife, and he has been sued upon a previous occasion, and a verdict had passed against him.

The defendant now said, that in consequence of the misconduct of his wife, he had been bankrupt in 1861.

His Honour—You have not pleaded your bankruptcy, and besides, a bankrupt is bound to keep his wife.

Defendant—I have been divorced from my wife.

His Honour—What is the date of that divorce?

Defendant—It is a divorce according to the Jewish law.

His Honour—That will not do in this country.

Defendant—My wife is now under bail for attempting my life. Here is the agreement under which my wife and I have been divorced.

Upon reading the agreement, his Honour pronounced it worthless, and said it would not avail against a tradesman who supplied necessaries to his wife. He accordingly directed a verdict for the plaintiff.

INSOLVENT ACT—TARIFF OF FEES.

We are informed that the tariff of fees promulgated by the judges of the Superior Courts of Common Law and the Court of Chancery, under the Insolvent Act of 1864, has not been sent to the different County Court clerks in Upper Canada. This is not as it should be. One would imagine that the clerks, who are the taxing officers of bills of costs under the act, would be provided by the proper authorities with the means necessary for enabling them to perform their duties efficiently.

We now publish the tariff for the benefit of such as have it not, or who have not provided themselves with a copy of Mr. Edgar's work, which contains it:—

TARIFF.

Fees to solicitor or attorney, as between party and party, and also as between solicitor and client:

Instructions for voluntary assignment by debtor, or for compulsory liquidation, or for petition, where the statute expressly requires a petition, or for brief, where matter is required to be argued by counsel, or is authorized by the judge to be argued by counsel, or for deeds, declarations, or proceedings on appeal	$2 00
Drawing and engrossing petitions, deeds, affidavits, notices, advertisements, and all other necessary documents or papers when not otherwise expressly provided for, per folio of 100 words or under	0 20
Making other copies when required per fo.	0 10
When more than *five* copies are required of any notice or other paper, five only to be charged for, unless the notice or paper is printed, and in that case printer's bill to be allowed in lieu of copies, drawing schedule, list, or notice of liabilities, per folio, when the number of creditors therein does not exceed twenty	0 20
When the number of creditors therein exceeds twenty, then for every folio of 100 words up to twenty, 20c., and for every folio over twenty	0 10
Every common affidavit of service of papers, including attendance	0 50
Every common attendance	0 50
Every special attendance on judge	2 00
For every hour after the first	1 00
To be increased by the judge in his discretion.	
Every special attendance at meetings of creditors, or before assignee, acting as arbitrator	1 00
Fee on writ of attachment against estate and effects of insolvent, including attendance	2 00

Fees on rule of Court or order of judge...	1 00
Fee on sub. *ad test.*, including attendances	1 00
Fee on sub. *duces tecum*, including attendance.....	1 25
And, if above 4 folios, then for each additional folio, over such 4 folios	0 10
Fee on every other writ.....	1 00
Every necessary letter	0 50
Costs of preparing claim of creditors, and procuring same to be sworn to, and allowed at meeting of creditors, in ordinary cases, where no dispute.....	1 00
Costs of solicitor of petitioning creditor, for examining claims filed, up to appointment of assignee, for each claim so examined.....	0 50
Costs of assignee's solicitor for examining each claim, required by assignee to be examined.....	0 50
Preparing for publication advertisements required by the statute, including copies and all attendances in relation thereto.....	1 00
Preparing, engrossing, and procuring execution of bonds or other iustruments of security	2 00
Mileage for the distance actually and necessarily travelled—per mile..... ...	0 10
Bill of Costs, engrossing, including copy for taxation, per folio	0 20
Copy for the opposite party.....	0 50
Taxation of Costs	0 50

No allowance to be made for unnecessary documents or papers, or for unnecessary matter in necessary documents or papers, or for unnecessary length of proceedings of any kind. In case of any proceedings not provided for by this tariff, the charges to be the same, as for like proceedings, as in the tariffs of the Superior Courts.

COUNSEL.

Fee on arguments, examinations, and advising proceedings, to be allowed and fixed by the judge as shall appear to him proper under the circumstances of the case.

FEE FUND.

Every warrant issued against estate and effects of insolvent debtors	$1 00
Every other warrant or writ	0 30
Every summary rule, order, or fiat.....	0 30
Every meeting of creditors before judge..	0 50
If more than an hour.....	1 00
If more than one on same day, $2.00, to be apportioned amongst all.	
Every affidavit administered before judge	0 20
Every certificate of proceedings by judge of County Court for a transmission to a Superior Court or a judge thereof..	0 50
Every bankrupt's certificate	1 00
Every taxation of costs.....	0 15

FEES TO CLERKS.

Every Writ, or Rule, or Order.....	0 50
Filing every affidavit or proceeding	0 10
Swearing affidavit	0 20
Copies of all proceedings of which copy bespoken or required, per folio of 100 words.....	0 10
Every certificate.....	0 30
Taxing costs.....	0 50
Taxing costs and giving allocatur	0 65
For every sitting under commission, per day.....	1 00
If more than one on same day, $2.00 to be apportioned amongst all.	
Fee for keeping record of proceedings in each case.....	1 00
For any list of debtors proved at first meeting, (if made)	0 50
For any list of debtors at second meeting.	0 50
Any search.....	0 20
A general search relating to the bankruptcy of one person or firm.....	0 50

SHERIFF.

Same as on corresponding proceedings in Superior Courts.

WITNESSES.

Same as in Superior Courts.

SELECTIONS.

COMPOUNDING A MISDEMEANOUR—COMPROMISING JUSTICE.

A singular attempt to compromise justice was last week met by Mr. Baron Bramwell in the manner it deserved. It will be within the recollection of our readers that Edward Hammond pleaded guilty† to an indictment preferred against him at the November sittings of the Central Criminal Court for unlawfully imprisoning and assaulting his wife, at his residence at Peckham, and that on the 11th instant, when he came up for judgment, the counsel for the prosecution stated that the prisoner had, since the trial, executed a deed of separation from his wife, and also a settlement upon her, to the entire satisfaction of her legal advisers and herself, and that, in consequence of this arrangement, they did not desire to press for punishment. It appeared that the settlement was of one-half of the wife's property, the husband having none of his own. The prisoner's counsel then coolly submitted to the Court that the matter being settled and arranged, and as the prosecutrix did not press for punishment, the Court should discharge the defendant upon his own recognizances to come up for judgment when called upon, or that the case should again stand over until next session, in order that the defendant might file affidavits to deny certain statements, alleged to be falsehoods, contained in the depositions in the case. The learned judge declined to adopt any such suggestions, and required to know if the defendant was in attendance, and ordered him to surrender. The defendant, who had been standing behind his counsel, seemed much surprised at the order, but, of course, had no option but to submit, and was immediately placed in the dock.

