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VOL. IV. TORONTO, MAY, 1858. No. 5.

THE UPPER CANADA LAW JOURNAL

AND LOCAL COURTS' GAZETTE.

CONDUCTED BY

W. D. ARDAGH, Barrister-at-Law; ROBT. A. HARRISON, B.C.L., Barrister-at-Law.

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NOTICE.

WHEREAS Twenty-five Persons and more have formed themselves into a Horticultural Society, in the County of Hastings, in Upper Canada, by signing a declaration in the form of Schedule A annexed to the Act 20 Vic., cap. 32, and have subscribed a sum exceeding Ten Pounds to the funds thereof, in compliance with the 48th Section of the said Act, and have sent a Duplicate of said declaration written and signed as by law required, to the Minister of Agriculture.

Therefore, I, the Minister of Agriculture, hereby give notice of the formation of the said Society as "The Belleville Horticultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agr.

Bureau of Agriculture and Statistics.
Toronto, dated this 8th day of Feb., 1858.

LAW SOCIETY OF UPPER CANADA,

(Osgoode Hall.)

Hilary Term, 21st Victoria, 1857.

During this present Term of Hilary, the following Gentlemen were called to the degree of Barrister-at-Law —

Edward Taylor Bartnell, Esquire.	Caleb Elias English, Esquire.
Ernestus Cromble, "	Thomas Hodgins, "

On Tuesday the 9th day of February, in this Term, the following Gentlemen were admitted into the Society as members thereof, and entered in the following order as Students of the Laws, their examinations having been classed as follows:—

University Class:

Mr. James Windeat, M.A.	Mr John Anderson Ardagh, B.A.
" J. Pennington Macpherson, B.A.	" Wm. Pryor Atkinson, B.A.
" John Turpin, B.A.	" George Bartholomew Boyle, B.A.
" H. Collin Windeat Wethey, B.A.	" Frederick Lampman, B.A.

Mr. William Hamilton Jones, B.A.

Junior Class:

Mr. William Edward O'Brien.	Mr. James Saurin McMurray.
" Charles Arthur Jones.	" John Crawford.
" Henry Erskine Irving.	" George Frederick Duggan.
" Warren Rock.	" Frederick Fanning.

Note.—Gentlemen admitted in the "University Class" are arranged according to their University rank, in the other classes, according to the relative merit of the examination passed before the Society.

Ordered—That the examination for admission shall, until further notice, be in the following books respectively, that is to say—

For the Optime Class:

In the Phœnissæ of Euripedes, the first twelve books of Homer's Iliad, Horace, Sallust, Euclid or Legendre's Geometrie, Hind's Algebra, Snowball's Trigonometry, Farnshaw's Statics and Dynamics, Herschell's Astronomy, Paley's Moral Philosophy, Locke's Essay on the Human Understanding, Whateley's Logic and Rhetoric, and such works in Ancient and Modern History and Geography as the candidates may have read.

For the University Class:

In Homer, first book of Iliad, Lucian (Charon Life or Dream of Lucian and Timon), Odes of Horace, in Mathematics or Metaphysics at the option of the candidate, according to the following courses respectively. Mathematics, (Euclid, 1st, 2nd 3rd, 4th, and 6th books, or Legendre's Geometrie, 1st, 2nd, 3rd and 4th books, Hind's Algebra to the end of Simultaneous Equations), Metaphysics—(Walker's and Whateley's Logic, and Locke's Essay on the Human Understanding); Herschell's Astronomy, chapters 1, 3, 4, and 5, and such works in Ancient and Modern Geography and History as the candidates may have read.

For the Senior Class:

In the same subjects and books as for the University Class.

For the Junior Class:

In the 1st and 3rd books of the Odes of Horace; Euclid, 1st, 2nd, and 3rd books, or Legendre's Geometrie 1st and 3rd books, with the proublems; and such works in Modern History and Geography as the candidates may have read: and that this Order be published every Term, with the admissions of such Term.

Ordered—That the class or order of the examination passed by each candidate for admission be stated in his certificate of admission.

Ordered—That in future, Candidates for Call *with honours*, shall attend at Osgoode Hall, under the 4th Order of Hil. Term, 18 Vic., on the last Thursday and also on the last Friday of Vacation, and those for Call, merely, on the latter of such days.

Ordered—That in future all Candidates for admission into this Society as Students of the Laws, who desire to pass their Examination in either the Optime Class, the University Class, or the Senior Class, do attend the Examiner at Osgoode Hall, on both the first Thursday and the first Friday of the Term in which their petitions for admission are to be presented to the Benchers in Convocation, at Ten o'clock A.M. of each day: and those for admission to the Junior Class, on the latter of those days at the like hour.

Ordered—That the examination of candidates for certificates of fitness for admission as Attorneys or Solicitors under the Act of Parliament, 20 Vic. chap. 63, and the Rule of the Society of Trinity Term, 21 Vic. chap 1 made under authority and by direction of the said Act, shall, until further order, be in the following books and subjects, with which such candidates will be expected to be thoroughly familiar, that is to say:

Blackstone's Commentaries, 1st Vol.; Smith's Mercantile Law; Williams on Real Property; Williams on Personal Property; Story's Equity Jurisprudence, The Statute Law, and the Practice of the Courts.

Notice.—A thorough familiarity with the prescribed subjects and books will, in future, be required from Candidates for admission as Students; and gentlemen are strongly recommended to postpone presenting themselves for examination until fully prepared.

Notice.—By a rule of Hilary Term, 18th Vict., Students keeping Term are henceforth required to attend a Course of Lectures to be delivered, each Term, at Osgoode Hall and exhibit to the Secretary on the last day of Term, the Lecturer's Certificate of such attendance.

Ordered.—That the Subjects for Lectures next Term, be the Law of Mortgages, to be lectured upon by Samuel Henry Strong, Esquire; and the Law of Evidence to be lectured upon by John Thomas Anderson, Esquire.

ROBERT BALDWIN,
Treasurer.

Hilary Term, 21st Victoria, 1858.

STANDING RULES.

ON *the subject of Private and Local Bills*, adopted by the Legislative Council and Legislative Assembly, 3rd Session, 5th Parliament, 20th Victoria, 1857.

1. That all applications for Private and Local Bills for granting to any individual or individuals any exclusive or peculiar rights or privileges whatsoever, or for doing any matter or thing which in its operation would affect the rights or property of other parties, or for making any amendment of a like nature to any former Act,—shall require the following notice to be published, viz:—

In Upper Canada—A notice inserted in the Official Gazette, and in one newspaper published in the County, or Union of Counties, affected, or if there be no paper published therein, then in a newspayer in the next nearest County in which a newspaper is published.

In Lower Canada—A notice inserted in the Official Gazette, in the English and French languages, and in one newspaper in the English and one newspaper in the French language, in the District affected, or in both languages if there be but one paper; or if there be no paper published therein, then (in both languages) in the Official Gazette, and in a paper published in an adjoining District.

Such notices shall be continued in each case for a period of at least two months during the interval of time between the close of the next preceding Session and the presentation of the Petition.

2. That before any Petition praying for leave to bring in a Private Bill for the erection of a Toll Bridge, is presented to this House, the person or persons purposing to petition for such Bill, shall, upon giving the notice prescribed by the preceding Rule, also, at the same time, and in the same manner, give a notice in writing, stating the rates which they intend to ask, the extent of the privilege, the height of the arches, the interval between the abutments or piers for the passage of rafts and vessels, and mentioning also whether they intend to erect a draw-bridge or not, and the dimensions of such draw-bridge.

3. That the Fee payable on the second reading of and Private or Local Bill, shall be paid only in the House in which such Bill originates, but the disbursements for printing such Bill shall be paid in each House.

4. That it shall be the duty of parties seeking the interference of the Legislature in any private or local matter, to file with the Clerk of each House the evidence of their having complied with the Rules and Standing Orders thereof; and that in default of such proof being so furnished as aforesaid, it shall be competent to the Clerk to report in regard to such matter, "that the Rules and Standing Orders have not been complied with."

That the foregoing Rules be published in both languages in the Official Gazette, over the signature of the Clerk of each House, weekly, during each recess of Parliament.

J. F. TAYLOR, Clk. Leg. Council.
10-tf. Wm. B. LINDSAY, Clk. Assembly.

Legislative Council,
Toronto, 4th September, 1857.

EXTRACT from the Standing Orders of the Legislative Council.

Fifty-ninth Order.—"That each and every applicant for a Bill of Divorce shall be required to give notice of his or her intention in that respect specifying from whom and for what cause, by advertisement in the official Gazette, during six months, and also, for a like period in two newspapers published in the District where such applicant usually resided at the time of separation; and if there be no second newspaper published in such District, then in one newspaper published in an adjoining District: or if no newspaper be published in such District, in two newspapers published in the adjoining District or Districts."

J. F. TAYLOR,
10-tf. Clerk Legislative Council.

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IS published monthly in the City of Toronto, at $4 per annum if paid before 1st March in each year: $5 if paid afterthat period.

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CONTENTS.

REMITTANCES.

April, 1858.—Mr. McKenna, Brampton, $4; John Cooke, Port Albert, $5; Thos. Jenkins, D.C.C, Rolph, $4; Robert Nichol, Vienna, $4; A. M. Mackenzie, Alexandria, $4; Z. Burnham, Whitby, $10; George McManus, Mono, $4; Sheriff Thompson, Perth, $5; John Cadenhead, Fergus, $4; A. Hatelle, Wardsville, $4; D Matheson, Embro. $5; Charles Hutchinson, Co. Atty., London. $4; Frede ick Wyld, J. P., Rowan's Mills, $4; Robt Balmer, Oakville, $9; W. H. Bowlby, Toronto, $4; John Brown, C.D.C., Longwood, $4; R. Sutherland, Berlin, $4; Daniel C. Gunn, Hamilton, $12.

DIARY FOR MAY.

1. Saturday... St. Philip and St. James. Articles of service and affidavits for admission as Attornies in E. T., to be left with Secretary of Law Society.
2. SUNDAY... *4th Sunday after Easter.*
9. SUNDAY... *Rogation Sunday.*
13. Thursday .. *Ascension Day.*
16. SUNDAY... *Sunday after Ascension.*
17. Monday .... EASTER TERM begins. University College Easter Term ends.
23. SUNDAY... *Whit Sunday.* Pentecost.
24. Monday..... Queen Victoria born, 1819. Holiday. [for hearing, June Term.
29. Saturday... EASTER TERM ends. Chancery—last day for setting down cause
30. SUNDAY .. *Trinity Sunday.*

"TO CORRESPONDENTS"—*See Last Page.*

The Upper Canada Law Journal.

MAY, 1858.

POWER OF A COLONIAL PARLIAMENT TO IMPRISON FOR CONTEMPT.

In the consideration of this important subject it will be necessary for us to bear in mind that two great social rights are involved—the one the right of the subject to personal liberty—the other the right of Parliament to abridge the liberty of the subject.

The British Parliament possesses, in addition to its own extraordinary powers, every species of authority with which the highest ordinary Court of Record in the kingdom is clothed: it can commit for contempt—can fine and imprison—can administer an oath: (Ferrall, Law of Parliament, 114.) The right to commit for contempt is now universally acknowledged to belong to both Houses: (May's Law of Parliament, 60.) The power of commitment by the Commons is established upon the ground of immemorial usage: (*Ib.* p. 61.) It is also virtually admitted by the Stat. 1 James I., cap. 13, sec. 3, which provides that nothing therein "shall extend to the diminishing of any punishment to be hereafter by censure in Parliament inflicted upon any person, &c."

No person having any knowledge whatever of constitutional law, can at this day deny the right of the Imperial Parliament—the highest Court of the Realm—to commit for contempt, or breach of its privileges. The *Lex et Consuetudo Parliamenti* is a part of the law of the Realm, and as such requires obedience and respect from every British subject or resident within British dominions. The question is whether this right in whole or in part extends to any—and if any, what Colonial Parliament—and if it at all extends to the Colonial Parliament of Canada.

Colonies are such either by conquest or occupation. Of the former is Canada. Of the latter is Newfoundland. It is a disputed fact to which class Jamaica belongs. We name these three Colonies in particular, because, as to two of them at least, (Jamaica and Newfoundland) the Privy Council has pronounced an opinion; and as to the third (Canada) we are especially concerned.

The Crown can by prerogative, it it said, introduce a great part of the law of a parent State into a Colony acquired by conquest; but it is very doubtful whether it can so introduce the *Lex et Consuetudo Parliamenti*. The inquiry is immaterial, though interesting, because the Crown never has in truth by prerogative or otherwise attempted to introduce that part of British Law into Canada or any other Colony. It is a debateable point whether as to Colonies acquired by occupation into which British subjects carry with them British laws they do in fact carry the *Lex et Consuetudo Parliamenti*. The better opinion appears to be that they do not: (Kielly v. Carson, 4 Moore P. C., 63.) The next inquiry is whether the Colony, no matter how acquired, can adopt that portion of Imperial law, and as regards Canada whether she has not really done so.

There appears to be no good reason for holding that a Colony cannot adopt the *Lex et Consuetudo Parliamenti*. Has Canada done so? In 1792 the Parliament of *Upper* Canada declared that "in all matters of controversy relative to property and *civil rights*, resort shall be had to the Laws of England as the rule for the decision of the same:" (32 George III., cap. 1, s. 3). The Parliament of *Lower* Canada not only did not, but always refused to make any such declaration. Hence, even supposing that the declaration made by Upper Canada was of itself sufficient to introduce into Upper Canada the English laws and customs of Parliament, that introduction does not at all bind *United* Canada as at present constituted.

It follows, we think, that if the Legislature of Canada has the power to imprison for contempt, it must be as inherit to the power of Legislation, and necessary for the regulation and protection of that power. Is such a power one that follows and is attached to a power of Legislation? Here we must refer to adjudicated cases.

In 1830, Sir Allan McNab having refused to answer questions put to him by a select Committee of the Legislative Asssembly of Upper Canada, appointed to inquire into certain misdeeds at Hamilton, was adjuged guilty of a high contempt, and breach of the privileges of the House of Assembly. It was resolved that the Speaker should issue his warrant directed to the Sergeant-at-Arms, or his Deputy to apprehend Sir Allan McNab, and bring him to the Bar of the House on a day fixed to answer for contempt and breach of privilege. This was done, and after being heard at the Bar of the House, Sir Allan was consigned to the common gaol of the Home District "during the pleasure of the House." Having been in course of time liberated, he brought an action for false imprisonment against the Speaker, Mr. Bidwell, and a member of Parliament, Mr. Baldwin. The Court of King's Bench held that the defendants were not liable to be sued for what had been done, inasmuch as they

acted under the resolutions of the Assembly, and the Assembly had done nothing illegal in passing such resolutions: (McNab v. Bidwell, Dra. Rep, 152). The Chief Justice, (Sir J. B. Robinson, Bart) is reported to have said "I do not say that because the British House of Commons has power, therefore under our adoption of the Law of England, the same power is vested in the House of Assembly as a body perfectly similar; but I consider the question in this way, the fact that the House of Commons assumes and exercises the right, shows that it is felt to be necessary in order to enable them to discharge their duties. I think the same necessity exists here, and from principle the same consequence in my opinion must follow as a necessity:" (p. 103.) He relied strongly upon some remarks of Lord Ellenborough in 14 East. 137, and was supported in the opinion expressed by the late Mr. Justice Sherwood.

At this time there was no decision of the Privy Council in England, but six years afterwards a case did arise which came before the Privy Council, and was at great length adjudicated upon, and in which not only was much reliance placed upon the dictum of Lord Ellenborough in 14 East. but the views of our Chief Justice were more than borne out by Mr. Baron Parke who delivered judgment in the Privy Council. The case was an appeal from the judgment of the Court of Errors of Jamaica affirming a judgment of the Supreme Court of that Colony: (Beaumont v. Barrett, 1 Moore P.C., 59). The Privy Council decided that the Parliament of Jamaica has power to imprison for contempt and Baron Parke, (now Lord Wensleydale) in delivering judgment used this language—"I think it to be inherent in every assembly that possesses a supreme legislative authority, to have the power of punishing contempts, and not merely such as are in direct obstruction to its due course of proceeding but such also as have a tendency indirectly to produce such an obstruction in the same way as Courts of Record may not only remove or punish persons who actually are interrupting their functions, but may also repress those who indirectly impede the administration of justice by disparaging and weakening their authority:" (p. 76.)