His Lordship then addressed him as follows:—"You have pleaded guilty to an indictment charging you with an offence of very great

† 9 Sol. Jour. 216.

enormity, and most certainly of very great rarity in this country. You kept your wife shut up in a room for one year, and this is almost as bad an offence as anyone can well conceive, and an offence which no man can regard with other feelings than those of indignation and surprise—indignation that she should have been imprisoned by you, shut out from all communication with her friends and society; and surprise that she should so long have submitted to your cruel treatment. You now seem to think that you have made atonement for her wrongs by giving her liberty from you, and settling upon her one-half of her own property. In my opinion that is not atonement enough. You ought to have settled all upon her, and to have given her something from your own, and have begged her pardon for the ill-treatment you have shown her. I must also state *that a prosecution is not the property of those who institute it to deal with it as they think fit.* The public have a higher interest in having redress rendered and wrong punished, to deter others from offending in like manner; and men are not to think that they can treat their wives as you have done, and escape without punishment. Acting upon the depositions that I have before me, and the public object which I have mentioned, I now sentence you to twelve months' imprisonment with hard labour."

There are few, if any, who will not admit that this is by no means too great a punishment, when we observe that the object of the prisoner in so treating his wife was to get rid of her, that he might enjoy her property without the incumbrance of her presence. Had the learned judge been hood-winked by the seeming humility of the plea of guilty, and consented to be led by the wishes of the prosecutor, as is but too much the modern practice, there would have been afforded additional ground for the cry which is even now daily gaining ground, that the criminal law of this country is directed merely to the protection of property, and that the old system of "eric" is practically being restored amongst us. We congratulate the country that Mr. Baron Bramwell has taken occasion to vindicate the rights of the public, as opposed to the desire of the parties, and has declined to permit the court to be made the instrument of what is, in effect, if not in form, composition of a misdemeanour. We are the more impressed with the importance of this judgment as we find that the principle on which it rests is not always acted upon. We have read with deep regret the report of a case *Ex parte Dobson, Re Wilson*, 1 N. R. 379) in which the Lords Justices of appeal in Chancery permitted a bankrupt, whose prosecution they had actually ordered, to go free on payment by his friends of a sum of money sufficient *to buy off the opposing creditors.*—*Solicitors' Journal.*

PROMISE v. PERFORMANCE.

The case of William Sladden, a bankrupt solicitor, affords a striking commentary on the great suit of "Promise *v.* Performance." Here is an unhappy mortal who, only last year, was distributing circulars — one of which was sent to us from the country, where, we understand, they circulated freely —whereby he offered to conduct intending defaulters through the labyrinths of "section 192," at fabulously low rates. When "a solicitor" offers to transact all the business connected with the drawing-up and registering of composition deeds for a fee which one of our correspondents informed us amounted to ten shillings less than the stamps which were to be paid for out of that fee, we might, perhaps, if not very gullable, conclude that he knew but little of the matter. Still we could scarcely have expected so extraordinary a proof of incompetence for the particular function in question, as this bankrupt has supplied. He has, unquestionably, shown himself quite unequal to the task which he undertook, and it may be that that has partly to account for Mr. William Sladden's present position. From what transpired (on the 21st instant,) it appears that "the bankrupt had executed no less than three deeds of composition, the first bearing date the 23rd of November, 1863, the second the 21st of March, 1864, and the third, the 21st of June, 1864. All these deeds proved to be *bad in law*, and eventually he was compelled to petition." Difficulties innumerable have been met with in respect of composition deeds under the Bankruptcy Act, but this is one of the most remarkable illustrations of two well-known proverbs which has ever came under our notice. *Verbum sapienti.—Solicitors' Journal.*

MAGISTRATES, MUNICIPAL & COMMON SCHOOL LAW.

NOTES OF NEW DECISIONS AND LEADING CASES.

Registry Act — Separation of City from County—Copies of Books.—The registrar of the county of Frontenac, after the city of Kingston was separated from the county for registration purposes, furnished to the registrar for the city a statement of titles to land before separate books were kept for the city. The plaintiff (the registrar for the county before the separation) then sued the city of Kingston for these copies. It was *held*, however, that the plaintiff was not bound to furnish them, and that the defendants were not obliged to pay for them, the case being one not provided for by the act: (*Durand* v. *City of Kingston*, 14 U. C. C. P. 439.)

Municipal Law — Application to unseat Alderman—Relator. — The Con. Stat. U. C. cap. 54 (Municipal Act), sec. 127, has rather

limited than increased the number of persons allowed to be relators by 12 Vic. cap. 18, s. 146.

The Legislature having provided a cheap, speedy and convenient remedy, the court will not in general allow parties to resort to the more expensive one, by obtaining leave to file an information in the nature of a *quo warranto*, which existed before the passing of our municipal acts; and parties aggrieved will generally be confined to the relief to be obtained under the statute: (*In re Kelly* v. *Macarow*, 14 U. C. C. P. 457.)

LARCENY — ADULTERER. — The prisoner was indicted for stealing certain chattels from his master, whilst in his employment. It was proved that he went off with his master's wife, *animo adulterii*, and knowingly took his master's property with him. It was objected for the prisonor that he was acting under the control of his mistress, who could not be charged with stealing from her husband, and that therefore the charge could not be sustained. He was, however, convicted, and the court sustained the conviction: (*In re Mutters*, 13 W. R. 326.)

MAGISTRATE—NOTICE OF ACTION—JURISDICTION—BONA FIDES.—A justice of the peace is entitled to notice, even though he has acted as such without jurisdiction. Where it was clear that defendant had acted as a justice, having made a conviction, and issued a warrant under it, and there was no evidence of malice except the want of jurisdiction, *held*, not necessary to entitle him to notice that it should be left to the jury to say whether he acted in good faith: (*Bross* v. *Huber*, 18 U. C. Q. B. 282.)

In an action for a penalty against a defendant for acting as a justice of the peace, without qualification, &c., the defendant is not entitled to notice of action: (*Crabb, qui tam* v. *Longworth*, 4 U. C. C. P. 283.)

SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

NOTES OF NEW DECISIONS AND LEADING CASES.

RAILWAY ACCIDENT — PLAINTIFF WRONGFULLY IN THE BAGGAGE CAR—CONTRIBUTORY NEGLIGENCE—EXCESSIVE DAMAGES.—The plaintiff travelling in defendants' train with a passenger ticket, went into the express company's compartment of a car, of which the other two compartments were for the post-office and the baggage. While there, owing to the negligence of the defendants' servants, the train, which was stationary, was run into by another coming up behind it, and the plaintiff's arm was broken. The compartment in which he was, was not intended for passengers, but it appeared that they frequently went in there to smoke, and that the conductor had twice passed through it while the plaintiff was there without making any objection. No person in the passenger cars was seriously injured. It was proved that a printed notice that passengers were not allowed to ride upon the baggage car was usually posted up on the inside of each door of the passenger cars, and on the door of the baggage car, but it was not distinctly shewn that it was there on that day. The jury found that the plaintiff was wrongfully in the car, but that he was not told where to go when he bought his ticket, nor did the conductor order him out; and so, that he was not to blame.

Held, that assuming the plaintiff was aware of the notices, and nevertheless went into the baggage car, the defendants were not thereby excused under all circumstances; and that the jury were warranted in finding that the plaintiff did not act so negligently as to prevent him from recovering, the collision having resulted entirely from defendants' gross negligence.

But the jury having given $2,000 damages, and the evidence as to the injury being very loose, no medical witness having been called, the court granted a new trial on payment of costs: (*Watson* v. *The Northern Railway Company of Canada*, 24 U. C. Q. B. 98.)

COUNSEL AND CLIENT—WITHDRAWAL OF COUNSEL—WHEN PERMITTED.—When a party appears in court by counsel, and the cause is on, and the counsel has been fully seised of it, his authority cannot be revoked by his client, so as to give the client a right himself to address the court. But if counsel is not seised, as, when upon a motion, the hearing has proceeded no further than the reading of affidavits to the court, he may at the instance of his client be permitted to withdraw, and the client himself be heard: (*Reg.* v. *Maybury*, 11 L. T. Rep. N. S. 566.)

INFANT—GUARDIAN—RELIGIOUS EDUCATION.—In the absence of other circumstances materially to the benefit of an infant, the court will direct it to be educated in the religion of its father.

The importance of educating a child in the religion of its father is not, however, so great as to induce the court to deprive it of the care of its mother: (*Austin* v. *Austin*, 13 W. R. 332.)

NEGLIGENCE—COMPENSATION UNDER CON. STAT. U. C. CAP. 78.—In actions under Lord Campbell's act, 9 & 10 Vic. cap. 93 (from which our act

"respecting compensation to the families of persons killed by accident and in duels," is taken), the plaintiff cannot have a verdict for merely nominal damages (which are given when the law implies damage, but not when the right is given by statute only). Nor can the plaintiff recover for expenditure on the deceased in his lifetime, made necessary by the negligence, but which would not have constituted a debt from him in his lifetime: (*Boulter* v. *Webster*, 13 W. R. 289.)

UPPER CANADA REPORTS.

COMMON PLEAS.

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

IN THE MATTER OF THE JUDGE OF THE COUNTY COURT OF THE COUNTY OF LAMBTON, IN A CAUSE IN THE FIRST DIVISION COURT OF THAT COUNTY, OF KEMP V. OWEN.

Action in Division Court for goods—Cause of action—Where same arose—Writ of prohibition.

On an application for writ of prohibition on the ground that the cause of action did not arise within the jurisdiction of the judge of the county of Lambton.

Held, that where the defendant resided at G., at which place a bargain was made for the delivery of certain goods at W., and the bargain was fulfilled by such delivery and acceptance, that the cause of action arose partly at G. and partly at W., the judge of the county where W. is situate had no authority in respect of the cause of action.

[C. P., T. T., 1864.]

S. Richards, Q. C., moved for and obtained a rule on the judge of the county court of the county of Lambton, and upon Kemp the plaintiff in the suit in question, calling upon them to shew cause why a writ of prohibition should not be issued to prohibit the said judge from further proceeding in the said suit, on the ground that the said court had no jurisdiction in the said plaint or action to hear or determine the same; he referred to *Watt* v. *VanEvery*, 23 U. C. Q. B. 196. The facts were that the defendant resided at Goderich in the county of Huron; a verbal bargain was made at Goderich between the plaintiff and the defendant for the delivery by the plaintiff of a certain quantity of coal oil at a certain price to the defendant at Wyoming in the county of Lambton. Nothing appears as to the time and place of payment. The oil was delivered at Wyoming, and this action is for the price of it, or for the balance of it.

Harrison shewed cause. The bargain being verbal, there was no enforceable contract until the delivery and acceptance of the oil at Wyoming, and there also the money was payable for it, as nothing had been agreed upon as to the time or place of payment. *Aris* v. *Orchard*, 6 H. & N. 160.

The judge enquired into the particular objections which were raised at the trial before him, and upon the same facts which are now before the court he determined that the cause of action did arise within the county of Lambton, and therefore this court will not re-try a matter which has been already tried and decided upon in the court below; *Newcomb* v. *DeRoos*, 6 Jur. N. S. 68; many other authorities were also cited, most of which are to be found in the decisions already mentioned.

S. Richards contra, referred to *Jackson* v. *Beaumont*, 11 Ex. D. 300, as shewing that the defendant not acquiescing in the judge's decision, but protesting against it, and the judge having no authority in fact, the defendant is not now precluded from this writ, which is one of right. *Wilde* v. *Sheridan*, 16 Jur. 426; *Bonsey* v. *Wordsworth*, 18 C. B. 325.

ADAM WILSON, J.— We think that the verbal bargain made at Goderich, effectuated by the delivery and acceptance of the goods at Wyoming, establishes very clearly, according to the authorities, that the cause of action did not arise, that is, did not wholly arise at Wyoming, but partly at Goderich and partly at Wyoming, and therefore the judge of the county of Lambton, in which Wyoming is situated, had not and has not authority in respect of the cause of action; and as it appears the defendant resides at Goderich beyond the county of Lambton, so he has not authority to try the cause in respect of the defendant's residence.

The case in 6 H. & N. 160, does not apply here, for in this case the verbal contract made at Goderich was the contract acted upon and carried into effect at Wyoming, so that it would have been necessary on the trial to prove what it was took place at Goderich, while, in the case referred to, the verbal bargain was abandoned and a new one was entered into when it came to be carried into effect by the addition of a new and important term to it. We think the rule must be made absolute.

Rule absolute.

ELECTION CASES.

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

THE QUEEN ON THE RELATION OF MCLEAN *v.* WATSON.

Mayor—Contract—Disqualification—Two Relations for same cause at instance of different parties—Collusion.

Where defendant at the time of his election to the office of mayor for the town of Goderich, was shown to be a party, as surety, to a bond given to the Corporation for the due performance of his duties by one of its officers, defendant was held to be disqualified from holding the office of mayor.

The judge before whom the case was heard, being of this opinion, declined to withhold his judgment, upon the allegation that there was a prior relation at the instance of a different relator against same defendant for same cause pending before a County judge, which relation, it was sworn, was collusive, and intended to protect defendant in the enjoyment of the office, contrary to law.

[Common Law Chambers, February 24th, 1864.]

The relator complained that James Watson, of the town of Goderich, in the county of Huron, and Province of Canada, Esquire, had not been duly elected, and had unjustly usurped the office of mayor of and for the said town of Goderich, in the county of Huron aforesaid, under the pretence of an election held on the fourth and fifth days of January, one thousand eight hundred and sixty-four, at the town of Goderich aforesaid, in the said county of Huron, and declaring that he the said relator had an interest in the said election as a voter, shewed the following causes why the said election of the said James Watson to the office of mayor should be declared invalid and void:

First—That the said election was not conducted according to law in this: That the polls in the wards of St. David and St. Andrew, in the said town, were not kept open from ten o'clock in the forenoon until four of the clock in the afternoon during the said fourth and fifth days of January aforesaid; but on the contrary, that the poll in the said ward of St. David was closed and kept closed by the returning-officer thereof from the hour of twelve of the clock, noon, until the hour of half-past twelve of the clock in the afternoon, on the fourth and fifth days of January aforesaid; and that the poll in the said ward of St. Andrew was closed and kept closed by the returning-officer thereof from the hour of twelve of the clock, noon, to the hour of half-past twelve of the clock in the afternoon, on the fifth day of January aforesaid, and that during said time no access was or could be had to either of the said polls in either of the said two wards by any voter during the said last-mentioned time.