In 1842 on an appeal to the Privy Council from the Supreme Court of Judicature of Newfoundand, the very same question was presented for decision, and was in a measure differently decided: (Keilly v. Carson et al, 4 Moore P. C. 63). Mr. Baron Parke who on this occasion delivered the judgment of the Council, not only overruled his previously expressed opinion, but affected to doubt the dictum of Lord Ellenborough in 14 East. 137. These were Baron Parke's words on this occasion,—"There is no decision of a Court of Justice in favor of the right (of a Colonial Legislature to imprison for contempt) except that of the case of Beaumont v. Barrett decided by the Judicial Committee, the members present being Lord Brougham, Mr. Justice Bosanquet, Mr. Justice Erskine, and myself. Their Lordships (Lord Chancellor, Lord Brougham, Lord Denman, Lord Abinger, Lord Cottenham, Lord Campbell, the Vice Chancellor, the Chief Justice of the Common Pleas, Mr. Justice Erskine, Right Hon. Dr. Lushington,) do not consider that case as one by which they ought to be bound in deciding the present question. The opinion of their Lordships delivered by myself immediately after the argument was closed, though it clearly expressed that the power was incidental to every Legislative Assembly was not the only ground on which the judgment rested, and was therefore in some degree extra judicial, but besides it was stated to be and was founded entirely on the dictum of Lord Ellenborough in Burdett v. Abbott (14 East. 137) which dictum we all think cannot be taken as an authority for the *abstract proposition that every Legislative* body has the power of committing for contempt. The observation was made by His Lordship with reference to the peculiar powers of Parliament, and ought not we think to be extended any further. We all therefore think that the opinion expressed by myself in the case of Beaumont v Barrett, ought not to affect our decision in the present case, and *there being no authority on the subject,* we decide according to the principle of the Common Law:" (p. 92.) And what did they decide? That the Legislative Assembly of Newfoundland had no power to imprison for contempt a person who grossly abused one of its members for language used by him in Parliament, and who when summoned to the Bar of the House, instead of retracting the abusive language, made use of violent language to the abused member who was then in his place in the House! What was the reasoning of the Privy Council? They cited the maxim of the Common Law *Quando lex aliquid concedit concedere viditur et illud sine quo res ipsa esse non potest,* and continued, "In conformity to this principle, we feel no doubt that such an assembly has the right of protecting itself from all impediments to the due course of its proceeding. To the full extent of every measure which it may be really necessary to adopt, to secure the free exercise of their Legislative functions, they are justified in acting by the principle of the Common Law. But the power of punishing any one for past misconduct as a contempt of its authority, and adjudicating upon the fact of such contempt, and the measure of punishment as a judicial body, irresponsible to the party accused, whatever the real facts may be, is of a very different character and by no means essentially necessary to the exercise of its functions by a local Legislature, whether representative or not. All these functions may be well performed without this extraordinary power, and with the

aid of ordinary tribunals to investigate and punish contemptuous insults and interruptions." (p. 88.)

Were there no further decision, we should of course at once conclude that the "extraordinary powers" of a Colonial Legislature are more mythical than real; that their only power is to punish persons impeding the business of legislation; and that members of the High Court of Parliament in a Colony, if abused or insulted for the fearless and open discharge of their responsible duties in Parliament, must appeal to the law courts of the country for redress, in the same manner as other liege subjects of Her Majesty. We should be forced to these conclusions, however unreasonable or unjust, impolitic or dangerous to legislative independence we might deem them. But the worst remains to be told. It has been lately decided by the English Privy Council that a Colonial Parliament has not even the power to punish by imprisonment persons refusing to appear to give evidence before committees, and so obstructing the legitimate business of legislation! The privileges of a Colonial Parliament have, under the skilful reasoning of the English Privy Council, been whittled and whittled down to the fine point of—nothing!! The case of *Fenton* v. *Hampton*, decided before the Privy Council on 17th February last, reduces the privileges and the powers of a Colonial Parliament to a mere laughing-stock and a by-word. Here are the facts, which we take from a legal report of the case:

During a Session of the Legislative Council of Van Dieman's Land, in the year 1855, the Council, in accordance with their rules and orders, appointed a committee of their own body to inquire into certain alleged abuses in the Convict Department, and the Council resolved that the committee should have leave to send for persons in order to prosecute the inquiry. One John Stephen Hampton was deemed a material and a necessary witness in the prosecution of the inquiries. The chairman of the select committee issued a summons to Mr. Hampton to appear personally before the select committee, at a certain time and place, to be examined as a witness on the subject of the inquiry. The summons was duly served. Mr. Hampton refused to appear; and in consequence, the select committee was obstructed in their inquiries, and the Council prevented from obtaining their report. Thereupon, the Legislative Council, being informed of these circumstances, resolved that Mr. Hampton be desired to attend at the bar at the Council's House at Hobart Town, on a day and hour named. Mr. Hampton was duly served with the summons to attend, but would not obey it, "and wilfully and contemptuously, and without reasonable excuse, disregarded the summons and order, and refused to attend." The Council then resolved that he was guilty of contempt, in disobeying the resolution of the House and the summons of the Speaker. They further resolved that the Speaker (Mr. Fenton) should issue his warrant for the apprehension of Mr. Hampton, to be held in the custody of the Serjeant-at-Arms during the pleasure of the Council. In compliance with this resolution, the Speaker did issue his warrant, and the Serjeant-at-Arms executed it by taking Mr. Hampton into custody. For this arrest Mr. Hampton brought an action against the Speaker, and recovered damages. The case having been carried by way of appeal before the Privy Council in England, was ably argued before the Council, consisting of Right Hon. Lord Justice Knight Bruce, Right Hon. T. Pemberton Leigh, Right Hon. Lord Chief Baron of the Exchequer, and Right Hon. Lord Justice Turner. The Chief Baron (Pollock) having noticed the cases of *Beaumont* v. *Barrett*, and *Kielly* v. *Carson*, said "we think we are bound by the decision of *Kielly* v. *Carson*, the greater authority of which, as compared with *Beaumont* v. *Barrett*, it is quite unnecessary to enlarge upon. An attempt was made to distinguish the present case from those cited; the authority of the Legislative bodies in those cases being derived from the Crown; whereas the Legislative Council of Van Dieman's Land derives its legislative authority from a Statute of the Imperial Parliament. We think there is no foundation for this distinction, and that if the Legislative Council of Van Dieman's Land cannot claim the power they have exercised on the occasion before us, *as inherently belonging to the supreme legislative authority which they undoubtedly possess*, they cannot claim it as under the Statute as passed by the common law of England (including the *Lex et Consuetudo Parliamenti*), transferred to the colony by 9 Geo. IV. c. 83, s. 24. *The Lex et Consuetudo et Parliamenti* apply *exclusively* to the Lords and Commons of this country (Great Britain), and do not apply to the Supreme Legislature of a Colony, by the introduction of the Common Law there.—(*Fenton* v. *Hampton*, 6 *Weekly Reporter*, p. 341.)

All we have to observe, in conclusion, is, that the Parliament of Canada has no more power to commit for contempt than the Parliament of Van Dieman's Land; and the extent of that power we leave our readers to infer from what we have written.

REMUNERATION OF WITNESSES IN CRIMINAL CASES.

It is one of the essential rules of society that crime be prevented. The prevention of crime is in great part effected by the sure and firm administration of justice in the punishment of criminals.

For the discovery of crime and the detection of criminals testimony is necessary. One man strikes another on the public highway at a time when several per-

sons are passing. These persons are bound to give evidence before the proper tribunal, as to the striking of the blow, the person who struck it, and the person who was struck, and all surrounding facts. So with any other offence of a criminal nature against the laws.

In some countries when a crime is committed not only is the offender arrested, but all persons who happen to be witnesses of his guilt The laws of our country are not so rigorous, but strive to attain the desired end by means not altogether free from censure. No doubt it is the duty of a person who witnesses the commission of crime to bear witness against the criminal. This duty or obligation exists no matter how small or how great the nature of the crime may be. It is a duty enforceable by process of law; but as it cannot always be so enforced, justice in some cases is defeated.

It is as much the duty as the interest of every citizen to attend to his business in life—the calling whereby he earns his livelihood. Time, in a new country like Canada, is money. Neither the professional man nor the laborer ought, if it can be avoided, to be required to give up his time—to neglect his occupation for hours, days, or weeks, without compensation. It may be that he cannot afford to do so. And whether he can afford it or not, it cannot be done without loss to himself, neglect of his duties, or sacrifice of his time. Some men are more willing than others to make this sacrifice in the prosecution of wrong doers for the good of society. When the crime is one of enormity there is more than will, there is often a positive sense of duty. But for one case where this will or sense of duty exists there are one hundred cases where it does not exist. On the contrary there is to be found a positive disinclination to lose one's time and neglect one's business, for the indiscernible object termed public good, unless some compensation is made. When no such compensation is made the disinclination to bear testimony has a very lamentable effect. It has the effect of suppressing crime instead of dragging it to light. Man's selfishness is stronger than his sense of public duty, and in consequence crime triumphs and justice is defeated.

As a remedy for this state of things we think compensation to witnesses in criminal cases ought to be allowed. In England it is allowed to all classes of Her Majesty's subjects —rich and poor. In Upper Canada it is sometimes extended to paupers, and at all times denied to those more fortunate in worldly possessions.

In England there is now great discussion because of the *inadequacy* of the compensation allowed. Surely in Upper Canada, where there is an *absence of all compensation*, some discussion is needed.

We are of opinion that for the more thorough discovery of crime, and the more certain punishment of criminals, a moderate allowance ought to be made, at least to Crown witnesses, if not to witnesses for the defence. We are satisfied that as the law now stands the hardship to witnesses is only equalled by the failure of justice caused by the prevailing vicious system. The man who sees a crime committed, and volunteers evidence subjects himself to losses and crosses, which, if he were to remain silent, he might avoid. Why should he not be paid for his time as much as the judge who receives his evidence, or the Crown Counsel who elicits it? So long as this is not the case it is to the advantage of men to have eyes and see not, and ears and hear not.

The only argument against our proposal is the probable expense. Such an argument does not meet our case All persons are interested in the suppression of crime. There is no reason why the few should be made to bear the expense of protecting the interests of the many. John Brown, who saw Henry Jones stab Dick Thompson, has no more interest in the prosecution of Henry Jones than William Robinson or any other of the community who did not see the offence committed. Why then should John Brown be obliged to bear his own expenses and neglect his occupation without compensation?

As all men in a community are equally interested in the punishment of criminals, the community and not individuals should bear the expense. Is not a witness in a criminal case as much entitled to payment as a juror? Let witnesses' fees, like the other expenses of the administration of criminal justice, be paid for by the Province—in other words, by the whole community Crown witnesses in Lower Canada are freely paid out of the Consolidated Revenue Fund. Why not in Upper Canada? Besides, we see no reason why our law should in this respect differ from that of England. The following are the clauses of the English Statute, 7 Geo. IV. c. 64, the enactment of which in Upper Canada we recommend to our Legislature.

XXII. And with regard to the payment of the expenses of prosecutions for felony, be it enacted, That the court before which any person shall be prosecuted or tried for any felony is hereby authorized and empowered, at the request of the prosecutor, or of any other person who shall appear on recognizance or subpœna to prosecute or give evidence against any person accused of any felony to order payment unto the prosecutor of the costs and expenses which such prosecutor shall incur in preferring the indictment, and also payment to the prosecutor and witnesses for the prosecutor of such sums of money as to the Court shall seem reasonable and sufficient to reimburse such prosecutor and witnesses for the expenses they shall have severally incurred in attending before the examining magistrate or magistrates, and the grand jury, and in otherwise carrying on such prosecution, and also to compensate them for their trouble and loss of time therein; and although no bill of indictment be preferred, it shall still be lawful for the court, where any person shall, in the opinion of the court, *bonâ fide* have attended the court in obedience to

any such recognizance or subpœna, to order payment unto such person of such sum of money as to the court shall seem reasonable and sufficient to reimburse such person for the expenses which he or she shall have *bonâ fide* incurred by reason of attending before the examining magistrate or magistrates, and by reason of such recognizance or subpœna and also to compensate such person for trouble and loss of time; and the amount of expenses of attending before the examining magistrate or magistrates, and the compensation for trouble and loss of time therein, shall be ascertained by the certificate of such magistrate or magistrates, granted before the trial or attendance in court, if such magistrate or magistrates shall think fit to grant the same; and the amount of all the other expenses and compensation shall be ascertained by the proper officer of the court, subject nevertheless to the regulations to be established in the manner hereinafter mentioned.

XXII. And whereas, for want of power in the court to order payment of the expenses of any prosecution for a misdemeanor many persons are deterred by the expense from prosecuting persons guilty of misdemeanors, who thereby escape the punishment due to their offences; for remedy thereof be it enacted, That where any prosecutor or other person shall appear before any court on recognizance or subpœna to prosecute or give evidence against any person indicted of any assault with intent to commit felony, of any attempt to commit felony, of any riot, of any misdemeanor, for receiving any stolen property knowing the same to have been stolen, of any assult upon a peace officer, in the execution of his duty or upon any person acting in aid of such officer, of any neglect or breach of duty as a peace officer, of any assault committed in pursuance of any conspiracy to raise the rate of wages, of knowingly and designedly obtaining any property by false pretences, of wilful and indecent exposure of the person, of wilful and corrupt perjury, or of subornation of perjury, every such court is hereby authorized and empowered to order payment of the costs and expenses of the prosecutor and witnesses for the prosecution, together with a compensation for their trouble and loss of time, in the same manner as courts are hereinbefore authorized and empowered to order to the same in cases of felony; and although no bill of indictment be preferred, it shall still be lawful for the court, where any person shall have *bonâ fide* attended the court, in obedience to any such recognizance, to order payment of the expenses of such person, together with a compensation for his or her trouble and loss of time, in the same manner as in cases of felony: Provided, that in cases of misdemeanor the power of ordering the payment of expenses and compensation shall not extend to the attendance before the examining magistrate.

XXIV. That every order for payment to any prosecutor or other person as aforesaid shall be forthwith made out and delivered by the proper officer of the court unto such prosecutor or other person, upon being paid for the same the sum of one shilling for the prosecutor, and sixpence for each other person, and no more; and, except in the cases hereinafter provided for, shall be made upon the treasurer of the county, riding, or division, in which the offence shall have been committed or shall be supposed to have been committed, who is hereby authorized and required, upon sight of every such order, forthwith to pay to the person named therein, or to any one duly authorized to receive the same on his or her behalf, the money in such order mentioned, and shall be allowed the same in his accounts.

REVISED STATUTES, U. C.

We have received a copy of the proposed Consolidated Statutes of Upper Canada, fresh from the hands of the Statute Commissioners, and are constrained to defer further notice of it until our next number.

LAW REFORMS OF THE SESSION.—GENERAL REVIEW.

More members of Parliament during the present Session appear anxious to distinguish themselves as law reformers than ever we remember during any previous session. Of this the result is an abundance of bills upon every conceivable subject, ranking from the sublime to the ridiculous. We have not time—nor would we if we had time—undertake to notice one-fourth of them.

The first bill which we shall notice is that "To amend the naturalization laws of this Province," the object of which is to make three year's residence sufficient to entitle an alien to become naturalized. A second bill on the same subject, "to repeal certain acts therein mentioned, and to make better provision for the naturalization of aliens" would feign reduce the term to "one year's residence." In 1849 the term was seven years. In 1855 it was reduced to five years. Now it is proposed to reduce it to three years and still further to one year. If the term is to be gradually reduced in this manner, better do away with the necessity of any previous term of residence, and allow foreign subjects to swamp us during election times simply by taking the oath of allegiance. We doubt the propriety of such legislation. There is also a bill "to amend the law respecting titles derived through aliens." By the Act of 1841 (4 & 5 Vic. c. 7,) it was enacted that "no person shall be disturbed in the possession or shall be precluded from the recovery of any lands, &c., on the ground of his claim to the same being derived from or through an alien, provided such claim be not so derived after the passing of this Act." (s. 10.) And by the Act of 1849, (12 Vic. c. 197,) it was enacted, "that from and after the passing of this Act every alien shall have the same capacity to take, hold, possess, enjoy, claim, &c., convey, &c., real estate in all parts of the Province as natural born or naturalized subjects." (s. 12.) Thus it will be seen that persons deriving title through aliens *before* 1841 or *after* 1849 were not liable to be disturbed, while no such provision is made for persons so deriving title *between* these two periods. The object of this bill is to supply the hiatus.

Next we have a bill "To amend the Act for the formation of Joint Stock Companies for Manufacturing, Mining, Mechanical or Chemical purposes." The object of the bill is to lessen the liability of the shareholders of these Companies. At present they are "jointly and severally liable for *all* debts and contracts made by such company until the whole amount of the capital stock of such company * * * shall have been paid in." (13 & 14 Vic., cap. 28, s. 11). It is proposed to enact that "no shareholder in any such company shall be in any way subject or liable to or for the payment of any debt of such company beyond the amount

of the share or shares in the capital of the said company for which he shall have subscribed." This is the true joint stock principle; and if it is not too much to relieve companies formed for "manufacturing, mining, mechanical, or chemical purposes" from the responsibility of partnership, the amendment proposed is reasonable and deserving of support.

A bill "to authorise the improvement of water courses in Upper Canada" is one undertaken no doubt with motives most laudable, but so full of generalities, that if passed in its present shape, will, we fear, be productive of great confusion. The first clause is pregnant with inconsistency. It authorises the owners of land to *improve* any water course bordering upon or running along or passing through or across their respective "properties:" (*quære*—is this word known to the law?) *and* to turn the same to good account for their respective uses and benefit by the construction of mills, manufactories, works and machinery of *any* description; and for any such purpose "to erect and construct in and about any such water course or water courses, all the works necessary for the efficient working, such as flood-gates, canals, embankments, dams, dykes, and the like." To us it is quite a new idea that water courses may be *improved* by the erection of "flood-gates, canals, embankments, dams, dykes, and the like." Then what is meant by "water course?" Is it intended to allow enterprising millers to improve navigable streams by damming them up so as to "to turn the same to good account for their respective uses and benefit." Verily we are wise in our generation. If the English language has any meaning the first section of this bill is unadulterated nonsense. The remaining sections, three in number, are little better than the first; and so we shall leave the whole to those whose duty it will be to deal with it as legislators. Our belief is that the framer of the bill is prompted with the best intentions, but has unfortunately failed to make clear the nature of his intentions, so as to be consistent with common sense. It is said that the bill is a transcript of Statute 19 & 20 Vic. c. 104, which applies exclusively to Lower Canada. This makes it no better. The one is as much nonsense as the other and our surprise is great that the latter was ever sanctioned by the Governor General.

The bill "to amend and consolidate the usury laws of this Province, and for the better regulating of the rate of interest," will be differently viewed in Lower and Upper Canada. In the former it will be said "to go too far"—in the latter "not to go far enough." The truth is, that the bill is intended to be a compromise, and like most compromises, is a half-measure which half satisfies one party and half *dis*satisfies the other. Our usury laws are in a state of transition. In 1811, by the Statute of Upper Canada, 51 Geo. III., c. 9, six per cent. was declared to be the legal rate, and any contract for a greater rate was declared to be void, and subjected the party accepting such illegal interest to severe penalties. In 1837 by the Statute 7 Wm. IV., c. 7, an exception was made for the benefit of commerce, &c., in favor of bills of exchange and promissory notes in the hands of holders for value without notice. So the law continued till 1853, when an act passed repealing the two former acts and abolishing all penalties for usury. (16 Vic. c. 80,) and making void contracts for an amount of interest exceeding six per cent. for the excess only, (s. 3.)—a very illogical enactment. It is now proposed to repeal it. Instead thereof, there are two remedies offered in two distinct bills. The one re-enacts the act of 1853, except as to bills and notes, upon which any interest may be taken—and this is the Government measure. The other contains certain fixed rates for bills and notes, and a different rate for mortgages and other securities. On bills and notes not having more than four months to run there is to be seven per cent. On bills or notes having five months to run there is no provision for interest, we presume by accident. When the time is *not less* than six nor more than eight months, eight per cent. is to be allowed. When not less than nine nor more than twelve months, nine per cent., which is the maximum. Loans on mortgage may be at such rate as may agreed upon; but if no rate be specified, eight per cent. is to be allowed. As a safety-valve, power is given to the Executive under extraordinary circumstances to raise or reduce the rate of interest on bills or notes. This is the substance of the new usury bills, about which so much is said and so little understood. We think it a great pity that owing to the conflict of opinion between Upper and Lower Canada we may be obliged to accept such instalments of much needed legislation. No principle is recognized. Mere expediency governs, and nobody is pleased. Why not have one Law for Upper and another for Lower Canada? We see no other way of escaping the imposition of legislative monstrosities like the bills now before us. Though strange, we find a bill more Upper Canadian than either of the preceding bills recently introduced by a member of a Lower Canadian constituency. It is entitled "An Act to amend Statute 16 Vic., cap 80." It enacts generally that any rate of interest agreed upon "shall be allowed and recovered in all cases where it is, shall be the agreement of the parties that interest shall be paid,"—limits banks to seven per cent.,—and where no other rate of interest is agreed upon fixes the legal rate at six per cent.

The bill "to amend the Division Courts' Act of Upper Canada" was reviewed in our last issue, and we see no reason to alter the opinions then expressed.

The subject "of the bill to allow verdicts on Trial by Jury in civil causes to be returned, although the Jury may not be unanimous," received attention in our last issue. We look upon the measure as highly dangerous to the due administration of justice,—and in every aspect pernicious. We hope it will never appear upon our Statute book, and yet we have cause for alarm, when we remember the large support it received in the Legislative Council. The experiment is uncalled for—and being one likely to be attended with serious consequences, ought not to be risked.

The bill to abolish imprisonment for debt meets with our hearty approbation. It accords in every particular with the views which we expressed in our issue for March A check is to be placed upon the power to arrest. Instead of allowing any creditor to arrest his debtor upon affidavit of danger, the facts and circumstances must first be stated, and a judge satisfied. The right to arrest for a debt exceeding ten pounds is to be taken away. The minimum is to be as in England—twenty-five pounds. The law as to fraudulent assignments is improved. The Statute of William Fourth, making a fraudulent assignment a misdemeanor, is repealed, and with amendments, re-enacted. The bill in our judgment goes as far as judgment requires. Under it no debt can be detained in custody if he has made a full and fair surrender of his property. There is in it an effective blow aimed at preferential assignments, while assignments made in good faith for all creditors alike are protected.

The bill "providing for the separation of cities in Upper Canada from counties for judicial purposes," is carefully drawn. It provides, that a city having a population of not less than 25,000 inhabitants, may be by proclamation detached for judicial purposes from the county in which it is situate. Provisions necessary thereto as to adjustments of different kinds follow. We are not prepared to deny that the principle asserted in this bill is a good one. We incline to think that it is good. Many of the reasons which admit of cities being separated from counties for municipal apply as well to judicial purposes.

The bill "to make better provision for the punishment of frauds committed by Trustees, Bankers and other persons entrusted with property," is a transcript of a recent English act, the provisions of which must be familiar to our readers. It appears to make fraud of every kind a crime. If it is passed it will certainly be a terror to evil-doers. The only doubt is as to whether the measure though a good one for England is not too severe for Canada. We think not. If fraud is less frequent here than there, there will be less use of the bill. In such a case it will as to crimes not committed be harmless. But its operation as a preventive of crime will nevertheless be great—and we hope effectual. In our issue for September last, we pointed out the necessity of legislation on this question, and are glad to find that we shall have to wait only a short time for it.

The bill "to amend the law in relation to the jurisdiction and procedure of the several Surrogate Courts in Upper Canada, and to simplify and expedite the proceedings in such Courts" is a most desirable measure. It repeals the old Probate Act, 33 Geo. III., cap. 8., and the Act for the appointment of guardians, 8 Geo. IV., cap. 6. The main features of the Act, are that the Court of Probate is to be abolished. There is to be as at present a Surrogate Court for each County or Union of Counties. For each such Court there are to be as at present a Judge and Registrar, who are to be paid by fees. The jurisdiction now possessed by the Probate Court is as to persons dying within the jurisdiction of a particular Surrogate Court transferred to that Court. Hence the jurisdiction of the Surrogate Court is enlarged. There is power, when necessary, to take the opinion of a jury, which is also a new feature. There is moreover under certain restrictions, a right of appeal given to Chancery. Affidavits may be administered by a commissioner appointed by any of the Superior Courts. This alteration will of itself, supposing the parties to an administration to live only twenty-five miles from the County Town, be a saving to them of at least $20. Power is given *to a Judge of the Superior Courts of Common Law*, a Judge of Chancery and a County Court Judge to be appointed by the Executive to frame general rules and orders for the government of Surrogate Courts. Hitherto to call them Courts was a misnomer. If the bill now under consideration pass, the foundation for that charge will be removed. To the profession there will be in fact an introduction to the Courts of which heretofore they knew as little as of the Courts of Hayti. Persons having business at these Courts will be able to secure professional skill, not only to facilitate their business, but by their very retainer to prevent delays. Hitherto delays might be short or long—even very long, and no one was the wiser. If this bill pass, no delay can take place without the cause being known. One of the chief necessities of a Court is Procedure. This hitherto in these Courts, either did not exist, or if existing was unknown beyond the precints of the Court. The present bill will enable any man who can read to possess himself of that which before was unknown even to men learned in the law. It combines all the solid benefits of decentralization with all that is beneficial in centralization. The unmeaning law of *bona notabilia* is abolished, and the grant of probate will be, as it ought to be, in the place most convenient for the parties, viz., in the county in which

the deceased resided at the time of his death. It may seem ungenerous to notice a matter in no way affecting the merits of a bill which commends itself to the profession and the public, but we cannot help expressing our regret that it has been thought necessary to cut down the fees in Schedule B. They were before this bill already too low. But as economy is the order of the day, we must assume that it explains why something is taken from Peter to enrich Paul. Upon the whole we do not hesitate to recommend the measure as one deserving support. It will be to the country as great a boon, as it is an honor to its introducer.

The bill to amend the law of dower is in the main also entitled to support. It embodies our ideas as expressed in our issue for last December. Dower as it is now is an absurdity. It is the cause of much mischief and little good. It clogs the sale of land in order to mock widows with what the law is pleased to term "support." For one widow who derives any advantage from the law, hundreds of men have their lands depreciated and themselves well nigh beggared. Dower in England has outlived the reason of its existence. In Canada it was never applicable, and ought never to have been introduced. The bill before us by giving to the husband the power of freeing his land of dower does no more than the law of England now permits a husband there to do. It may be said that it is cruel to widows. The whole community does not consist of widows—they are, we are glad to say, a very small portion, though a *fair* portion of the community. It is wrong therefore to preserve a law which directly or indirectly injuriously affects every landholder in the Province for the problematical sustenance of a few women unfortunately deprived of their husbands. At present, owing to this very cause, the trouble of investigating a title is endless. It is presumed that every man is married. When a man signs a deed and no wife joins, it is presumed that there is an outstanding dower. So the presumption is made as to several dowers, when the land has passed through many hands. Inquiry is at great expense made as often as the title is investigated. And not in one case in fifty is it found that the bargainor was a married man at the time of the conveyance. This we write from experience. The majority of men who marry and acquire real property have sufficient prudence to preserve, if not to accumulate it. We have sufficient confidence in such men to say they will provide for their widows. To give to a widow dower in every case is to suppose that the husband either will not or can not make provision for her, and this we hold to be opposed alike to natural affection and every day experience.

Rarely, if ever, does a married woman when asked by her husband decline to bar her right to dower. It is expected of her. When she does not do so, it is generally owing to neglect. To make that neglect the cause of a subsequent claim is needlessly to disturb men in the enjoyment of their land—to embarrass the transfer of real property—and when we consider how little the widow gains by it, we cannot regard the law otherwise than a dog-in-the-manger policy of the worst description.

The bill "to make better provision for the collection of claims against the owners of vessels navigating the lakes and canals in Upper Canada" is a very necessary measure. It provides generally that any debt or liability contracted by the owner, master, agent, or consignee of any ship or vessel within the Province.—1. For goods, wares, merchandise, or provisions furnished for the use of such vessel. 2. For labor, repairs, or any kind of work done to or upon such ship or vessel. 3. For towing such ship or vessel with any steam vessel, horses, or otherwise. 4. For damages done to any other vessel or property by collision—shall be a *lien* upon such ship or vessel and preferred to all others. There being no Admiralty law in Upper Canada the most flagrant wrongs have been committed, and no remedy or an insufficient remedy only existed. The masters, &c., of vessels are not at all times men of property. Their occupation is such that one day they are here and another day may be far beyond the reach of our laws. Without some mode of detaining them or their vessels the law is frequently powerless. The principle of the bill before us is good. We believe the details will require much consideration. On this occasion we have neither time nor space to enter into an examination of the machinery proposed.

The bill "to amend the Act repealing mortgages and sales of personal property in Upper Canada" is very objectionable. As the law now stands, all such instruments must be registered "in the office of the Clerk of the County Court of the County or Union of Counties where the property mortgaged or sold shall be at the time of the execution of the instrument." (20 Vic., cap. 3, sec. 5.) It is proposed to have them registered "in the office of the Clerk of the Township or United Townships, City, Town or Village in which the mortgagor or bargainor shall reside at the time of the execution thereof." The objection to this is, that to meet the convenience of two persons a great many are inconvenienced. The object of registry is to give notice to the public or to make things so that notice may be easily obtained. The office of the Clerk of the County Court situate as it is invariably in the County town, is much more accessible to the general public than the offices of Township Clerks. Besides the duty is one which never can be expected to be performed as well by Township Clerks as Clerks of County Courts. We believe that the

registry of bills of sale and chattel mortgages is sufficiently de-centralized at present. Indeed we think that if the proposer of the present bill were to strike out all that it contains and amend the former acts by making it necessary for *Clerks of County Courts to furnish returns to a central registry* to be kept in Toronto, he would be doing good service to the community, which at present he is not doing. The analogy is perfect in the offices of the Deputy Clerks of the Crown in each County, with a principal office in Toronto.

The bill "to amend the act passed in the twentieth year of Her Majesty's reign, intituled, An Act to extend the right of appeal in criminal cases in Upper Canada" is so necessary that no one can dispute it. The 20 Vic., c. 61, enacts that "no sentence of death in any case of capital felony shall be passed to take effect until after the expiration of the *terms* next succeeding the sitting of the Court at which such sentence of death shall be passed," (s. 5.) This is a clear error. We said so the moment we first read the Act and so expressed ourselves in our issue for October last. It is now proposed that the word "terms" be struck out, and the word "term" inserted in lieu thereof. The Judges' have construed "terms" to mean at least *two* terms, and so have held *in favorem vitæ*. The bill now before the Legislature will remove the doubt caused by a mere clerical error and make the Act of 1857 to speak what it really meant.

The bill "*to amend and consolidate the Jury laws of* Upper Canada," containing no less than one hundred and eighty-one clauses, is an important measure. It recites that it is expedient to amend and consolidate the various Acts relative to the mode of selecting Jurors in Upper Canada, the performance of their duties and the remuneration to be by them received, with a view to reduce the expense attending the present system, and to obtain a better class of Jurors than are now obtained. If the bill should be at all effectual as to either of its declared objects it will be a treasure. The lamentable inefficiency of many jurors who now grace jury boxes is a theme of constant remark. Property qualification is of itself no qualification for a juror. What we want is intelligence and honesty Without the one the administration of justice is a delusion. Without the other it is a snare. One thing of all others remarkable in the bill before us is that, while professing to consolidate "the various Acts" (32 Geo. III., cap. 2; 12 Vic., cap. 36; 13 & 14 Vic., cap. 58; 14 & 15 Vic., cap. 14; 14 & 15 Vic. cap. 65; 16 Vic., cap. 120; 18 Vic., cap. 130; 19 & 20 Vic., cap. 92) now in force, it does not repeal a single one. This we take to be a fault of omission. The second clause of *the bill preserves the good old rule "of a unanimous* verdict of twelve jurors duly sworn." It ignores all the vapid theories of majority visionaries. The bill being a government measure, we presume the government is pledged to the principle of this clause, and that we shall be rescued from the impending danger of the bill which "the Senate" *in its wisdom has passed. Following the second clause* there is a methodical arrangement of the remaining clauses. 1. Qualifications, exemptions, and disqualifications of Jurors. 2. Selection and distribution of Jurors from the assessment roll. 3. Jurors' book and second selection of Jurors. 4. Selecting Jury lists from Jurors' rolls. 5. Jury process. 6. Drafting panels from Jury lists. 7. Summoning Jurors. 8. Drawing at trial. 9. Challenges. 10. Special Juries. 11. View's Juries de Medietate Linguæ and Inquests 12. Application of certain provisions to Cities and Recorders Courts. 13. Omissions not to vitiate verdicts. 14. Payment of Jurors 15. Fees to Officers. 16. Penalties. 17. Miscellaneous Provisions. 18. Schedule. The length to which our observations have already extended, prevents us at present examining the minutiæ of this elaborate bill. We can only say from what we have read of it, that it appears to be ably conceived and ably executed.

The bill "to secure to Married women certain separate rights of property," having been originated in and passed by the Legislative Council is now before the Legislative Assembly. It deals with a subject upon which legislation is required; but we scarcely think it furnishes the legislation *necessary. The difficulty of at all mastering the* law of husband and wife has in England until recently, deterred her most experienced and most gifted jurists. It is a delicate, and it may be unsafe, thing to enact that husband and wife shall no longer be one but two persons. The dependence of the wife upon the husband has long been recognized as a guarantee of connubial felicity. The absolute dependence may in some cases work hardship. Why not then proceed by making provision for exceptional cases instead of making exceptional cases the basis of general legislation. This is what the bill before us does. It makes every married woman possessed of property, real or personal, quoad the property, independent of and separate from her husband. She may do with it as she pleases. She may enjoy it in "as full and ample a manner as if she continued sole and unmarried." She may make separate contracts—she may make devises and bequest—she may fancy her good man "down among the dead men," and govern herself accordingly in all matters of property and civil rights. This is we fear going *too* far as an experiment. It is going further than has yet been done in England. It is putting on the Statute book all that Mrs. Norton demands, and more than the *English Legislature has yet acceded. We recommend to* our Legislature the careful perusal of the English Marriage

and Divorce Act of last Session. It admits of an application to the tribunals of the land for the protection of a married woman under certain circumstances in the exclusive enjoyment of her property. It vests a discretion where discretion ought to exist, instead of doing away with all wholesome checks as in the bill now before our legislature.