Second—That the said James Watson was not, at the time of his election, qualified to be a member of the council of the said corporation, because at the said time he was disqualified as having an interest in a contract with the said corporation in this: that one Charles Fletcher, of the said town of Goderich, was before and at the time of the said pretended election of the said James Watson as mayor, treasurer of the Municipal Corporation of the said town of Goderich; and that the said James Watson was, before the said election of mayor and for a long time thereafter, surety for the due performance of the duties of treasurer of the said Municipal Corporation of the town of Goderich by the said Charles Fletcher, by bond duly executed by the said James Watson to the said Municipal Corporation of the said town of Goderich, dated the fourth day of August, in the year of our Lord one thousand eight hundred and fifty-eight, and which bond was, at the said time mentioned, in full force, virtue, and effect.

Third—That the said James Watson was not, at the time of his election, qualified to be a member of the council of the said corporation, because at said time he was disqualified as having an interest in a contract with the corporation in this: that he the said James Watson, before and at the time of the said election, for a valuable consideration, held a shop-license from the Municipal Corporation of the said town of Goderich, for the sale of spirituous and other liquors, which said license was still in force, uncancelled and unrevoked.

James Shaw Sinclair made oath, that he was present at the nomination of candidates for the office of mayor of the town of Goderich, for the year one thousand eight hundred and sixty-four, which nomination took place on the twenty-first day of December, 1863. That James Watson attended at said nomination, and consented to his being nominated as a candidate, and addressed the electors in his own behalf. That the said James Watson exerted his influence on his own behalf during the fourth and fifth days of January, being the polling-days at said election. That deponent was present at the public declaration of the election of him the said James Watson, held on the seventh day of January, 1864, and that the said James Watson publicly thanked his supporters and accepted the office of mayor of the said town, for the year one thousand eight hundred and sixty-four. That deponent was present at the first meeting of council for the said town of Goderich, held on the eighteenth day of January, 1864, at which time the said James Watson filed his declaration of office of mayor, and took his seat as such mayor, and took part in the business of the said council as the head thereof.

Mr. Sinclair also made oath that he had searched in the office of the town-clerk of the town of Goderich, and found a bond from James Watson, Esquire, mayor of the said town of Goderich for the year one thousand eight hundred and sixty-four (together with other obligors therein named), to the Municipal Corporation of the said town of Goderich aforesaid, for the due performance of the duties of the office of treasurer of the said town by one Charles Fletcher. That he, deponent, knew the handwriting of the said James Watson. That the signature, "James Watson," set and subscribed to the bond, was the proper handwriting of the said James Watson. [Annexed was a copy of the bond.] That the said Charles Fletcher had for several years occupied the office of treasurer of the said town of Goderich; that he did on the twenty-first day of December last, and on the fourth and fifth days of January instant, occupy the said office of treasurer of the said town, and fulfil the duties thereof That the said bond was in full force and effect from the day of the date thereof (being the fourth day of August, one thousand eight hundred and fifty-eight) up to and until after the said fourth and fifth days of January instant; and furthermore, until after the public declaration (as the law directs) of him the said James Watson as mayor of the said town of Goderich by the returning-officer of the said election, and that during all the said time the said bond of the said James Watson was in full force, virtue, and effect, according to the tenor thereof. That the said bond was accepted by the said Municipal Corporation of the said town, and held by them as a valid and subsisting security against the said James Watson, mayor of the said town of Goderich, elected on the fourth and fifth days of January, 1864, aforesaid, and the other obligors therein mentioned from the date thereof up to and until after the election and declaration of him the said James Watson as mayor aforesaid. That deponent was informed, and verily believed, the accounts of the said Charles Fletcher as such treasurer as aforesaid, had not been finally audited and settled between him as treasurer as aforesaid and the said Municipal Corporation of the town of Goderich, for the year one thousand eight hundred and sixty-three. That he, deponent, had caused search to be made in the office of the treasurer of the corporation of the said town of Goderich (he being the proper officer of the said corporation to issue licences for the sale of spirituous liquors in shops and stores), and found that on the ninth day of March, in the year of our Lord one thousand eight hundred and sixty-three, a license to sell wine, beer, and other spirituous liquors by retail, was issued by the said town treasurer to the said James Watson, mayor of the said town of Goderich as aforesaid, and which said license was, as deponent was informed and verily be-

lieved, regularly issued by the said treasurer, as officer of the corporation aforesaid, to the said James Watson; and that the said James Watson paid therefor to the said treasurer, as such officer of the said corporation as aforesaid, the sum of thirty dollars currency of this Province, and that the paper annexed was a true copy of said license.

William Torrance Hays, made oath that at the election for the mayoralty of the town of Goderich aforesaid, on the fourth and fifth days of January, 1864, the poll in the ward of St. David, in the said town of Goderich, was not kept open from ten of the clock in the forenoon until four of the clock in the afternoon during the said fourth and fifth days of January aforesaid; but on the contrary, that the said poll was closed and kept closed by the returning-officer thereof from the hour of twelve of the clock, noon, until the hour of half-past twelve of the clock in the afternoon on the fourth and fifth days of January aforesaid; and also that the poll in the ward of St. Andrew, in the said town of Goderich, was, as deponent was informed and verily believed, closed and kept closed by the returning-officer thereof from the hour of twelve of the clock, noon, to the hour of half-past twelve of the clock in the afternoon on the fifth day of January aforesaid, and that during the said time no access was or could be had to either of the said polls in the said two wards by any of the voters thereof.

M. B. Jackson shewed cause, and filed the affidavit of William Fisher Gooding, wherein it was sworn, that on the twenty-first day of January, 1864, he instructed his attorney to commence proceedings against the defendant James Watson, to remove him from the office of mayor of Goderich, to which office he was elected at the late municipal election for said town, held on the fourth and fifth days of January. That a writ of *quo warranto*, duly issued, and was served on said Watson in pursuance of my said instructions. That he, deponent, voted against said Watson at said election, and did all he could to prevent his election to said office. That he, deponent, commenced and was carrying on, and intended to carry on to final judgment, the said proceedings against said Watson on said writ of *quo warranto*. That never before nor since the said proceedings were commenced by deponent, had he spoken to said Watson on the subject of said proceedings. That deponent did not commence nor carry on said proceedings in collusion with said Watson, nor for the purpose of preventing others from taking proceedings against him; but on the contrary thereof, commenced and was carrying on proceedings *bona fide*, and intended to remove said Watson from said office if he, deponent, could legally do so.

James Watson, the defendant, made oath, that on Friday, the twenty-ninth of January, 1864, he was served with the writ of *quo warranto* in this case. That on Thursday, the twenty-first day of January, 1864, and before he was served with the last-mentioned writ of *quo warranto*, and before he had any knowledge whatever that such writ had issued, he was personally served with a different writ of *quo warranto* on the relation of William F. Gooding. That the grounds of objection in both said writs were identical, as is also the office out of which it is attempted by both processes to remove deponent. That he instructed his attorney to defend the suit on the relation of said Gooding. That the same was returnable before the Judge of the County Court of the United Counties of Huron and Bruce, on the twenty-ninth day of January, 1864, and was, on the application of deponent's said attorney, enlarged until the tenth day of February, 1864, and then in other respects corroborated the affidavit of Gooding. That the poll in the ward of St. David was closed, as in the statement in this cause is set forth, without deponent's consent, but by and with the consent of the agent ot John V. Detlor, who opposed deponent at said election. That the poll for St. Andrew's ward was closed on the second day of polling, and was then so closed at the instance and request of the agent of said Detlor, and by and with the consent of the agent of said John V. Detlor, who represented him at said poll for half an hour only, to wit, from one until half-past one, and after that time there were only two votes to be polled in said ward.

Other affidavits were filed on the part of defendant in corroboration of the foregoing, which it is unnecessary to state in detail.

Several affidavits were filed on the part of the relator, in answer to those of the defendant. The affidavits in answer were to the effect that the said so-called relation of Gooding was never intended to be a *bona fide* proceeding, but got up merely for the purpose of delaying and hindering this cause from being fairly and properly disposed of. That several of the strongest supporters of the said Watson openly admitted that such was their intention. That the proceedings in the said so-called relation were informal and otherwise defective, and that if the proceedings herein were to be stopped by reason of said relation, that a technical objection would be urged at the last moment, and defeat the object of the said so-called relation. That the object of said relation was to defeat this cause. That said proceedings were commenced and carried on for the very purpose of preventing said Watson from being removed from said office.

M. B. Jackson argued that this being the second writ issued against defendant for the same cause, it ought not to be proceeded with, or, if proceeded with at all, should be made returnable before the County Judge before whom the first proceeding was pending. (Con. Stat. U. C. cap. 128, sub. secs. 3, 4.) That it was positively sworn Gooding's relation was *bona fide* and not collusive. That to allow both relations to proceed would not only be contrary to law but most oppressive to defendant; and on the merits he argued the statute as to closing or not closing the poll is directory only, and cannot affect the validity of the election in the absence of a suggestion that voters were thereby deprived of their votes. He also argued that defendant was not shown to be interested in a contract or contracts within the meaning of the statute. (Con. Stat. U. C. cap. 54, sec. 73.)

Robert A. Harrison, in support of the summons, argued that the pendency of the prior relation was no answer to this writ, but, if anything, a reason for moving to set it aside (*Smith v. Fisher*, 11 U. C. C. P. 161); that defendant having appeared, was bound to answer on the merits; that the prior relation, if open to defendant, was shown to be collusive, and so of

no effect as against the present relation (*Kelly q. t.* v. *Cowan*, 18 U. C. Q. B. 104); that before the statute there might be several informations at the instance of several relators (*The King* v. *Slythe*, 6 B. & C. 244; *The King* v. *Bond*, 2 T. R. 770; *The King* v. *Eve et al*, 5 A. & E. 780); that the statute is a substitute for the former proceeding by information, and only requires the several writs to be made before the same Judge where issued at the instance of one and the same relator; that the proper remedy is to stay the proceedings, if in the same court, in all causes except one (*The King* v. *Cousins*, 7 A. & E. 285; *The Queen* v. *Alderson*, 11 A. & E. 3). But if in different courts or before different judges all may proceed, and at all events the present relator being really in earnest, ought not to be stopped. (*Reg.* v. *Alderson*, 11 A. & E. 3.) On the merits, he contended the cases were decisive. As to closing the poll before the hour appointed by statute, he referred to Con. Stat. U. C. cap. 54, secs. 101, 108, sec. 97, sub-sec. 7. The word "shall" is imperative, not directory (Con. Stat. U. C. cap. 2, sec. 18, sub-sec. 2). *Hall* v. *Hill*, 22 U. C. Q. B. 578; *Reg. ex rel. Arnott* v. *Marchant*, 2 U. C. Cham. R. 189; *Reg. ex rel. Coupland* v. *Webster*, 6 U. C. L. J. 89; *In re Charles* v. *Lewis*, 2 U. C. Cham. R. 171; *Reg. ex rel. Horne* v. *Clark*, 6 U. C. L. J. 114; *Reg. ex rel. Smith* v. *Brouse*, 1 U. C. Pr. R. 180. As to the disqualification by reason of the bond, he referred to *Reg. ex rel. Coleman* v. *O'Hare*, 2 U. C. Pr. R. 18; *Reg. ex rel. Bland* v. *Figg*, 6 U. C. L. J. 44; *Mayor of Clifton* v. *Silly*, 7 El. & B. 97; *Mayor of Cambridge* v. *Dennis*, 1 E. B. & E. 660; *Reg. ex rel. Moore* v. *Miller*, 11 U. C. Q. B. 465; *Reg. ex rel. Lutz* v. *Williamson*, 1 U. C. Pr. R. 94. As to the disqualification by reason of the license, which for a valuable consideration he contended was a contract, and referred to *Reg.* v. *Francis*, 18 Q. B. 526; *Reg. ex rel. Stock* v. *Davis*, 8 U. C. L. J. 128; *Reg.* v. *York*, 2 Q. B. 847; *Reeves* v. *The City of Toronto*, 21 U. C. Q. B. 157; *Simpson* v. *Ready*, 11 M. & W. 844; *Reg. ex rel. Crozier* v. *Taylor*, 6 U. C. L. J. 60.

MORRISON, J.—I am quite satisfied that the defendant was, at the time of the election, disqualified upon the ground of the existence of the bond to the corporation, to which he was a party. This, without reference to the other grounds taken against the election, is, in my opinion, sufficient to make void the election so far as defendant is concerned. Being of this opinion, I do not think I should withhold my judgment by reason of the alleged pendency of the relation at the instance of Mr. Gooding, and I shall Therefore hold and adjudge that the defendant has usurped the office of mayor for the town of Goderich, under pretence of the election held on the fourth and fifth days of the month of January last, and order the issue of a writ for his removal from the said office.

Order accordingly.

REG. EX REL. DORAN v. HAGGART.

Con. Stat. U. C. cap. 54, sec. 135—Offices of Mayor and Reeve not to be held by one and the same person.

Held, that the mayor of a town not withdrawn from the jurisdiction of the county or united counties within which situated, though the head of the council and chief executive officer of the corporation, is not a member of the council within the meaning of section 135 of the Municipal Institutions Act, so as to be eligible, if chosen, to hold the office of reeve; in other words, that the offices of mayor and reeve cannot in such case be holden by one and the same person.

[Common Law Chambers, March 7, 1864.]