The bill "to amend the Act to authorize investigations in the case of accidents by fire," extends the Statute 20 Vic., cap. 36 which is at present re .ected to "Cities, Towns, and Villages," to cases of fir occurring in rural districts." The extension, though we fancy little required cannot do much harm. In this respect the bill possesses a negative, not a positive recommendation. It matters little whether it becomes law or not.

The bill "to define the liability of conveyancers" commends itself to every thinking man; and we believe that all readers of the *Law Journal* are thinking men. The principle of this bill is just and sound. A man who undertakes to do a thing for pay, and is paid a fair compensation, ought to be liable in law as he is in conscience to make good whatever loss the party for whom the work is don. suffers in consequence of the work being negligently or improperly done. Cases daily come under the notice of the profession in which whole families are ruined by either negligence or unskillfullness of men calling themselves conveyancers, who now enjoy the immunity of being free from liability for the results of their negligence, stupidity, or ignorance. We sincerely hope a measure so just and so necessary as that now before the Legislature will meet with hearty support.

UNIVERSITY OF TORONTO.—LAW FACULTY.

Academical honors are at all times pleasing to us. We have reason to know they are not to be had in either of our Toronto Universities for the asking. The governing body of Trinity College, in its wisdom appears to have done away with lectures in law. If we mistake not the Legislature has done the same for the University of Toronto. In the latter University it would however appear, that examinations in law are still had, degrees still conferred, and medals still awarded to gentlemen who distinguish themselves.

At the recent examination of the University of Toronto medals were awarded to the following gentlemen upon their passing their final examination in law for the degree of LL.B.:—

Gold Medal W. H. Bowlby, B.A.
Silver " C. E. English, M.A.
" " D. A. Sampson, B.A.

HISTORICAL SKETCH OF THE CONSTITUTION, LAWS AND LEGAL TRIBUNALS OF CANADA.

Now that public attention is being directed to the propriety—nay, the necessity of a fusion of the laws of Upper and Lower Canada, we have great pleasure in being able to announce that an original essay on the above subject will be forthwith published in the pages of this Journal.

It will be commenced in our next issue, and continued monthly till completed. The aim of the writer will be to narrate,—not to discuss.

His materials are, we are informed, the best that can be had,—consisting of several French and English Manuscripts and publications now out of print. To this may be added all the information that can be gathered from *Edits, Arrets,* and *Ordonnances* of the French Government and of the Province of Quebec, together with *Ordonnances* and Acts of the Parliament of the Provinces of Upper and Lower Canada, and of Canada. No pains will be spared either in research or compilation, that can be made tributary to the object of the writer. The period embraced will be nearly three centuries, that is, from the settlement of Canada by the French to the present day.

DIVISION COURTS

OFFICERS AND SUITORS.

The circulation of the *Law Journal* amongst the Clerks and Bailiffs of Division Courts, although considerable, has not reached the extent it should have done by this time, considering that it has been more than three years in existence, and that its usefulness to that class of men especially has been so fully and generally recognised and declared both by County Judges, and other competent authorities.

We have heard of one County Judge at least, who makes the *taking* and *reading* of the *Journal* a condition of his Clerks and Bailiffs *holding office*, on grounds somewhat analaguous to those on which the law compels persons about to enter a profession to pass an examination to determine their fitness before allowing them to enter on the performance of duties affecting the interests of the public. None but properly qualified men should be allowed to hold office; and although there is no form of an examination for the candidates for public offices, yet in most instances the men who are chosen to fill them are taken from that class of society the members of which, with few exceptions, receive a liberal education, sufficient to enable them to undertake any duties which do not require a special training: so that for this reason we generally find incompetency to be an exception.

The offices of Clerk and Bailiff in the Division Courts, and the men who usually fill them, cannot however be

judged by this rule. The offices are such as require in their incumbents not only a fair share of education and cleverness, but also a knowledge of the law by which these Courts are governed; and the officers, from the decentralized position of the Courts, are of necessity in many instances farmers and men whose business was not such as to have fitted them for their new occupation, and in hardly any case can a man be found possessing at first the requisite kind of information and experience.

Under these circumstances how could it be expected, or how could it be possible that the important and responsible duties which devolve on these officers should be properly and faithfully performed with advantage to the public unless they had some means of informing themselves of their precise nature and extent, and availed themselves thereof.

Our Journal was established at first mainly with a view to this end—to add to the usefulnes of these Courts and thereby to benefit the public at large—and although we may have extended our sphere we have in no wise departed from or forgotten this important object, or neglected to use any means which lay in our power for its advancement; and we can hardly be accused of expecting too much if we look to find on our subscription list the name of *every* Clerk and Bailiff in Upper Canada—nay, more, we think that a County Judge would not be overstepping the boun ls of duty by urging on each of the officers under his control in a manner not to be *misunderstood* by them, the necessity of making themselves familiar with the pages of the *Law Journal*. If it be the duty of the Judge to select men fitted for the office, as well as they *can* be in such cases at first—it can be no less so to see that they take measures to qualify themselves more fully, and to keep pace with the continual development of the laws that they assist to administer.

We have taken the trouble to make enquiries lately in respect to the public feeling in different Counties in regard to Division Courts, led thereto by having seen some articles of a character unfavorable to them and their working in local papers and we find a marked contrast between those Counties where the *Journal* is generally taken by officers, and those where it is not, in the estimation in which the Court is held and entirely in favour of the former. It could not well be otherwise, for whilst we point out the path of duty we do not omit to warn of the danger attending its neglect, and athough the ignorant or ill disposed may transgress on the plea of knowing no better, it is only the foolhardy who will venture to do that which he knows to be wrong.

We have ever been the advocates of that system which brings justice as it were to every man's door, and we have a claim which should not be overlooked or forgotten on all those whether officers or suitors whose just interests we have endeavored to advance or to whom the good of the public is an object.

ANSWERS TO CORRESPONDENTS.

To the Editors of the Law Journal.

April 21, 1858.

GENTL.. .EN,—In your last number I find an opinion expressed upon a very important question, which may possibly receive some further notice from you. I refer to your answer to the correspondent "T. B." In the absence of the question put to you, the reader may perhaps not see the full force of the expressions you use. You say, "Our own view is, *a claim of possession is not a claim of title to land.*" And you add, in a separate sentence, "It may be that in its most comprehensive sense the term *title* embraces the possession, but not in the sense in which it is used in the Act, so that a defence which would amount to a plea of leave and license would not *of necessity* bring title to the land in question." I have italicised some parts of the above, to which I wish to draw your attention. That a defence of leave and license would not "of necessity" bring up the question of title seems plain enough.—For instance, there might be a permission to enter and remove a crop, or a right, as of an outgoing tenant to take the away-going crop, that right being given to him in a lease which had expired, there being no dispute as to the expiry. But suppose a defence of leave and license, in support of which the defendant sets up a lease, the validity of which the plaintiff denies? Or, in view of what you lay down, namely, that "Claim of possession is not a claim of title," take the case of a Defendant setting up a lease which the Plaintiff says has expired and thus disputes the continuance of the title of "possession." Is not the defence in either case a claim of "title to land?" I cannot help thinknig that it is, and the right of the Division Court to try such a question seems to me to be more than doubtful.

The Act of 1850 excepts "any cause involving the *right* or *title* to real estate." The Act of 1853 forbids the trial of every cause in which "the title to any corporeal or incorporeal hereditaments shall be in question." The term "title," as a legal phrase, you seem to admit, embraces, in the most comprehensive sense, the right to possession. I submit that nothing can be more comprehensive than the sense in which it is used in these enactments. If you restrict the interpretation, a large majority of disputes as to land would come before the Division Courts, and a difficulty will also meet us in th.s way—we shall be at a loss to say *how far* it shall be restricted. It cannot have been the intention of the Legislature, one would think, to permit the trial of all the nic questions of tenancies to be disposed by a tribunal which must decide summarily, often under great disadvantages, and from which there is no ready appeal. But let the interpretation be the comprehensive one to which you refer, and the Courts will know readily where to stop; questions proper for another tribunal where *law* can be better discussed and decided upon, will go to that tribunal, and we shall have a practice alike consistent with the *words* of the statute, the "*comprehensive*" and legal signification of those words, and, I think, with the ends of justice.

Yours, C.

[We feel obliged by the above communication and very willingly insert it.

Our opinion had reference to a case where a plea of "leave and license" was put on the record in an action for trespass on land, and we considered that the pleadings were not conclusive evidence that "title to land" was in question—the plea not of necessity demanding that conclusion.

We should be happy to receive the case to which our correspondent refers.—EDS. L. J.]

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

(*For the Law Journal.*—By V.——.)

[CONTINUED FROM PAGE 83, VOL. 4]

PROTECTION TO BAILIFFS.

Officers and persons acting in their aid have special protection under the Division Courts Act. This protection in

respect to actions against them will be noticed under another head. Of that protection which a Bailiff is entitled to receive when acting in Court, little need be said as the Judge will take care that he is not insulted with impunity. By the 13th section of the D. C. Act, every Bailiff is required "to exercise the power and authority of a constable and peace officer during the actual holding of the Division Court." And by section 75, should any person wilfully insult an officer during his attendance in Court, the offender may be taken into custody by order of the Judge and fined.

Upon this it may be remarked that as the power rests with the Judge to punish it will doubtless be exercised should occasion require, and however gross the insult the Bailiff should not retort or give word for word to the offender. The law through the Judge is the officer's protection and shield, and will vindicate him against the wrong-doer.

If the Judge has not heard or seen the insult offered —for it may be by gesture as well as words, the Bailiff may state the fact to the Judge and solicit the protection of the Court. Should the Judge have heard the objectionable language, it becomes the officer to remain silent, for the Judge will act without solicitation if rebuke or punishment be called for.

Penalties for assaulting Bailiffs and recovering goods taken in execution may be ranked under the head of protection to officers. By the 100th section of the D. C. Act, "If any officer or Bailiff (or his deputy or assistant) be assaulted in the execution of his duty," the person offending is liable to be fined. In the language of this section— "officer" (or clerk) is distinguished from Bailiff, and the office of Deputy Clerk is recognized by the Statute. The words in the clause, "his deputy," would appear to refer to the Clerk—the words "his assistant," to the Bailiff.

It is further provided by this clause—"That if any rescue shall be made or attempted to be made of any goods and chattels, or other property seized under a process of the Court, the person so offending shall be liable to a fine." The fine in either case is £5, and it may be recovered by order of the Court, or before any Justice of the Peace for the County, and the offender may also be imprisoned for any term not exceeding three months.

It is further provided that, the Bailiff or any peace officer may take the offending party into custody with or without warrant and bring him before the Court or a Justice of the Peace, to be dealt with according to law.

If the Court be sitting at the time of the offence committed, or its sittings are immediately about to take place, it will be better that the offender should be taken before the Court that the law may be promptly and publicly vindicated and a final decision obtained, but in any case in which the offender is arrested without warrant, unless the hour be unreasonable as at night, in which case he may be secured in a lock-up, or other convenient place till the next day, the party should be brought promptly before the Court or before a Magistrate, and a complaint be formally lodged, as any unreasonable detention would not be justifiable.

The general rule of law as to arrests by constables without warrant, would govern arrests under this section.

THE MAGISTRATE'S MANUAL.

BY A BARRISTER-AT-LAW —(Copyright Reserved.)

[*Continued from page* 84, Vol. IV.]

I.—Information or Complaint.

The first proceeding before a magistrate when appealed to ministerially, is the information or complaint. The party giving information or complaining tells his story, which the magistrate or his clerk generally reduces into writing. No information need be under oath unless intended as the foundation for a warrant to arrest in the first instance, or unless expressly required by statute to be under oath.* The magistrate before taking the information ought to be satisfied *first* that some person named has committed or is suspected to have committed treason, felony, or other indictable misdemeanour or offence, and *secondly*, that such offence *was committed within the limits of his jurisdiction*, or that the person guilty or suspected to be guilty, having committed the offence elsewhere out of his jurisdiction, *is residing or being, or is suspected to reside or be within his jurisdiction.* †

Form.—The information may be in this form:

Province of Canada: (*County or United Counties or as the case may be*) of ——.

The information and complaint of C. D. of ——, (*Yeoman*) taken this —— day of ——, in the year of our Lord ——, before the undersigned (*one*) of Her Majesty's Justices of the Peace, in and for the said (*County or as the case may be*) of ——, who saith that, &c., (*in stating the defence.*)

This form is taken from statute 16 Vic., cap. 179,—intituled, "An Act to facilitate the performance of the duties of Justices of the Peace out of sessions in Upper Canada, with respect to persons charged with indictable offences;" an act of the greatest utility to which we shall have occasion frequently to refer. Appended to it there are many forms which ought when possible, to be used. A departure from them however, does not of itself make a form otherwise good at all exceptionable. The Statute enacts—"That the several forms in the schedule contained —*or forms to the like effect*—shall be good, valid, and sufficient in law." (sec. 20.)

The form of information which we have above given, cannot be deemed more than a skeleton. We shall now proceed to examine its details and so point out the necessary parts of every information or complaint.

Complainant's name, i. e., "the information and complaint of C. D. of, &c." There is no rule of which we have any knowledge, which declares that the name of the informant *shall* be stated in every information. The form given in the Act, supported by universal usage and long practice, inclines us to the belief that in every information the name of the informant *ought* to be stated. It is only consistent with the open and fair administration of justice, that a person accursed of crime should as a rule be informed of the name of his accuser. By this means, motives may be detected—and causes laid bare, so as not only to show that a groundless charge has been preferred, but *why* the particular complainant preferred the groundless charge.

* Basten v. Carew, 3 B. & C., 649; 16 Vic., cap. 179, sec. 4.

† 16 Vic, cap. 179, sec. 1.

Date when exhibited.—The information continues, "taken this —— day of ——, &c." An information taken by a magistrate, is in technical language said to be "exhibited." There are several reasons why this date should be made to appear on the face of the information. One is to show that the information was made subsequent to the offence. Another is to show the time when proceedings were commenced so that if there be any limitation as to time, the commencement within proper time may be made apparent from the paper themselves. An error in this date however is not fatal if the true date be made to appear from the evidence or other proceedings.*

Style of magistrate, "before the undersigned one of Her Majesty's Justices of the Peace in and for, &c." This must appear on the face of the information, so that thereby it be shown that the person acting has authority so to do. † Stating one-self to be a Justice "*for* the County," instead of "*in* and *for*," seems to be bad. ‡

Defendant's name, "who saith that E. F., &c." The name of the defendant so far as known must be stated—so if more than one the name of *every* defendant: it was therefore held bad to describe several defendants as "Messrs. Harrison *and Company.*" ‖ It does not appear that any addition such as yeoman, is essential in the description of defendant. §

U. C. REPORTS.

QUEEN'S BENCH.

Reported by C. Robinson, Esq., *Barrister-at-Law.*

NEWBERRY v. STEPHENS ET AL.

MUNICIPAL LAW.

Taxes—Extension of time for collection—Duration of collector's authority—His right to appoint a bailiff—Costs—Tender

The time for levying a school tax in the city of Kingston, imposed by by-law in December, 1855, was extended by resolution of the city council, under 18 Vic., ch 21, sec. 3 until the 1st of August, 1856, and again, on the 22nd of December, 1856, to the 1st March, 1857.

Held, that the collector, who was the same person for both years, might distrain between the 1st of August and the 22nd of December, 1856, although no resolution extending the time was then in force: *McLean* J., dissenting.

Replevin, for two silver spoons, eight tea-spoons, and a sugar tray.

Plea—Not guilty, by statute.

At the trial, at Kingston, before *Hagarty,* J., it appeared that the defendant Stephens was collector of taxes for the city of Kingston, and Conley acted as his bailiff. £1 8s. was claimed from the plaintiff for school tax, which he tendered to Conley, who would not receive it without the costs. The things were afterwards seized, and were replevied by the plaintiff.

It seemed that two assessments were made for school purposes in 1855, each for the same amount; and the plaintiff, thinking that he was charged with the same tax a second time, at first refused to pay it. Afterwards, finding his mistake, he tendered it to the constable, who demanded also the costs of the warrant of distress, which had issued, 5s., which the plaintiff refused to pay. The bailiff in consequence seized the goods, which gave rise to this action.

The school trustees, in August 1855, had called upon the municipality of Kingston to levy £1,600 for school purposes, and in order to comply with this request a by-law was passed on the 19th of December, 1855, authorising a rate of 7d. in the pound on the property assessed for 1855. The time for levying the money was extended by the corporation from time to time, by resolutions, till March, 1857, the last postponement being by resolution passed on the 22nd of December, 1856.

The time had been last extended before that to the 1st of August, 1856: and the plaintiff contended that there being no resolution passed after that day until the 22nd of December, 1856, there was no authority to levy at the time when his goods were seized namely, on the 5th of December, 1856.

The roll for 1855, *exclusive* of school taxes, was made up on the 6th of September, 1855, and certified on the 6th of December following. It shewed the plaintiff to be assessed for property amounting to £48, which, at 7d. in the pound, made the school tax £1 8s. This school tax was added in the roll after the 11th of December, 1855, and before January, 1856, as the city clerk stated. On the 14th of December, 1855, the collector had received from the plaintiff £6 4s., being his rates for general purposes for 1855, on the same property.

On these facts a verdict was rendered for defendants, leave being reserved to the plaintiff to move to have the verdict entered in his favour for 10s.

Wallbridge, Q. C., obtained a rule *nisi* accordingly. The grounds taken were, that the defendants had no right to take possession of the goods, the time allowed therefor having expired: and that the plaintiff had tendered to the defendants, before seizure, the amount for which they distrained.

Richards shewed cause.

The statutes bearing upon the question are referred to in the judgments.

Robinson, C. J.—This action is an unreasonable one on the part of the plaintiff, for if the necessity of a distress was occasioned, as it seems to have been, by his refusing to pay what he was really liable for, and if his refusal can only be excused by his having himself fallen into an error, he should surely have been content to bear the natural consequences of his own mistake, and should have paid for the warrant, rather than get up a law suit about five shillings costs. He contended that the distress was illegal, first, because there was no power to distrain on the 5th of December, 1856, on which day the seizure was made, the last postponement before that being to the 1st of August, 1856, which day had long passed. This is assuming that the effect of the statute 18 Vic., ch. 21, sec. 3, is to disable the collector for the year from distraining during his year after the 14th of December is passed, unless while there is a resolution of the municipality *in force* extending the time for collecting to some day which has not yet expired. There is much in the language of the clause referred to to favour what the plaintiff contends for, and I am not sure that one or both of my brothers do not take that view of the effect of the clause.

I do not for my own part take that to be the correct view. To understand the question we must look at the statutes 13 & 14 Vic., ch. 48, sec. 12, sub-sec. 2, and sec. 24, sub-secs. 6 and 7; to 16 Vic., ch. 182, secs. 39, 42, 46, and 47; and 18 Vic., ch. 21. We shall there see that the collector of taxes has, as a general rule, to make up and return his collections on the 14th of December in each year, and that in his return, if he has not collected all the sums set down in the collector's roll, he is bound to state how it happened that he did not collect them; and then, the obstacle being known, it is pointed out in the act what steps the municipality may take for enforcing the payment of those arrears which the collector has been unable to levy. But as it would be more convenient to have the taxes collected in the ordinary manner by the collector, whenever that was still practicable, the legislature provided a means for leaving that open to him, by permitting him, under the sanction of the municipality, to defer making that final report, which in general he is to make on the 14th of December, to such further day or days as they might appoint, in order that he might not be *functus officio* for that year in regard to his collections, by having given in his final report, and stated his inability to collect such arrears, as he would be bound to state; which final statement of his would necessarily, under the Assessment Act,

* Rex. v. Kent, 2 Lord Rayd, 1546. Rex. v. Fuller, Ib. 510 Rex. v. Picton, 2 East, 196. Rex. v. Chandler, 14 East, 272.

† Rex. v. Johnson, 1 Str. 261, Kite & Lanes' case, 1 B. & C., 101; Re Peerless 1 Q. B. 143.

‡ Reg. v. Stockton, 2 New Sess. cases, 16.

‖ Rex. v. Harrison, 8 T. R., 508.

§ 1 Burns, J., 966.

leave the payment to be enforced by another and less convenient proceeding.

But with all deference for the contrary opinion, I cannot think it reasonable to hold the legislature to have intended by these enactments, that so long as the collector has not returned his roll, he is not at liberty to go on and levy when he finds a distress, although the 14th of December may have passed, or any other day which has been given him for making up his return.

The intention of the act, I think, is not to leave the collector under the absolute necessity in all cases of concluding himself on the 14th of December from any further discharge of his duty, by making up and finally returning his roll and thus putting the matter out of his hands. It could never have been meant to restrain him from collecting whatever he can collect before he has sent in his final return. If, for instance, a collector, without any authority from the council to postpone his return beyond the 14th of December, should delay making it till the 25th of the month, he could, I think, distrain in the meantime for any arrear of taxes, which he had either neglected to levy, or could not find names of levying before.

The rate which has given rise to this question was imposed by a by-law, which was not passed till the 11th of December, 1855, and could hardly have been collected before the 14th of December in that year, when the collector in the ordinary course was to make his return; and it was not proved at the trial, indeed, that the rate had been placed on the collector's roll until after the 14th of December, 1855. It was sworn that it was put in between the 11th of December (the passing of the by-law) and the 1st of January, 1856, but whether before or after the 14th of December does not appear. The 3rd section of 18 Vic., ch. 21, does not seem to apply to this case, for the defendant Stephens, who was collector for 1856, did not after the 14th of December in that year return this rate of £1 8s. as a sum which he could not collect, or had failed or omitted to collect, for in fact he had seized goods before that day; and assuming that this was a sum which it was the duty of the collector for 1856 to collect, he was at liberty to go on and collect it on the 5th of December, 1856, when there was no order of the council any longer in force postponing the collection.

As to the second ground—that the collector or his bailiff could not distrain after the amount had been tendered, which he was authorised to levy—that is no doubt true, but do the facts of the case support the exception? That depends on the question whether there was a right to insist upon the plaintiff paying the charge for the warrant. Clearly it was the duty of the bailiff to levy the costs in addition to the rate, but it has been argued that the collector ought not to have given a warrant to any one else, but should have distrained himself, in which case no warrant would have been necessary. The statutes do not in terms direct that the collector shall do the duty of a bailiff in distraining; and in my opinion he could employ a bailiff for that purpose, and the plaintiff therefore was liable to the charge, which that occasioned, and so did not, in tendering the bare rate, tender all that was necessary for stopping the distress, for he should also have tendered the costs of the warrant. Wherefore, in my opinion, this rule should be discharged, and the verdict stand for the defendant.

McLEAN, J.—The defendant Stephens was collector of taxes in Kingston, in 1855. The collector's roll for ordinary city purposes was made up by the city clerk, as stated by him, about the 6th of September, 1855, and must have been delivered to the collector soon after, as the notice to the plaintiff demanding payment of the sum of £6 4s., the amount of his assessed taxes for 1855, bears date on the 10th of September. A demand had been made on the 4th of August, 1855, by the board of school trustees, for the sum of £1600, to be raised for school purposes. That demand was in sufficient time to have admitted of the school rate being entered upon the collection roll before it was given to the collector, but nothing was done till the 11th of December, when a bye-law was passed, imposing a rate of 7d. in the pound on all assessed property, for the purpose of raising the required amount for schools. The amount of rate so imposed was entered on the collector's roll between the 11th of December and the 1st of January, but at what particular time does not appear. On the 14th of December the plaintiff paid to the collector, as appears by his receipt, the amount of tax for ordinary city purposes; and from the fact that the school rate was not then demanded, it may be inferred that such rate was not then entered on the roll in compliance with the provisions of the 39th section of 16 Vic., ch. 182. By the 46th section of that act it became the duty of the defendant Stephens, as collector, to return his roll to the city chamberlain on or before the 14th December, 1855, unless the *municipal council* of the *county* appointed some other day not later than the 1st of March then next, for that purpose.

The roll was not returned by the collector on the 14th of December; and it does not appear that the *municipal council* of the *county* appointed any other day for the return, nor does it appear that the city council of Kingston, as authorised by the 3rd section of 18 Vic., ch. 21, passed any resolution or took any steps to "*authorise* and *empower* the collector, or any other person in his stead to continue the levy and collection of the unpaid taxes" till the 22d of April, 1856, when the time for such collection was extended to the 1st of July following. From the fact stated by the city clerk on the trial, that the city council extended the time on the 30th of June, 1856, up to 1st of August, and then again from the 22nd of December, 1856, up to the 1st of March, 1857, it is evident that some portion of the rates, for some cause or other, remained unpaid, and that these extended periods were considered necessary to enable the proper officer to collect the amount Between the 1st of August and the 22nd of December there was no resolution of the city council "*empowering* the collector, or any other person in his stead, to continue the levy and collection of the unpaid taxes;" so that during that period the *power* was suspended. By the 46th section of 16 Vic., ch. 182, the time for returning the collector's roll on the 14th of December might be changed by the *county* council to any day not later than the 1st of March following. Then, by the third section of 18 Vic., ch. 21, in the event of any of the taxes remaining unpaid on the 14th of December, or on such other day in the year as may have been appointed by the *municipal* council of the *county*, the city council had power by resolution to authorise and empower the collector, or *any* other person in his stead, to *continue* the levy and collection of such unpaid taxes in the manner and with the powers provided by laws for the general levy and collection of taxes. What the resolution of the city council was authorising the collector to proceed with the collections between the 30th of June and 1st of August, 1856, does not appear; but assuming it to be sufficient for the purpose, it is pretty obvious that by limiting the period for collection to the 1st of August the council expected the work to be completed by that time. At all events they did not, on the 30th of June, give to Stephens any time beyond the 1st of August to collect the amount of his roll. Without any resolution, then, of the city council authorising the levy and collection of the taxes unpaid, the defendant Stephens, by his bailiff, seized the property of the plaintiff on the 5th of December, 1856, for the school rates, and certain costs claimed to be due for the warrant and seizure, and removed the same from his possession. In thus acting it appears to me he acted illegally, and that the plaintiff was entitled to replevy his goods.

If it was competent to the defendant to proceed in his character of collector after the 1st of August, without any power or authority from the city council, but such as his first appointment gave him, then the provisions of the third section of the 18th Vic., ch. 21, are unnecessary and superfluous, and the city council of Kingston, by their several resolutions extending the time up to the 1st August, 1856, only gave to the collector Stephens an authority and powers which he had before. But it is manifest that the legislature considered that any collector would be *functus officio* as to any taxes unpaid on the 14th December, or at such other time, not later than the first of March, as might be appointed by the *county* council; and as it might happen that the *county* council might omit to appoint any time, it was intended, by the third section, to place it in the power of the municipality interested in the collection to proceed by *resolution* notwithstanding such omission. When the period limited by the resolution of the 30th June had expired, the defendant Stephens could not be certain that he, though he had acted as collector, would be longer continued in that duty by the city council, for the statute enabled that body by resolution to *authorize* the collector, or *any other person* in his stead, to continue the levy and collection. Till that power was execised, and while it was uncertain whether the col-

lector or another in his stead would be chosen by the council, the collector could not, by continuing to act, deprive the council of the right which they had to appoint another to discharge those duties which he had failed to perform within the period allowed to him.

It appears to me that by the proper construction of the 46th section of 16th Vic., ch. 182, every collector is bound to return his roll by the 14th of December, and to pay over all moneys collected, unless some further time is given by the county council, not later than the 1st of March, and that at the time appointed for such return the collector ceases to have any further power to collect. But if any taxes remain unpaid, the municipal council interested in their collection may, if they think proper, authorise the collector, or they may authorise any other person, to proceed to collect such arrears: and in such case the person authorised, whether the collector or another, may proceed in the manner and with the powers provided by law for the general levy and collection of taxes.

By the 76th section of 16 Vic., ch. 182, it is provided that every collector, before entering upon the duties of his office, shall enter into a bond with two or more sureties for the faithful performance of the duties; and by the 79th section, if any collector shall refuse or neglect to pay to the person legally authorised to receive the same, the sums contained in his roll, or duly to account for the same as uncollected, a summary mode is provided for levying from the goods and chattels of such collector, or his sureties, such sum as may remain unpaid or unaccounted for. A warrant may be issued by the treasurer of the municipality, or city chamberlain, within twenty days after the time when such payment ought to have been made. There must of course be a certain time for the payment over of moneys, and *that* time, as it appears to me, is the 14th of December in each year, under the statute, unless the time is extended by the county council, or authority given by the municipality interested to continue the collection. When the time for collection was extended to the 1st of August the time of payment was fixed for that day, and the collector and his sureties might have been proceeded against for neglect in paying over the amount of the roll, or to account for the same as uncollected.

On these grounds I am compelled to differ from the Chief Justice and my brother Burns, and I do so with considerable hesitation, as there is undoubtedly a great deal of weight to be attached to the views taken by them of the question which has been brought before us.

There is no doubt that if entitled to levy for the amount of tax in arrear, the collector was also entitled to levy for costs, as it was clearly shown that the taxes had been demanded, and that they were unpaid upwards of fourteen days after they were so demanded, in which case the 42nd section of 16 Vic., ch. 182, authorises the collection with costs. The refusal of the plaintiff to pay a sum of 5s., which appears certainly not an unreasonable amount if costs were chargeable, has given rise to this action, and has doubt occasioned to both parties very considerable expense, which cannot be reimbursed, whatever the result of the suit may be; but it often happens that persons, rather than submit to what they conceive to be a wrong, will incur any amount of expense, and in this case both parties may be influenced by that feeling, each believing that right is on his side; and the fact of there being a difference of opinion in this court on the subject, may perhaps shew that each of the litigating parties is not without some foundation for the views which they severally entertain. I am of opinion, under all the circumstances, that the rule should be made absolute.

Burns, J.—It appears from the facts proved that the municipal authorities did extend the time for payment of the taxes of 1855 several times in the year 1856. On one occasion the extension was to the 1st of August, 1856, and, again, on the 22nd of December, 1856 the time was extended to the 1st March, 1857. Between the 1st of August and the 22nd of December, 1856, the defendant levied the rate, namely, on the 5th of December.

The third section of 18 Vic., ch. 21, gives the municipal council authority from time to time to extend the time in which the collector may make his return, and may continue the levy and collection of the taxes. The question in truth is, when and at what precise moment does the collector become *functus officio*. Suppose the municipal council does not extend the time beyond the 14th of December in each year, does he on that day become incapable of exercising his functions as collector? I have no doubt he may receive moneys on account of taxes after that day, provided he has not made his return, and may include the payment of them in his roll and return, but whether he may take the compulsory powers with which he is invested is another question. If he does so after that day, I do not see what restriction there may be as to time, unless his authority is held to be co-extensive with his possession of the roll. The 28th section of 12 Vic., ch. 81, enacts that the municipality shall, so soon as conveniently may be after their own election, nominate and appoint the assessors and collectors, who it is declared shall hold the appointment until the third Monday in January, in the year next after the appointment, and until the municipality shall appoint the new assessors and collector. I apprehend the collector does not become *functus officio* then until the expiration of this period, and if that be the case, the different provisions of the statute for enlargement of the time for his making his return are in favour of the collector, and, if the municipality does enlarge the time, also in favour of the rate-payers provisionally; but they have no other effect, and as long as the officer continues in office, his authority to collect the rates continues so long as he retains the roll, which is his authority, so far as the amount is concerned, for collecting the rate. This, I take it, applies to the case of rates expected to be paid within the year for which the collector has been appointed. The present case is that of rates unpaid for 1855, carried over to 1856, and placed in the hands of the same collector, who was also appointed for the year 1856. His term of office would continue until the third Monday in January, 1857, and until the municipality appointed a new collector. The collector's authority to distrain is given by the 42nd section of 16 Vic., ch. 182, and other sections. No time is mentioned when he shall do so, except that he cannot until after fourteen days have expired from demand made. In this case it appears that the rolls for 1855 were not completed until the 11th of December in that year, and if the collector must make demand fourteen days before he could distrain, if he were *functus officio* on the 15th of December, he could not have levied any of the taxes of that year. The effect of carrying them on to the next year by extension of time gave the collector of that year an authority to collect them. I apprehend he was not *functus officio* until the third Monday of January, in 1857, and that his levying them during his term of office, and while he had as yet made no return of his roll, which may be considered his authority while he remains in office, it was not open to the plaintiff to say his authority to levy these rates expired on the 1st of August, 1856.

I look upon the provisions respecting the collector making his return by the 14th of December in each year, or any other time the municipal council may extend the time to, not as determining his authority to collect the taxes, but that his authority to collect the taxes on the roll is co-extensive with his term of office, provided in the interval he has not returned the roll.

I think the rule should be discharged.

Rule discharged, *McLean*, J., dissenting.

CHAMBERS.

(Reported for the Law Journal, by C. E. English, Esq., *and* A. McNabb, Esq.)

Noad et al. v. Provincial Insurance Company.

Security for Costs—Affidavit.

An affidavit in support of a summons for security for costs; stating that the plaintiff resides out of the jurisdiction of the Court "as this deponent is informed and believes" is insufficient.

[24th March, 1858.]

Burns, obtained a summons calling on plaintiffs to show cause why they should not give security for costs. The summons was obtained on the affidavit of defendants' attorney, which stated the residence of the plaintiffs at the City of Quebec, in Lower Canada, out of the jurisdiction of this Court, and that they were usually resident and now reside there, "as I am informed and verily believe."

Stephens—showed cause, and contended that the affidavit was insufficient.