The relator complained that John Haggart, of the town of Perth, esquire, mayor of the said town of Perth, had not been duly elected, and had unjustly usurped the office of reeve of and for the said town of Perth, one of the municipal corporations, situate within and composing part of the municipal corporation of the united counties of Lanark and Renfrew, and not withdrawn from the jurisdiction of the council of the said united counties in which it lies, under pretence of an election, held on Monday, the 18th day of January, 1864, at the said town of Perth, in the county of Lanark; and declared that he the said relator had an interest in the said election as one of the councillors for the east ward of the said town of Perth, and *ex officio* a voter at and upon an election of reeve of and for the said town of Perth; and showed the following causes why the election of the said John Haggart to the said office should be declared invalid and void: First, that the said election was contrary to law, and was void in this, that before and at the time thereof the said John Haggart was, and thence hitherto hath been and still is, mayor of the said town of Perth, having theretofore been lawfully elected to be mayor of the said town; and having accepted the said office of mayor, and exercised the functions thereof, the said John Haggart, not having been at any time elected to be a councillor for any of the three wards into which the said town of Perth then was and still is divided, was not an eligible person to be elected to be reeve of and for the said town of Perth, nor in any manner entitled to fill or hold such office of reeve. Second, that before and at the time of the said pretended election to be reeve, the said John Haggart, as mayor of the said town of Perth, and by law head of the corporation thereof, was actually presiding as such mayor at a session of the council thereof, and, being such mayor, was not at the same time eligible for election as reeve of the same corporation, nor in any manner entitled to hold or exercise the functions of both offices of and for the same corporation. Third, that the said John Haggart was not duly or legally elected or returned as such reeve of the said corporation, in this, that the said John Haggart never was a councillor for any of the wards of the said town of Perth, nor was he ever in any manner a member of the council thereof, except in so far only as his election by the ratepayers of the said town to the said office of mayor may constitute him a member of the council thereof. Fourth, that the said John Haggart has accepted the said office of reeve, and has been and still is attempting to hold and exercise the functions of both the said offices of mayor and reeve of and for the same corporation of the said town of Perth, contrary to law. Fifth, that the said John Haggart was not duly or legally elected or returned as such reeve as aforesaid, in this, that he the said John Haggart, as mayor, presided over and conducted the said election of reeve, and was his own returning officer, so far as such last mentioned election was concerned.

The relator made oath, that the town of Perth, in the county of Lanark aforesaid, was not withdrawn from the jurisdiction of the council of the

united counties of Lanark and Renfrew, in which the said town lies, and of which it forms a part; that the said town is divided into three wards, each of which annually elects three councillors, to form, with the mayor of the town, the municipal council of the corporation thereof; that at the annual municipal election in and for the said town of Perth, held on the 4th and 5th days of January, 1864, and for that year, John Haggart, of the said town of Perth, esquire, was duly elected to be mayor of the said town of Perth for the said year 1864, the said John Haggart having been duly nominated as one of the candidates for that office, according to the statute, on Monday, the 21st day of December, 1863, previously; that on the 18th day of the said month of January, 1864, the said John Haggart accepted the said office of mayor, and made and filed his declaration of office as such, and took his seat as mayor in the council of the corporation of said town; that the said John Haggart has since hitherto held the said office of mayor of the said town, and exercises the functions thereof; that at the same municipal election for the said town for the said year 1864, held on the said 4th and 5th days of January, 1864, the following persons were duly elected as councillors for the respective wards of the said town, namely, for the west ward Duncan Kippen, John Hart and Robert Douglas, for the centre ward Warren Botsford, William O'Brien and Robert Allan, and for the east ward George Cox, Robert Elliott and the relator; that on the said 18th day of January, 1864, the new council of the said town met, and all the said councillors, without exception, accepted their respective offices as councillors, and made and filed the declaration of office as such, as required by law; that at such meeting of the said new council, on the said 18th day of January, 1864, after the said declaration of office had been so made and filed by the said mayor and councillors, the election of a reeve and deputy reeve to represent the said town of Perth for the said present year 1864, in the council of the corporation of the said united counties of Lanark and Renfrew, was then commenced and proceeded with; that thereupon John Hart moved, and Duncan Kippen seconded, that John Haggart, the said mayor, be elected reeve of and for the said town for the said present year 1864; that the following councillors, namely, Duncan Kippen, John Hart, Warren Botsford and Robert Allan, and the said mayor, John Haggart himself, voted for the said motion that the mayor be elected reeve as aforesaid, and all the remaining councillors, namely, Robert Douglas, William O'Brien, George Cox, Robert Elliott and the relator voted against the same; that a tie having thereby been produced on the said election of reeve, the said mayor John Haggart, claiming to be the highest-assessed member of the said council on the assessment roll of the said town of Perth, then gave a second and casting vote in favor of himself, and then declared himself elected as reeve of the said town for the said year 1864 accordingly; that when the said mayor was so proposed for election as reeve as aforesaid, and before any of the said votes were taken, deponent, as one of the said councillors, stated and objected, in the presence and hearing of all the said councillors, and of the said mayor himself, that he the said mayor was not eligible for the said office of reeve, and that it would be illegal for him to take or hold the same; that the said John Haggart presided as mayor during the whole of the said session of council, including the said election of reeve, and was in fact his own returning officer on the said election of reeve; that on the 26th day of January, 1864, the said John Haggart made and signed the declaration of office as such reeve of the said town of Perth, and thereafter took his seat as such reeve in the council of the corporation of the said united counties of Lanark and Renfrew accordingly; that the said John Haggart held both the said offices of mayor and reeve of and for the said year 1864, and claims and insists on the right to exercise the functions of both offices.

R. A. Harrison, for the relator, cited Con. Stat. U. C. cap.54, secs. 101, 102, 116, 120, 135, 144 & 145; *Reg. ex rel. Pollard* v. *Prosser*, 2 U. C. Prac. R. 330; Statute 24 Vic. cap. 37.

——— shewed cause.

JOHN WILSON, J.—The mayor of a town is chosen by the electors, at the annual election holden on the first Monday in January (Con. Stat. U. C. cap. 54, sec. 101). His qualification is the same as that of an alderman in cities, and of a councillor in towns (*Ib.* sec. 102; see also *Reg. ex rel. Bender* v. *Preston*, 7 U. C. L. J. 100). He is deemed the head of the council, and the head and chief executive officer of the corporation (*Ib.* sec. 120), but is not, in my opinion, a member of the council within the meaning of section 135 of the act, so as to be eligible for the office of reeve. It is by section 144 of the act provided, that in case of the death or absence of the head of a town council (viz., the mayor), the reeve, &c., shall preside. So by section 145 it is provided that in the absence of the head of the council (the mayor), and, in the case of a town, in the absence also of the reeve, and also of the deputy reeve if there be one, the council may from among themselves appoint a presiding officer. These enactments are quite inconsistent with the idea that the offices of mayor and reeve may be held by one and the same person, and strengthen the interpretation which I have placed upon section 135 of the act. I therefore adjudge that the defendant hath usurped and doth still usurp the office of reeve for the town of Perth, and that he be removed therefrom.

Order accordingly.

CHANCERY REPORTS.

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

WEIR v. WEIR.

Alimony—Co-habitation.

The right of a wife is to reside with her husband, in his home or in the joint home of both: where, therefore, it appeared that the husband resided with his children, (by a former wife), and compelled his wife to live at lodgings, the court, although no violence or other ill-treatment was shewn on the part of the husband towards his wife, made a decree for alimony in her favour: and that, although it was shewn that during such time the husband had been in the habit of visiting and remaining with his wife.

This was a suit for alimony, under the circumstances stated in the head note, and came on for the examination of witnesses and hearing before

his Lordship the Chancellor at the sittings of the Court at Ottawa, in October last.

Radenhurst for the plaintiff.

McLennan for the defendant.