Richards, J.—In *Joynes* v. *Collison*, 2 D. & L. 449, it has been decided that an affidavit, stating "that deponent was informed and verily believed that the residence of the plaintiffs is at Glascow, in the Kingdom of Scotland, and that they now, as deponent has been informed and verily believes, reside there out of the jurisdiction of the Court," was insufficient. Parke, Baron in giving judgment, says, "According to the books of practice deposing to information and belief is not enough. There can be no difficulty in making a positive affidavit; for a defendant has only to take out a summons to be furnished with plaintiffs' residence." These applications are not generally favored by the Court, and as the case referred to is decided by the full Court, I think I ought to adhere to that decision as it is expressly in point. Jervis, C. J., in *Goatley* v. *Ermott*, 15 C. B. 291, in a somewhat similar case, observes, "The habit of this Court is to adhere to the authority of decided cases, for it is essential that the practice should be consistent and uniform."

I think this summons must be discharged.

Summons discharged.

Cameron v. Cameron.

Practice—Computation of Time—Notice of Assessment.

Notice of assessment served on Monday for Assizes commencing on following Monday is too late. Eight days time to plead is reckoned inclusive of both days, and when Sunday is last day no further time or additional day will be allowed.

The particulars of this case appear in the judgment.

Robinson, C. J.—This summons which was issued by *Draper, C. J.*, came on before me.

It was on the plaintiff to shew cause why the Interlocutory Judgment against the defendant should not be set aside with costs;

Because the same was entered up too soon—or

Set aside on payment of costs on affidavit of merits—or

Why the notice of assessment should not be set aside with costs on the ground that the same was served too late.

As regards the notice of assesssment, it is evident that it must be set aside having been served on Monday, for the Assizes commencing on the following Monday. It has been decided that such a notice is too short.

The 146th sec. C. L. P. Act requires eight day's notice to be given. The time being fixed by that Act cannot be governed in the mode of computing it by the rule laid down in sec. 22 of 2 Geo. IV., ch. 1. The C. L. P. Act prescribes no mode of computation, and we must take it therefore to be according to and governed by the general principle of law in such cases, which is, that one day shall be inclusive and the other exclusive; and according to that computation there was not an eight day's notice in this case, for there were clearly not eight days without counting both the first and the last.

Then as to the judgment, the 61st, 102d, and 112th sections of the C. L. P. Act are to be considered, and in all these eight days is the time given to plead. The notice to plead in this case was served on Saturday, and including that day in the computation the eight days expired on Saturday night, and plaintiff contends that he was at liberty to sign judgment on the opening of the office on Monday.

The defendant maintains that Sunday being a dies non, he had all the Monday following to file his pleas, and that he did file them on that day. The question is whether the judgment previously signed (on Monday morning) was regular.

Our 166th rule of Court, which provides that when any particular number of days not expressed to be clear days, is prescribed by the Rules of Practice of the Courts, the same shall be reckoned inclusively of the first and last days, unless the last day shall happen to fall on some day on which the Crown offices are not required to be open, in which case the time shall be reckoned exclusively of the last day, does not seem to me to be capable of controlling the legal effect of the language of this Act of Parliament. The Act itself does not except in the 65th sec. (which does not apply to the time for pleading after notice) make any provision for excluding Sunday from computation when it happens to be the last day. And it has been decided in England on principles which equally apply here, that in the absence of any provision to the contrary, the act is to be carried literally into effect, reckoning the Sunday as the eighth day, Rowberry v. Morgan 9 Ex. 730; according to which the plaintiff in this case was entitled to sign judgment on the opening of the office on Monday. That decision however was in regard to the computation of the time allowed before execution can issue after a judgment for want of appearance to a specially endorsed writ. The question in this case turns upon the method of computing the eight days allowed for pleading.

In the case of Moore v. the Grand Trunk R. Co. 4 U. C. L. J. 20, the Chief Justice of the Common Pleas decided that the judgment in a similar case was regularly signed on the Monday morning; the cases are precisely similar, and I shall therefore decide the same upon this application, for we must have a uniformity of practice in Chambers till the full Court lays down the practice. My own impression, moreover, is against setting aside the judgment as being signed too soon.

The notice of assessment was served too late, so that the assessment cannot stand, and as to that, the summons must be made absolute but not with costs, as more was asked than can be granted.

The judgment I think was regularly signed and can only therefore be set aside on payment of costs.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Between J. G. Bowes, *Appellant*, and City of Toronto, *Respondents*.

Upon an Appeal from the Court of Error and Appeal of Upper Canada.

(Concluded from our last Number.)

"I returned from Quebec in about three weeks. I have made no application for my share. I never applied at the bank, or to the contractors, or the chamberlain, to know how matters were proceeding; but Mr. Bowes stated to me, between July and November, 1852, what was doing. He told me what amount of debentures were issued and lodged; and during this time treated me as entitled to half. I did not hear that the debentures had been negotiated and the proceeds received, until Mr. Bowes stated it in Court. I had reason to believe before that such was the case. I did not know of the amount of profit, or that it had been received until Mr. Bowes stated it in Court. In December last, when I returned from Quebec, I saw Mr. Bowes about different matters; and our interview was of such a nature that we have not spoken since. I have seen Mr. Hincks since, but did not speak to him on the subject. I may have stated to parties that I had been chiseled out of my share of my profits.

"By Counsel—I understood Mr. Bowes to state in his evidence that I had no interest in the profit on the sale of the debentures. I am not positive."

The evidence thus given by Mr. Cotton, being that of a person entertaining unfriendly feeling towards the appellant, it was fit to watch narrowly and receive cautiously; but their Lordships see no ground for laying Mr. Cotton's testimony wholly out of the case; nor, as to a considerable portion of what he says, is he unsupported. Mr. Courtwright, whose respectability there seems no reason to question, one of the firm of Story and Co., the contractors, was examined for the appellant, and among other things deposed thus:—

"I was anxious for the passing of the bye-law of the 28th of June; I pressed its passing because we had arranged with Mr. Roberts, of New York, for all our iron, and had undertaken to place a portion of the debentures in his hands. It was very important to us to get the debentures at that time. The iron was then being delivered, and we got it at a pretty low rate. It had risen at that time. We got it at a very low rate. We paid 39 dollars at Quebec, and it was worth there, I think, 50 dollars. We got 1,000 tons here at 37 dollars. It was an object to us not to forfeit our contract. Several ships had, I believe, arrived, or were on their way with it. For these reasons we were anxious to get the debentures, and to get the bye-law passed. We had a legal

adviser from New York. We were aware that the legality of the bye-law was questioned, but we were willing to run the risk and take the debentures. Our legal adviser was also agent for Mr. Roberts. I remember writing a letter to Mr. Bowes, dated I believe, 30th June. We had previously endeavoured to sell the debentures, but had not succeeded. We had authorised Mr. Roberts to sell a portion, if not the whole, at 85 cents on the dollar. He had not succeeded. We never expected to get par for them. Never said so, that I know of. Before writing the letter we had a conversation with Mr. Bowes, two or three days before. He proposed to purchase the debentures at 80 cents on the dollar. We told him we thought he could have them; and he wanted a written proposition, and in consequence the letter was written. This was the first proposition that was made between us and the Mayor. I am not sure whether we accepted his offer at once, or said only we thought he could have them. We thought this was as good an offer as we could get, It was no favour to Mr. Bowes."

In page 37, he says:—

"We expected to get the debentures after the bye-law was passed as soon as we were entitled to them. We directed the chamberlain to deposit them as issued in the bank. We sold the whole £50,000 on the same terms, although my letter mentioned only £24,000. The residue of the debentures was talked about at the original conversation, but no arrangement was made with respect to them. I did not suspect Mr. Bowes to be the cause of the delay in issuing the debentures; the chief delay had occurred before this time. We had disposed of £6,000 debentures otherwise, and did not know whether we could let Mr. Bowes have them. I cannot tell at what rate we sold them. We paid for right of way with them. We re-purchased £5,000 of the £6,000 at 80 cents on the dollar. We only got £40,000 in money for the £50,000 debentures."

In page 38, he says:—

"I desired the sale to Mr. Bowes to be considered confidential, because we had not sold all the debentures, and it might prejudice the sale of the rest. I did not come here long before the 28th June at that time—only a few days before. For some time previous, none of the firm had been here. Previously I had been here, and also Mr. Laymond. During the spring, I was here part of the time, also Mr. Laymond part. We were willing to run the risk of the illegality of the bye-law, as we were advised by our legal adviser, and also Mr. Boulton; and it was thought the bye-law was not illegal; and at all events, the debentures would be legalised. We felt sure also that the city would not repudiate them. We re-purchased the £5,000 debentures we had sold, because Mr. Bowes wanted to get the whole £50,000."

The letter of the 30th of June, 1852, already mentioned, is set forth in the schedule to an affidavit made by the appellant on the 1st of September, 1852, which was thus:—

"1stly. I say that I have filed certain copies of documents relating to the matters in question in this suit, as set forth in my affidavit made in this cause, and filed with the said copies on the 23th day of August, which documents are also particularised in the first schedule hereto annexed.

"2ndly. I further say, that subsequently to the city council passing the bye law of the 28th June, 1852, in the said first schedule hereto annexed mentioned, Messrs. M. C. Story and Co., in the said bill mentioned, addressed a letter to me offering to sell debentures of the City of Toronto to the amount of £24,000, which letter is now in my possession; and I submit that it is wholly irrelevant to the matter in question in this suit; I however say that I have set forth a true copy thereof in the second schedule hereto annexed.

"3rdly I further say, that subsequently to the debentures in the said bill mentioned becoming within the power and control of the said Messrs. Story and Company, and to their being publicly offered by them for sale, I have, in the course of my private correspondence, mentioned to my said correspondent the fact of the said Messrs. Story and Company having such debentures for sale, and I have received letters from my said correspondents relating thereto; but I say that such my correspondence had relation wholly to the private transaction of the said Messrs. Story and Company having such debentures for sale, and did not otherwise in any manner, relate to any of the matters in question in this suit. And I submit that such my correspondence is irrelevant to the matters in question in this suit. And I further say, that I never have kept copies of, or extracts from or a copy of or extract from such my correspondence, nor have I ever kept the letters, or any of the letters, so received by me, nor any copy of, or extract from any part of such correspondence; but the letters so received by me have been, to the best of my belief, destroyed or cast away among waste papers after having been read; and I say that I have not now any part of such correspondence in my possession, custody or power.

"I further say, that I have drawn up a statement relating to the matters in question in this suit for the purpose of my defence to this suit, which statement I have placed, and now is, in the hands of my solicitor, for the purpose of such my defence, which statement, for such reason, I object to produce.

"I further say, according to the best of my knowledge, remembrance, information and belief, that I have not now, and save as herein-aforesaid, never have had any in my own possession, custody, or in the possession, custody or power of my solicitors or agents, or agent, or in the possession, custody or power of any other person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of, or extract from, any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them wherein any entry has been made relative to such matters or any of them other than, and except, the documents set forth in the first and second schedules hereto."

Then comes the first schedule of documents; the second schedule contains the letter of the 30th of June, from the contractors to the appellant, in these words:—

"Toronto, June 30th, 1852

"J. G. Bowes, Esq.,

"Sir,—We propose to sell you the £24,000 of Toronto debentures, authorised by the city council on the 28th instant, to be issued in aid of the Ontario, Simcoe and Huron Union Railroad; you to pay us eighty cents, on the dollar, on the deposit of the said debentures in such bank in the City of Toronto as you may designate, and we to deposit said debentures as soon as we receive the same.

"Let us know your acceptance, or not, of this proposition in writing to-morrow.

"Very respectfully,

"Your obedient servants,

"M. C. Story & Co."

The letter of the 30th of June was evidently written after a communication upon the subject of it between the appellant and the contractors, who, on the same footing and as a consequence of the same undertaking, parted with all the debentures acquired from them by Mr. Hincks and the appellant. The latter was also examined in the cause, and, among other things, deposed thus:—

"The offer was made to and accepted by me to take £24,000 debentures at 80 cents to the dollar. Not on my own account. I accepted the offer eight or ten days after it was received. No arrangement was made as to what the contractors should receive on the rest of the £50,000 debentures. Only £10,000 of the £24,000 were issued. This was after my acceptance of the offer. The money was paid over to the contractors for the £10,000 debentures, at the rate of 80 cents to the dollar. No similar arrangement was carried into effect as to the remainder of the £24,000. The arrangement of 80 cents to the dollar was the arrangement carried out throughout the whole £50,000 debentures, of which £10,000 were issued after 29th of July, 1852 and the £10,000 before. £50,000 debentures were issued for £50,000 stock. All that the contractors received in money for the £50,000 debentures was £40,000. I did not buy the £50,000 debentures for myself. It was not understood that the proposition in the letter as to the £24,000 should be carried out as to the rest of the £50,000. No subsequent arrangement, however, was made between me and the contractors. £10,000 of the £24,000 was purchased by me at 80 cents to the dollar, and the remainder of the £50,000 debentures were purchased at the same rate but not under any arrangement with me. I was interested in this arrangement under which the £40,000 were purchased. I had the same inte-

rest in the £10,000 as in the £10,000. There was not a profit made to my knowledge, by any body upon the transaction of £10,000. I think there was a profit of £5,000 made on it. I think not £9,000. I think as much as £8,000 was made, or thereabouts. This entered into the business of the firm of Bowes & Hall, of which I am a member. The share of the firm was £4,000, or half the profit that was made. The other member of the firm is John Hall. I am entitled to five-eighths of the profits of the business, or thereabouts, as I believe. This sum has gone into the business of the firm, like any other moneys of the firm. This was a partnership transaction from the first. Hall expected to have the benefit from the first."

In page 15 he says, in answer to a question by the Court:—

"There was no fresh arrangement made with the contractors after the letter offering the £21,000. The whole transaction proceeded on the basis of that letter. The contractors were not bound beyond the £21,000. They could have sold the debentures to any other party. Before the loan of £100,000 was taken up the debentures had passed out of my hands. I was only the owner in part. The rest was held by the other party. I did not interfere with the debentures after the letter of Glyn, Halifax & Co. was received. I did not abandon all interest in them."

In answer to Counsel, he says:—

"The remainder of the debentures beyond the £10,000, were lodged in the bank, on the tacit understanding that the contractors should receive the 80 cents to the dollar, according to the original offer in the letter."

The appellant's examination was then interrupted by another examination, or other examinations, and resumed at a subsequent period.

In page 17 he says:—

"I think the contractors spoke to me about the purchase of debentures more than two or three days before the date of the letter written by them to me. I don't think I had any conversation about purchasing them myself at all. They spoke to me perhaps two or three months before the date of the letter about selling the debentures, but not to myself, or I cannot tell whether to myself or not. I made no arrangement with them for purchasing debentures from them until after I had received the letter in question. I mean the letter dated the 30th June. I sent I think, a copy of this letter to Mr. Hincks a day or two after I received it. I suppose I made a proposal to him to join me in the purchasing them at the same time. I cannot say whether this was the first time I mentioned the matter to Mr. Hincks. I was at Quebec, and may have spoken to him on the subject before. It must have been in the summer. It must have been a month or two before I received the letter. I do'nt know what Mr. Hincks refers to in his letter of the 5th July, unless to a conversation I had previously with him, there was no arrangement or understanding. There may have been a conversation between us on the subject of purchasing debentures previous to my receipt of the letter of the 30th June. I am not sure, however, that there was any such communication. I doubt it, but still I think it is likely there was one. I am not aware that Mr. Hincks was in communication with anybody else as to the purchase of debentures. I don't know what led Mr. Hincks to suppose that debentures would not be issued so soon, except, perhaps, some previous conversation with me. I don't recollect receiving the letter referred to in the letter from Mr. Hincks of 6th. I don't recollect getting a letter from him desiring me to put off paying the contractors till next mail. I may have received such letter. I have no belief about it. I think not. I think I had a communication with Mr. Cotton before receiving the letter of 30th June. It was only a conversation about the City purchasing the debentures. He was not a member of the Corporation. I had no conversation with him about my purchasing debentures, but about Mr. Hincks purchasing. I have no idea when they occurred. I have no recollection of a conversation with Mr. Cotton about Mr. Hincks purchasing for the joint benefit of himself and me; there may have been. There was a conversation with Mr. Cotton, but I cannot say whether before or after the receipt of the letter. I have no belief of it. I am sure I had no conversation with Mr. Cotton at any time about any purchase in which he was to be interested that I know or believe. I never knew him in the transaction. I don't know, and have no belief, whether Mr. Cotton was aware of the purchase by myself and Mr. Hincks. I have no idea what the allusion to Mr. Cotton in the letter of the 9th August from Mr. Hincks refers to. I have found no letters or copies of letters from Mr. Hincks since I was examined. I have not found the memorandum book referred to in my evidence. I think it must have been taken out of my counting-house. I don't think Mr. Cotton ever wrote to me about these matters. I don't recollect writing to him about any debentures; I don't believe I ever did. I never spoke to the company or the contractors about the purchase of any other debentures. I don't recollect when I first formed the intention to purchase the debentures. I don't think I formed any intention to buy the debentures which were to be issued to the contractors or company before the receipt of the letter of 30th June. I am not sure whether it was before or after the receipt of that letter that I laid the matter before the finance committee, probably about and subsequent to the time of receiving the letter; and before I laid the matter before the finance committee, I formed no intention of purchasing the debentures myself. I mean the offer that was made to me of the debentures at 20 per cent. discount."

Lastly, in page 19, he says:—

"I think it was in January last that it was first rumoured that I was concerned in these debentures. I don't know that I ever mentioned to anybody that I had any concern in the negotiations I don't know that any member of the council was aware of the fact. I don't know that anybody was aware of it except to suspect, before I stated it here in court. I don't recollect any conversation with any member of the council upon the subject after the rumour arose. I don't think that I ever stated to any member of the council what was not the fact. What I denied was, that I had used the city funds. I never was asked whether I had any interest in the debentures. I may have been asked the question, though I dont recollect it; but in my answer I had reference to the charge that I used the city funds. I never mentioned, intentionally, to anybody, anything relating to the matter. This understanding arose as to what I stated with regard to the capacity in which I spoke. What I said was, that I never used the city funds, or had any interest as Mayor in the negotiation of the debentures. I never gave any member of the council to understand intentionally that I had no personal interest in the matter. I never heard that I had been misunderstood on this point until after the suit commenced. I told Mr. Cawthra I had no interest. I spoke as Mayor, but whether I said so or not I don't know. I always spoke in that capacity on this subject, but did not always say so. I don't recollect any conversation during the negotiation of the debentures on the subject."

Mr. Carr, a witness for the respondent, deposes thus:—

"I was a member of the city council last year. I resigned in October last. I was not a member of the council, I think, when the gift of £25,000 was agreed to. I was a member when the £35,000 loan was passed, and I think present in the council. I was a member when the £50,000 stock was agreed to be taken. I was present when the bye-law was passed for the issuing of £100,000 debentures to consolidate the debt. The Mayor advocated strongly the passing of these by-laws, gift and loan, and when I made any opposition, he endeavoured to pursuade me to support them. After the rumours arising as to the Mayor having an interest in the debentures, I put a question to him on the subject in council, and he positively denied having any interest. My question was, whether he had received any benefit or expected to receive any benefit from the speculation about the £50,000 debentures. He had previously answered a similar question from Mr. Romaine, that he had, neither directly or indirectly, received any benefit from it, and did not expect to receive any. He answered my question by referring to his answer to Mr. Romaine; when further pressed, he appearrd annoyed and indignant, and said that if further pressed on the subject, he should make it a personal matter. I have heard him declare the same thing both in and out of council.

"*Cross-examined*—I put the above question to the Mayor about twelve months ago; I think the latter end of last year. I think it probable that I voted for the £50,000 stock. I thought it a good exchange for the previous gift and loan. The Mayor always

took an active part in favour of the railroad. He advocated it as advantageous to the city. I opposed the issue of the debentures for the £50,000, as they were considered illegal. If that was at the same time as the change of the stock for the gift and loan, I opposed the whole. The contractors proposed the issuing of the debentures through some members of the council. I opposed it as wrong. I think I voted for consolidating the city debt, and issuing debentures for the purpose. I think city debentures, in the early part of 1852, were at a discount of about one per cent. per annum for the time they had yet to run. When the Mayor was questioned in council, he said that he had never purchased any city debentures, except through an agent, and to whom he paid half per cent."

Neither do their Lordships think this witness otherwise than credible.

It does not appear to their Lordships important on either side to lay stress on any other parts of the voluminous evidence before them. The leading and weighty facts, shewn by what has now been read, cannot admit of doubt; and upon the whole of the materials in the case their Lordships feeling very high respect for the opinions of the dissentient minority of judges in the Court of Error and Appeal, cannot but feel also some surprise that there should not have been an unanimous affirmance of the decision of the Court of Chancery, so far at least as it declared and enforced the liability of the appellant to the respondent for the ascertained and unquestioned amount of profit made and received by the appellant or his firm of Bowes and Hall, from the transaction in which he had permitted himself to engage respecting the Corporation debentures. The appellant's allegation that this profit was made and received by him on behalf, not of himself alone, but of himself and his partner Mr. Hall, which we assume to be correct in point of fact, we think immaterial. It does not, in their Lordships' opinion, diminish the appellant's liability to the respondents or give the appellant any title to be treated otherwise than as he *would have been liable to be treated, if he alone had been interested* with Mr. Hincks. We have not failed to observe the ninth reason of appeal in the Court of Error and Appeal, or the eighth reason here; but we have been unable to find that either of the answers to the bill takes any objection to it as insufficient in parties, nor does any such objection seem to have been taken at the hearing in the Court of Chancery, and we conceive that we ought not to treat the suit as defective.

The decree deals with the appellant as an agent or a trustee who, while acting in the agency or trusteeship, acquired for himself by contract, without the knowledge of the persons whom he was agent or trustee, an interest in the subject of the agency or trusteeship, and is accordingly incapable of retaining from them the benefit, if any, of the acquisition. And it has scarcely been denied in argument that if the appellant stood in the relation of agent or trustee towards the corporation or inhabitants of Toronto, the decree (subject to the point of Mr. Hall's absence) has charged the appellant rightly. The relation, however, was disputed; but as their Lordships think unsuccessfully He may not have been agent or trustee within the common meaning or popular acceptation of either term, but he was so substantially; he was so within the reach of every principle of civil jurisprudence, adopted for the purpose of securing, so far as possible, the fidelity of those who are entrusted with the power of acting in the affairs of others. If the appellant, as to the matters subsisting in the years 1851 and 1852 respectively, between the Corporation upon one hand and the contractors and railway company on the other, so far as the appellant had anything to do with them, was not *negotiorum alienorum gestor*, it seems difficult or impossible to say that any person ever was so. It is evident, we think, that as a member of the Corporation and Mayor he took part in those matters before and after the evil day of the 24th of June, 1852, to an extent more than sufficient to incapaciate him from dealing as he did with Mr. Hincks and the contractors, unless for his own loss, if there should be loss, and for the gain of the Corporation, that *is to say, of the inhabitants of Toronto, if there should be gain.* The able counsel for the appellant did not suggest that in the case of a private man of property having occasion and desiring to raise money by issuing debentures payable as to the principal at a distant day, but with intermediate interest and employing an agent for the purpose, the agent could act in the matter, with regard to the debentures, analogously to the manner in which the appellant acted here, as to those in question, and retain the profit from his principal. The difference between the two cases appears to their Lordships accidental merely and immaterial. It was incumbent on the appellant, while the affair of the debentures was pending and unsettled, not to place himself voluntarily on a position in which, while retaining the office of Mayor, he would have a private interest that might be opposed to the unbiassed performance of his official duty. But he did so. In all the steps on the part of the Corporation connected with the debentures that took place between the 24th of June and the 2nd of November, 1852—and they were important—the appellant, so far as he acted—and he did act—in the character of a member of its governing body was under a bias, by reason of his private interest; for in truth and effect, from a time preceding July, 1852, he stood as to the debentures in the position of the contractors.

The defence has been also to a great extent rested on the alleged ground that the appellant did not give wrong advice to the governing body of the Corporation, or exercise influence over it in the matter of the debentures; that the governing body would have acted exactly as it did if the appellant had not been a member of it; that the Corporation took altogether a prudent and correct course, and has lost nothing; and that any person not connected with it might honestly, safely, and effectually have made the bargain with Mr. Hincks and the contractors which the appellant did make. Assuming the alleged facts thus stated to be stated accurately, we conceive that they make no difference. But in truth it is very far from clear that the City of Toronto has not suffered considerably from the appellant's conduct. Their Lordships are of opinion that the bill on answers and evidence was such as to throw on him the burden of proof of the fact, if material, that there was no agreement or arrangement respecting the debentures between the appellant and the contractors, previously to the 28th of June *1852; and we think that no such proof has been given; and that* it is to be inferred from what is before us, that the appellant had, if not before the 24th, at least before the 28th, of June, 1852, ascertained what the contractors would do, and what he could do with them as to the debentures—in effect made himself sure of the contractors. Now, what were the appellant's sentiments on the subject in April and early in June, 1852? They appear from two letters of those dates (9th of April and 10th of June), written by him to Mr. Wilson (we believe a merchant in England). They are in pages 76 and 77 of the Appendix, and contain these passages:—

"A large amount of Municipal debentures will have to be disposed off in England during the ensuing summer, to provide the 'needful' for the construction of the 'Ontario, Simcoe and Huron,' and the 'Toronto and Guelph' railways. Should such an agency as that referred to above not be established, an agent will have to be sent from Canada to negotiate those securities, or some company in London, wholly unacquainted with the nature of our debentures, will have to be employed. Should an agent be sent to England on behalf of the Toronto and Guelph Company, of which I am President, he will be directed to take advantage of your valuable assistance in the sale of the securities of the company.

* * * * * *

"I am favoured with your letters of the 7th and 14th of May, and fully concur with you in opinion that it would be a decided advantage were you to pay a visit to this country, after having ascertained the information capitalists in England require, regarding the municipal securities of Canada. I should have submitted a proposition on this subject to the directors of the Toronto and Guelph railroad, had not the Canada Company, through their commissioner, Mr. Widder, who is himself a director of the railroad, volunteered to negotiate the debentures of the company free of charge. I may mention here, that the Corporation of Toronto has agreed to aid the Ontario, Simcoe, and Huron Railway, to the extent of £25,000 currency; the debentures of the city will be issued to this amount as the work progresses, the issue not to commence until £100,000 have first been expended on the road. I propose to make these debentures payable in London, and have them negotiated by an agent appointed by the Corporation, and hand their value in cash to the railway company, and thus pre-

vent the credit of the city being injured by entrusting the sale of its bonds to unskilful hands, or their being forced into the market by needy railway contractors.

"The security for the punctual payment of the interest and principal of Municipal Bonds provided for by the Provincial Act under which they are issued, is so ample that no doubt can possibly be entertained regarding their validity: their perfect security being once established, surely a favourable sale could be effected in the present state of the money market in London.

"I applied some time since, through the Bank of Upper Canada, to negotiate a loan for the City of Toronto to the amount of £50,000 sterling, to redeem debentures and small city notes now out, issued under an old Provincial Act which did not provide a sinking fund for their redemption; the bank offered to guarantee the principal and interest, but nothing has yet been done in the matter, beyond a favourable letter from Messrs. Glyn, Halifax & Co., agents of the Bank of Upper Canada in England.

"I will forward, as soon as published, a statement of the city debt and revenue, and should my views be approved of by the city council, regarding the loan and the manner of negociating city debentures for railway purposes, you will hear from me on the subject."

These were the appellant's views before he had performed the journey to Quebec, announced as probable in his letter to Mr. Wilson of the 12th of June. But what that journey effected we know. It would after the 24th have interfered with the appellant's personal interest—have tended to break up the arrangement with Mr. Hincks, if the debentures had been issued to the contractors payable in England, and so the heavy discount saved; and we find that the bye-law of the 28th of June, made in the appellant's presence and signed by him, expressly directs the debentures to be issued under it to be made payable in Canada. They were also, as we know, of very doubtful validity. But upon the delicate question whether the Corporation should take such a step, the Mayor was necessarily prevented by his private interest giving an unbiassed opinion.

It is after securing the discount that, at a later period of the year 1852, the English plan is arranged. By means of the difference between the debentures upon that plan and the debentures on the plan of the preceding June, the gain in dispute has been made; and it would probably be wrong to assume that this was made merely at the expense of the contractors, but be nearer the truth to say that it was made at the expense of the Corporation (as trustees for the City) who would not have found it necessary to issue so many debentures on the English as on the Canadian plan.

The secrecy and disingenuousness with which the appellant conducted himself do not improve his case, especially as, if he had on the 28th of June disclosed the true state of things to the Council, its other members might have taken a different course from that in fact taken by them, (a point as to which it can be scarcely necessary to refer, particularly to the evidence of Mr. Joshua Beard, Mr. Tully and Mr. Samuel Thompson, in pages 25, 28 and 32 of the Appendix.) But we do not say that had the appellant on the 28th of June made a full communication to the Council, and nevertheless its members had acted as they did act, that would have prevented the success against him of a suit on behalf of the inhabitants, which in effect and substance this suit still is.

It has been also argued that the governing body of the Corporation was a deliberative body, and on that ground out of the operation of any civil rules or principles applicable to agents and trustees; and the reported cases of Lord Petre and Lord Howden were mentioned, and it was said that members of the British legislature often vote in Parliament respecting matters in which they are personally interested, and do so without censure or risk. We are of opinion, however, that neither the governing character nor the deliberative character of the Corporation Council makes any difference, and that the Council was in effect and substance a body of trustees for the inhabitants of Toronto—trustees having a considerable extent of discretion and power—but having also duties to perform, and forbidden to act corruptly. With regard to members of a legislature properly so called, who vote in support of their private interests, if that ever happens, there may possibly be insurmountable difficulties in the way of the practical application of some acknowledged principles by courts of civil justice, which, however, are nevertheless bound to apply those principles where they can be applied. The Common Council of Toronto cannot in any proper sense of the term be deemed a legislative body; nor can it be so treated. The members are merely delegates in and of a provincial town for its local administration. For every purpose at present material, they must be held to be merely private persons having to perform duties, for the proper execution of which they are responsible to powers above them. We agree that the cases of Lord Petre and Lord Howden must at present be viewed as correct expositions of English law, but so viewed they do not, we conceive, affect the controversy before us.

It has been argued too that the bill in the cause puts the case against the appellant on the ground of loss to the Corporation, and of direct fraud in the popular sense of that expression upon the appellant's part; that neither of these has been established, and that therefore the bill should have been dismissed. We consider, however, that though some allegations of the bill are very possibly incorrect, a sufficient portion of its statements to sustain the decree has been established, and that the argument in this respect is not even plausible, except as to costs; with regard to which, had the appellant's conduct been open and straightforward, their Lordships might have been disposed to relieve him; but his proceedings have been so much otherwise, they rendered so much grave suspicion reasonable, that their Lordships concur in the decree in point of costs as well as otherwise.

Their Lordships, however, desire to be understood as not having intimated an opinion that if before December, 1852, the appellant had not entered into any agreement or arrangement concerning any of the debentures, nor had had any dealing in or with them, it would not have been competent to him in or after that month to deal for them with the contractors as any stranger might have done.

The recommendation of the Committee to the Crown must be the dismissal of the appeal with costs.

Appeal dismissed with costs.

SHORT NOTES OF DECIDED CASES.

By C. Robinson, Esq., *Barrister at-Law, Reporter to the Court.*

QUEEN'S BENCH,

Hilary Term, 1858.

In Coltman v. Brown, *instead* of "it was held that in these notices of title it is *insufficient*," *read* "sufficient;" and *instead* of "*Grace* v. *Whitehead*, V. C. K. 50," *read* "16 U. C. R. 50."

GENERAL CORRESPONDENCE.

To the Editors of the Law Journal.

Smithville, Co. Lincoln, April 14, 1858.

Gentlemen,—I beg to state, that I have been informed that a Subscriber to the *Law Journal* is entitled to receive your legal opinion on particular questions. I do not intend to take advantage of this; and therefore would assure you, that if you will favour *me* with your views on the following two questions, I shall not trouble you again, *by virtue of the subscription as above intimated*, for the space of twelve months from the present period.

The first question is—relative to that part of the Act concerning Chattel Mortgages, which sets forth, that such Mortgages shall cease to be valid, after the expiration of twelve months from the date thereof, unless a copy thereof &c., be filed, &c., *within thirty* days next preceding the said twelve months.

Do you consider that the "*within*" plainly reveals, that *on any day* during the said thirty days, the filing of a new copy. &c., would render the original Chattel Mortgage valid, upon the *extension* of the redemption time or privilege, after the aforementioned period of twelve months? Or is it to be understood to convey, that at the *end of eleven months from the date of the indenture, and no later*, such new copy must be filed, in case of an extension of the redemption privilege? Many practical men in these matters are diametrically opposed to each other in their positions. I have learned that several Lawyers have taken the affirmative; one of whom in Toronto maintains firmly, that if a new copy be filed on *the very last day* of the thirty days, the validity of the mortgage is established, in respect to the hereinbefore-mentioned extension.

For myself, I quite concur in this last construction.

The second question, concerning the nature and tenor of a Chattel Mortgage, may be thus presented:

Supposing that a Mortgagee is desirous of granting the Mortgagor a further privilege; that is to say, eight or ten months, after having permitted the mortgage to stand, until the expiration of the *twelve months, without having renewed the copy*, and *then* viewing the Indenture of Chattel Mortgage as *null and void*, pursuant to the Statute, I wish to inquire whether the goods and chattels enumerated in such indenture, *at once and thereupon*, revert to the Mortgagor, thereby re-investing him with the same, and thereby constituting such Mortgagor the sole and only possessor of such goods and chattels, and that *thereupon* the said Mortgagor is at *once* enabled to grant and convey *again*, unto the said Mortgagee, a *new original* indenture of mortgage; the same including the enumeration of the *identical* goods and chattels which were mentioned in the former mortgage, and thus this transaction be entered into as if no similar transaction had taken place previously?