VANKOUGHNET, C.—This case is somewhat a singular one. The plaintiff sues her husband for alimony on the main and indeed only ground on which the right to it here can rest, that the defendant will not receive her into his own house and home, or does not receive her there under such conditions, as enables her or makes it her duty to remain there with him. The facts are shortly these. The plaintiff and defendant were married some five or six years ago. The defendant then, and ever since, has had his home at a place called Spencerville, on the line of the Ottawa and Prescott Railway, and a few miles in rear of Prescott. At the time of his marriage he was a widower, with a family by his former wife, some of whom had reached man's estate, and the others were in near approach to it. To his family, his marriage was most distasteful. His sons and daughters lived with him at what was known as the homestead—the home referred to—and, from the evidence given by some of them before me, they appear to have resolved from the first that the plaintiff should neither enter nor live in their father's house. It does not appear that the defendant himself was unwilling to receive her there, but, overborne by his children of the former marriage, he seems to have acquiesced in their objections, and not to have exercised either his parental authority or his rights as *magister domi* to secure for his wife a place in his home. The result has been that for years he has been supporting and maintaining her at hotels, occasionally visiting her and having with her the intercourse which marital relations justify. In answer to the plaintiff's appeal for a fixed alimony this intercourse is set up in bar, and it is said that it amounts to, and answers all the obligations which are understood by, cohabitation, and which marital rights demand. On a motion before me to dismiss the bill for want of prosecution (*interim* alimony having been granted), and again at the hearing of the cause, I stated emphatically my opinion that cohabitation did not mean simply the intercourse of the parties, and the more especially when that was accidental and occasional, as in this case, and that it means the living together of the man and woman as husband and wife in the home of the former, or in their joint home, wherever that might be, and that it never could be tolerated that a man, a husband, might dwell in his own ascertained home and compel his wife to live in an inn or boarding-house, or other place, visiting her as he pleased, and be at liberty to say that she was thus in full possession of her conjugal rights, and that he was doing his duty by her. Fancy for a moment what the state of society might be if such a monstrous doctrine were admitted? A man living, perhaps, in luxury, in his own house, stopping short of that crime which might entitle his wife to a divorce absolutely, and yet leaving her to live at a place of public entertainment, not only without his society and the privacy and comfort of that home for which every married woman bargains when she casts in her lot with him she weds, but exposed to an acquaintance with any and every one who may in such a place intrude himself upon her. Forsaken, deserted and alone, under such circumstances, can any man dare to say she enjoys those rights which the married state confers upon her? In a suit in the ecclesiastical courts in England, for the restitution of conjugal rights, the common sentence of the court is, "That the husband receive his wife home as his wife, and treat her with conjugal affection." It is argued here that because the wife has, in the different places in which the defendant has procured her an abode, received him as her husband, and had sexual intercourse with him, she has submitted to her condition and debarred herself from complaining. I think not. She has shewn but a desire to maintain her marital connection with her husband, to yield to him as such, to afford him no cause of complaint, and to prove to him her desire to continue to him the duties of a wife at any sacrifice. This the courts in England could not have enforced upon her any more than upon him: for while they can enforce co-habitation they cannot compel intercourse. I do not think that her submission in this respect can be urged against her plaint, or treated as any condonation of the wrong which her husband does her in not taking her to his home. It is also alleged that the defendant is quite willing to receive her into his house, but how? While there is proof that he once himself brought her there, and that he again told her she was welcome to come; what we find was, on the occasion he did bring her there, and would probably be again her treatment if she ventured a visit, the eldest son of the defendant, a young man of 24 years of age, tells us—he says, when his father and the plaintiff arrived in a carriage in the yard adjacent to the house, he, the son, took the horse by the head, turned him round, and led him, and the carriage, with the plaintiff and defendant in it, out of the premises. In fact he turned them out again; he would not let the plaintiff enter; and he swears that neither he nor his brothers and sisters will have her there. In fact, as I understand him, she has only to enter to be ejected. The defendant submits to this action of his children. Is the plaintiff bound to do so? I think not. If the defendant cannot protect her in his own house, she is justified in keeping out of it, and compelling the defendant to make to her a proper allowance to support her elsewhere. She is willing to go to him. It is his duty to receive her, and to maintain her in his house free from assault, and from the insults of others, even though they be his own children. If his parental authority be not sufficient to restrain them, then his duty is to remove them out of his wife's way. His first duty is to her, to cleave to her, leaving all others beside; and if he is not prepared to do this, then he subjects himself to the only penalty which this court can inflict, as it does now, namely, an order to pay to her a fitting sum (to be settled by the Master) for her permanent maintenance, by way of alimony.

I have delayed judgment in this case in the hope that the parties might come to some arrangement among themselves; though I confess, from what I heard in evidence, and what I saw myself in the case of the defendant's gross misconduct, I had but faint hopes of his doing anything that was proper.

CORRESPONDENCE.

County Attorneys and Division Court Clerks.

To the Editors of the Local Courts' Gazette.

Guelph, Feb. 18, 1865.

Gentlemen,—Your article in the January number, upon County Attorneys and Division Court Clerks, is the truth. But you omitted to state that prior to the Stamp Act clerks made the return in duplicate to the county attorney of all fees payable to the Fee Fund, four times each year, viz., March 31st, June 30th, September 30th, and December 31st, for which said return the clerks were entitled to four dollars. This is now lost to them, and I can assure you to some clerks the loss of sixteen dollars per annum is no joke.

There are 33 counties and united counties in Canada West; in these counties are 262 division courts, being an average of 8 courts to each county; these 262 courts have each a clerk, who made, under the old system, a return of all fees and emoluments every three months to the county attorney, for which return each clerk received $4 or $16 per ann.

Multiply the courts by 16.....	262 00 16
	$4,192 00
The average sale of stamps for each county for division court purposes will be about $4,000; 1 per cent. upon this the county attorney has, over and above the 4 per cent. he used to have—say $40 for thirty-three counties	1,320 00
	$2,872 00
Then, allowing the Government 1 per cent. for the difference of cost between printing the blank forms formerly in use, and the expense of the present stamps.....	1,320 00
Saving to the Government from the hard-worked clerks.....	$1,552 00

Yours, respectfully,

A. A. B., *Clerk D.C.*

To the Editors of the Local Courts' Gazette.

Gentlemen,—I am sure you are well aware that Division Court Clerks are not overpaid for their services—and also that they have to, and do give a great amount of credit for fees which seldom come back for from three to six months; they have also lost $16 per annum for making fee fund returns, since the stamps came into use.

They are now obliged to keep a large supply of stamps on hand, which they can only procure from the County Attorney, if he has them. I lost the services of ten summonses last Court owing to the County Attorney having run out of stamps, which will be a great loss to the plaintiff. Surely, Division Court Clerks are not so much below the standard of respectability of postmasters as not to be trusted with the issuing of stamps; postmasters not only dispose of postage stamps, but they are generally the agents for the sale of bill stamps also.

I think, by drawing the attention of the Government to the case in your valuable journal, you will confer a great boon on us.

I should like some of my brother clerks to give their opinion on the matter.

A Clerk.

Hearing fees—Confessions.

To the Editors of the Local Courts' Gazette.

Gentlemen,—You would confer a favor on a subscriber by answering the following:

Is it correct in practice, at the time of entering orders or confessions in court, to affix to the proceedings stamps for "hearing undefended causes." Ought such fees to be charged on confessions?

A Division Court Clerk.

[We think such fees are chargeable. We will give our reasons in next number.]—Eds. L. C. G.

Law of away-going crops in Upper Canada.

To the Editors of the Law Journal.

March 2, 1865.

On the first of December last, A. rents a farm from B. for ten years, at a fixed rent, and immediate possession is given to A., who enters at once, and having been upon the farm a few days, the tax collector calls and demands the taxes for the past year, they not having been paid; and as A.'s lease provides that he (A.) is to pay all taxes due and to become due, A. of course had no other alternative than paying up. The off-going tenant, who was farming the place on shares with B. (his landlord), has left two fields sown last fall with wheat. Your opinion is requested as to whom this wheat belongs; is not A. entitled to the whole, there being nothing mentioned in his lease with B. as to any party entering to take the wheat off?

An old Subscriber.

[There is a notion prevalent that a tenant for a term of years has by the custom of the country the right to put in a fall crop during the last year of his tenancy, and after the expiration of his lease the right to go upon the land to reap it. In the absence of express stipulation in the lease the tenant, in our opinion, has no such right. If he quit the premises at the expiration of his lease, leaving a full crop in the ground, that crop under an ordinary lease as a part of the freehold passes to the landlord; and so if the landlord without reservation re-let the premises for a second term, the crops being at the time of the new lease in the ground, we apprehend the crop passes to the new tenant, as supposed by our correspondent: (See *Burrowes* v. *Cairnes*, 2 U. C. Q. B. 288; *Campbell* v. *Buchan*, 7 U. C. C. P. 70; *Gilmore* v. *Lockhart*, MS. R. & H. Dig., [LEASE I. 6.]—EDS. L. C. G.

INSOLVENTS.

Alexander McCallum	Cobourg.
Lewis B. Rose et al	Montreal.
Wm. Moon	London.
Wm. G. Strong	Cobourg.
Thomas Scott	Cobourg.
Hearn & Potter	Toronto.
Wm. Servos	Hamilton.
Lancaster H. Schofield	Whitby.
Elijah Lake	Oakwood.
Wm. McPhail	Cannington.
Lewis S. Wiswell	Cobourg.
L. A. Gurnett	Ancaster.
James G. Fraser	Galt.
Wm. McDonell	Hamilton.
John Campbell & Co	Co. Elgin.
Andrew Widdowson	Toronto.
Charles Patrick Reynolds	Toronto.
James R. Bradbury	Toronto.
Bradbury & Co	Toronto.
Alex. McLean	Mariposa.
A. A. Roy	Quebec.
P. T. Deguise	Quebec.
Archibald McIntyre	St. Thomas.
Wm. Ross	St. Thomas.
Samuel McClung	Bowmanville.
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John B. Orser	Picton.
Charles Carpenter	Hamilton.
Michael Graham	Tp. Brantford.
Wm. Tilt	Blair.
James Sutherland	Tp. Mariposa.
David Guthrie	Montreal.
Geo. R. Macnamee	Montreal.
Peter S. Filman	Tp. Barton.
Francis Y. Cowle	Bowmanville.
Alex Malcolm	Alliston.
McNaughton, Bros	Newcastle.
Luc Robert	Verchères.
Alex. Douglass	Brantford.
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Ellis Luther Derby	Napanee.
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Henry Merick	Merrickville.
A. Lang	Barrie.
Wm. Walter	Tp. Vespra.
Vars & Strong	Colborne.
P. V. Dorland	Belleville.
Michael Mulrowney	Quebec.
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John Keating	Stratford.
Damase Guimont	Cape St. Ignace.
Atcheson Cleland	Lachute.
McCulloch, Bros	Montreal.
Thos. Ferguson	Vankleek Hill.
Abner E. Van Norman	Hamilton.
Peter Coleman	Bowmanville.
Thos. Moore	St. Thomas.
J. R. McCullogh	Bowmanville.
Adams & Co	Montreal.
Henry B. Paris	London.
John Black	Lambton.
Ezra Dean Priest	Bath.
Thos. B. Howell	Kingston.
Robt. N. Reynolds	Kingston.
Thos. C. Watkins	Hamilton.
Alfred Brown	Montreal.
John Burns	Montreal.
Alfred Cliff	Chickopee Mills.
George Parker	Sandhill.
J. B. Vezina	Quebec.
Simon Deeks	Morrisburg.
Wm. A. Nash	Morrisburg.
Chas. Cruickshank	Clinton.
Laberge & Peltier	Acton Vale.
Thos. Jackson	Sandhill.
Wm. Weeks	Woodstock.
James Blair	Napanee.
Joseph Bingham	Bradford.
Wm. Wood	Sophiasburgh.
Richd. Philp	Bowmanville.
James McFeeters	Bowmanville.
David G. Ellis	Toronto.
Rae, Brothers & Co	Hamilton.
Walter Arnold	Niagara.
Robert Rutherford	Guelph.
J. T. Allin	Cobourg.
Hugh Edward Brown	Whitby.
William Warren, jr	Whitby.
James Blackwood	St. Thomas.
John C. Boswell	Tp. Hamilton.
Cosby Storey	Newboro.
James Feely	Norwood.
Duncan McDonald	Sarnia.
Pierre Poulin	Ste. Cecile.

APPOINTMENTS TO OFFICE.

JUDGES.

WILLIAM DAVIS ARDAGH, Esq., to be Deputy Judge of the County Court of the County of Simcoe. (Gazetted February 11, 1865.)

NOTARIES PUBLIC.

MICHAEL HAYES, of Toronto, Esq., Barrister-at-Law, to be a Notary Public in Upper Canada. (Gazetted February 18, 1865.)

WILLIAM LOUNT, of Barrie, Esq., Barrister-at-Law, to be a Notary Public in Upper Canada. (Gazetted February 18, 1865.)

THOMAS BABINGTON McMAHON, of Bradford, Esq., Barrister-at-Law, to be a Notary Public in Upper Canada. (Gazetted February 18, 1865.)

CHARLES ELDON EWING, of Wicklow, Esq., Barrister-at-Law, to be a Notary Public in Upper Canada. (Gazetted February 18, 1865.)

CORONERS.

NEIL FLEMING, Esq., M.D., Associate Coroner, United Counties of Huron and Bruce. (Gazetted Feb. 11, 1865.)

JOHN WILSON, Esq., M.D., Associate Coroner, County of Norfolk. (Gazetted February 18, 1865.)

THOMAS AISHTON, Esq., M.D., Associate Coroner, County of Lennox and Addington. (Gazetted February 18, 1865.)

THOMAS FREER, Esq., M D., Associate Coroner, United Counties of Lanark and Renfrew. (Gazetted Feb. 25, 1865.)

REGISTRARS.

ALEXANDER McLEOD MACKENZIE, Esq., Registrar of the County of Glengarry. (Gazetted February 25, 1865.)

TO CORRESPONDENTS.

"A. A. B."—"A CLERK"—"A DIVISION COURT CLERK"—"AN OLD SUBSCRIBER"—under "CORRES-PONDENCE."