On the contrary, should the Mortgagee proceed at once and *sell* the said goods and chattels? Yet, how could he do this, if he has no *tenure* of the property, by reason of the mortgage being *void?*

The *Law Journal* evinces your extensive researches in the field of legal science, and therefore I feel the more inclined to solicit a few rays of light from your valuable fountain.

I have endeavoured by commendation to promote the circulation of the *Law Journal*.

I remain, respectfully yours,

D. G.

[For the information of our correspondent and of others who may be similarly disposed, we state once for all, that our rule is to answer questions of general interest, and no others.

As the questions on the present occasion are of this class, we answer them with pleasure.

1. A chattel mortgage may be re-filed under Statute 20 Vic. cap. 3, s. 8, together with the statement by that section made necessary, *at any time* "within thirty days next preceding" the expiration of the term of one year; that is to say, a re-filing on the last of the thirty days is as effectual as a re-filing on the first, or any other of the thirty days.

2. The mortgage, if not re-filed within the time directed by the Statute, is not void *as against the mortgagor*, but only as against "the creditors of the person making the same, and against subsequent purchasers or mortgagees in good faith, for valuable consideration."—Eds. L. J.]

To the Editors of the Law Journal.

GENTLEMEN,—Permit me through the medium of your journal to ask the following question relative to Coroners:—

Supposing a Coroner is called upon to hold an inquest, an individual is found guilty and is committed to gaol, the witnesses are bound over to prosecute at the Court of Queen's Bench.

Please inform me if the Coroner is *bound* to *attend* at the prosecution without a *Subpœna*. If he neglects what is the consequence?

I see no reason why a Coroner should attend and be subjected to expenses without a sufficient remuneration for his time.

I am, Gentlemen,

Your obedient servant,

Prescott, C.W., 17th April, 1858. A CORONER.

[There are cases in which the Coroner's presence may not be necessary at the trial, but as a general rule his presence is to be desired. A criminal trial may at any moment take a turn making it necessary to call the Coroner to prove depositions or examinations taken before him, or to speak to the condition of the body, which last the Coroner being an educated man and generally speaking an M.D., is peculiarly qualified to do.

In every case in which the accused has been examined before the Coroner, or any of the witnesses have died, or are not in a condition to give evidence, it is the plain duty of a Coroner to attend at the trial. It is impossible to lay down any general rule on the subject, and the safer course is for the Coroner to attend in all cases. May not this however be urged that as it is the duty of the County attorney to get up the case and see that all necessary evidence is ready for the trial he will inform the Coroner or cause him to be subpœnaed should his testimony be material. He will not at least in ordinary cases assume that the Coroner will voluntarily attend, and that if the Coroner has no notice of his presence being desired at the Court he may not unreasonably conclude that his attendance may be dispensed with.

We quite agree with our correspondent that the Coroner should be remunerated for his loss of time. Why not for attending a Court as well as for holding an inquest? We have elsewhere examined the question of remuneration to Crown witnesses at length. We would suggest to Coroners their writing beforehand to the County attorney, in order to ascertain when their presence is indispensable.—Eds. L. J.]

To the Editors of the Law Journal.

GENTLEMEN:—Permit me to request an answer to a certain question on which there are different opinions existing, by Reeves of the Provisional Council of the County of Bruce.

The question is,—Has the Provisional Warden *two votes* on every question. For instance, on a division, there are 6 against 7 and he votes and makes it a tie, then gives the casting vote and decides the question. Such was the case on three several occasions at the sittings of the Provisional Council, and as a matter of course he gave great dissatisfaction by so doing. If *such a privilege be strictly law, it is certainly* very unusual for Wardens to exercise their prerogative in such an arbitrary manner. I am, Gentlemen, yours truly,

J. T. C.

Southampton, 26th April, 1858.

[The warden did wrong. Of this we have very little doubt. Every Provisional Municipal Council is a Municipal Corporate Body, and has all the corporate powers necessary to carry into effect the object of its erection. (12 Vic., cap. 78, sec. 13.) And "at any session or meeting of *any* Municipal Corporation * * * * all votes, resolutions and proceedings of such meeting shall be carried by the majority of the persons composing such meeting *other than the person presiding*, who in case of an equality of votes shall have the *casting vote.*" (16 Vic., cap. 181, sec. 30) The meaning is that the person presiding shall have *one* vote and that is a casting vote, to be given when there is an equality of votes, of which his own is not or cannot be one.—EDS. L. J.]

MONTHLY REPERTORY.

COMMON LAW.

EX. C. FITZMAURICE *v* BAYLEY, BART. *Nov.* 10, 11, 30.

Agreement for a lease—Ambiguity in material part of subject matter —New ground of argument in error.

Although it may be that where an actual demise is made generally at a yearly rent, and nothing is said as to the duration of the term a tenancy from year to year would be implied, yet where from the terms of an agreement for a lease coupled with surrounding circumstances, it is ambiguous what term is intended to be conveyed, such term is void for uncertainty.

In an action for the non-acceptance of a lease, a verdict was entered for plaintiff, with leave reserved for defendant to move for a non-suit on the ground that there was no sufficient contract in writing signed by the defendant or his agent within the Statute of Frauds, sec. 4. The Court below was accordingly moved on the ground that the contract was made by an unauthorized agent whose act was not ratified. Judgment was given on that point against defendant. In error the defendant now urged in addition to this, another ground of argument, viz., that the agreement ratified or unratified was void for uncertainty.

Held that he might do so, for that such a ground of argument, though never raised at the trial or in the Court below, is not a new objection, but a new argument in support and illustration of the original objection.

EX. C. SHEEHY *v.* THE PROFESSIONAL LIFE INSURANCE COMPANY. *November* 28.

Practice—Substituted service of process—Jurisdiction—Irregularity —Action on Irish Judgment.

The Courts in England will not treat as a nullity a simple irregularity of the Courts of Ireland, not involving a breach of natural justice *aliter* if they exceed their jurisdiction.

Held that whether or no the Courts of Ireland had acted erroneously in their construction of 13 & 14 Vic. chap. 18 (Ireland) ss. 8 & 9, in ordering substituted service of process to be made by post against an English corporation having an agent in Ireland, after personal service on that agent; yet that the error if any such existed was an irregularity only, and that they did not thereby exceed their jurisdiction.

Semble they acted rightly.

Q. B. RANDLE *v.* GOULD AND WIFE. *November* 12, 25.

Husband and Wife—Separation deed not avoided by cohabitation.

A deed of separation between husband and wife containing a covenant by the husband to pay to a trustee for the wife a certain sum during her life, was made subject to a proviso for the avoidance of the deed on the husband and wife agreeing in writing attested by two witnesses to cohabit and cohabiting thereafter for a certain time. The husband and wife having subsequently cohabited, but without any formal agreement in writing to do so, as mentioned in the proviso.

Held that the deed was not thereby avoided.

EX. HUNTLEY *v.* SIMPSON ET AL. *November* 23.

Malicious prosecution—Reasonable and probable cause—Goods taken under claim of right.

The plaintiff under a contract dressed timber for a ship-builder on the yard of defendants. Before the whole of the timber was dressed the ship-builder failed, and assigned his property to trustees for the benefit of his creditors, amongst whom was one of the defendants. The plaintiff claimed a lien on the timber he had dressed, but the defendants ordered him not to remove the spars. The plaintiff, however, removed the spars from the yard of the defendants the following morning an hour before the time for the defendants' workmen coming to the yard, and took them to a public wharf. The defendants thereupon took out a warrant against the plaintiff for stealing the timber, under which he was taken into custody and afterwards discharged by the magistrates.

Held that there was evidence of a want of reasonable and probable cause for making the charge.

EX. GIBSON *v.* DOOG. *November* 24.

Landlord and tenant—Covenant not to carry on trade—Waiver of forfeiture—Acquiescence for 20 years—Presumption of license.

An acquiesence for twenty years in the uninterrupted use of a house for a purpose of trade, to which the lessee has covenanted not to apply it raises a presumption of the grant of a license so to use it.

EX. ATTENBOROUGH *v.* THOMPSON. *Nov.* 22.

Bill of Sale—Filing of—Affidavit—Description of attesting witness.

A description in an affidavit filed under 17 & 18 Vic., chap. 36, sec. 1 of the place where the attesting witness to a bill of sale carries on or is engaged in his business, is a sufficient description of his "residence" to satisfy the Statute.

C. P. INSULL ET UXOR *v.* MOOGEN. *Nov.* 24.

Common Law Procedure Act, 1854, ss. 3 and 6—Matters of mere account—Duty of referee—Fraud.

It is the duty of a Judge referring a matter in dispute, under ss. 3 and 6 of the Common Law Procedure Act, 1854, to ascertain that it is a proper matter to be referred under those sections. But when he has referred it to the Master, the Master is to enquire into it without considering whether or not it is matter of mere account.

And therefore where a reference was made by a Judge under sec. 3 to the Master, and before the Master a question arose as to whether a receipt produced was obtained by fraud, and he refused to go into such question.

Held that he was wrong.

EX. C. JOHNSON v. GOSLETT AND OTHERS. *May* 9, *Nov*, 30.

Money had and received—Failure of consideration—Abortive scheme—Recovery of deposit—Mine worked on cost book principle—Evidence.

The rule that enables a depositor to recover his deposit upon a scheme proving abortive, is not affected by the fact of that scheme being a company established for the working of a mine on the cost-book principle.

A. and others, directors and managing committee of a proposed company, issue a prospectus in which their names appear as such directors and committee, and that of L. & Co., as bankers. By a resolution also of the same directors and others, promoters of the scheme, at a meeting held for that purpose, L. & Co. were appointed bankers to the Company, with whom an account was to be opened "in the names of the directors, and all monies are to be paid in to that account." At the same meeting it was also resolved that the company should be carried on under certain rules, by one of which it was arranged that "all payments due from shareholders, and all monies of the company should be paid into the hands of the bankers, to the account of the directors of the company." B. afterwards applies for shares, and pays a deposit, which is entered by the bankers to the account of some only of the directors, and not of all. The scheme then becomes abortive.

Held, that the rules and prospectus were evidence to fix *all* the directors with money had and received to the use of B.

C. P. LAWS v. RAND. *June* 27, *Dec.* 8

Cheque on Banker—Presentment—Reasonable time.

No time less than six years is unreasonable within which to present a cheque, unless some loss be occasioned by the delay: recognizing *Robinson* v. *Hawksford*, 9 Q. B. 52; and per *Tindall*, *C. J.*, in *Alexander* v. *Burchfield*, 7 M. & G. 1067.

Q. B. LONDON DOCKS COMPANY v. SINNOTT. *Nov.* 21, 25.

Corporation—Contract by not under seal not of a mercantile nature.

The acceptance of a contract by a corporation aggregate must be under seal, where it is not a contract with a customer of the company, nor of a mercantile nature, nor one which could not be under seal.

C. P. BAYNE v. SLACK. *Nov.* 25.

Common Law Procedure Act, 1852, *sec.* 18—*Suing British subject residing out of the jurisdiction—Irregularity—Waiver.*

A writ in the form given in the schedule, but with no indorsement, and nothing in it to shew the defendant what was the cause of action, was issued in order to sue the defendant who was a British subject residing out of the jurisdiction, under sec. 18 of the Common Law Procedure Act, 1852. An order to proceed was subsequently made by a Judge on an affidavit which contained no statement that the promise took place within the jurisdiction. It appeared by affidavit (inferentially) at least that the Judge's order to proceed was not served. A declaration in the action was filed, which declaration the defendant's attorney took out of the office.

Held, that by so doing any prior irregularities on the part of the plaintiff were waived by the defendant.

C. P. ROBERTS v. EBERHARDT. *May* 27, *Dec.* 8

Award, costs of—Receiver and Arbitrator—Deducting costs of award out of monies received by arbitrator as receiver.

R. and E. had been partners in the coal and lime trade. An agreement to disolve partnership on certain terms was entered into; E died and made M., his widow, his executrix. R. and M. agreed to fulfil the agreement, and referred the settlement of that and of all disputes about it to an arbitrator. R. and E. had also been in partnership as attornies and solicitors, and by agreement reciting that differences had arisen between R. and M about the last named co-partnership and the accounts of it, all matters then in dispute, and all differences that might arise before the making of a final award, were referred to the same arbitrator, and it was agreed that he should be the receiver of the estate monies and effects of the law partnership—should get in and settle, on such terms as he thought fit, all bills of costs due to the estate of the law partnership, and dispose of the estate, monies, and effects of the law partnership as he should think best for the interest of R. and M.; that the costs and expenses of the reference and award should be in the discretion of the arbitrator. The arbitrator made an award, which concluded in these words; "I certify that I have deducted and retained to myself the costs of this my award, out of the monies which have been received by me as such receiver as aforesaid."

Held, (*dissentiente*, *Williams*, *J.*,) that the award was bad; that the duty and authority of receiver vested in the arbitrator was auxiliary to his duty of arbitrator, and must have been fully discharged by him before he could be in a condition to make a final award: that he did not profess to have paid the costs of the award by anticipation, nor could he do so; that if when he made the award, money which he had received as receiver remained in his hands he was bound to make an award with reference to it, for his functions as receiver were then at an end, and he could not say that he applied it as receiver, nor could he by professing to act as receiver, obtain authority to fix the amount of his own charges—that that could not be done till the award was made; that he was as receiver *functus officio*; that he was in this matter acting as arbitrator, not as receiver, and acted erroneously in fixing the amount of his own charges and not deciding who was to pay them.

Per *Williams*, *J.*—That the award was not bad on the ground that the arbitrator had omitted to say by whom the costs were to be paid; that the arbitrator in that character had neglected his duty in omitting to adjudicate as to the costs of the award, because he had already thought fit, in his character of receiver to reduce them to nothing at all by defraying them out of the money he had in his hands as receiver; that it was just the same as if some third party had already defrayed them, or as if he had declared in his award that he would act gratuitously, and that therefore there was nothing to pay.

C. P. HODGKINSON v. FERNIE. *Nov.* 25.

Common Law Procedure Act, 1854, *s.* 8—*Reference—Award—Sending back—Jurisdiction.*

Under s. 8 of the Common Law Procedure Act, 1854, the Court has jurisdiction to remit the matters referred to the re-consideration of the arbitrators where there is no clause to that effect in the order of reference, in cases only where they might before the Statute have remitted such matters where there was such a clause.

HOW v. KIRCHNER. *Dec.* 16.

Ship owner—Non-payment of freight—Lien on Cargo.

A ship-owner is not entitled to a lien for non-payment of freight as against the consignees of goods, on the goods consigned to them by his ship under a bill of lading, stating that the freight for the same goods was to be paid by the shipper, with these words in the margin of the bill,—"Freight payable one month after sailing, ship lost or not lost."

Q. B, LEVY v. GREE. *Jan.* 12.

Appeal, right of—Rule dropping—Common Law Procedure Act, 1854, *ss.* 34, 35.

A rule which drops from the fact of the court being equally divided is discharged within the meaning of the Common Law Procedure Act, 1854, ss. 34, 35, so as to give the party supporting the rule a right of appeal.

REVIEW OF BOOKS.

LEGAL INTELLIGENCER. Published every Friday, by King & Baird, No. 607 Sansom Street, Philadelphia. $2 per annum, in advance.

We have received several numbers of this useful paper. It contains many reported decisions of the Supreme Court of Pennsylvania, and of the District Court of the same State. We hope at some future time to be able to transfer from it to our pages, cases of interest in Canada.

The laws of Pennsylvania and of Canada, are not unlike each other—both are founded upon the common law of England.

THE CANADIAN MERCHANTS' MAGAZINE AND COMMERCIAL REVIEW. Toronto: published by Wm. Weir & Co. Price, $4 per annum, in advance.

This magazine, of which two volumes have been published, richly merits the support of every Canadian who takes a pride in seeing the prosperity of his country reflected in its literature.

The commencement of the Canadian Merchants' Magazine was the result of considerable enterprise, which we are glad to learn is to be crowned with success. But were we unable to say more for it than this—that it is a Canadian production we should not feel half satisfied with its editors. It displays in every number the fruits of untiring industry.

Reports of legal decisions of mercantile interest, whether delivered in Upper or Lower Canada, are to be found in its pages often when not to be found elsewhere. Occasional articles upon subjects of commercial interest often the production of members of the legal profession, are also to be found in its pages. There is not only a Journal of Mercantile Law, but of Banking Currency, Finance, and of Insurance. Each and all of these are kept up with admirable consistency. No lawyer who subscribes for this periodical will, we are sure, regret his investment.

The number for April—the one before us—will bear comparison with the best of its predecessors. The Canadian Merchants' Magazine and Commercial Review has our best wishes for its continued success.

THE UNITED STATES INSURANCE GAZETTE AND MAGAZINE. Edited by G. E. CURRIE. $3 per annum, payable in advance. New York, G. E. Currie, No. 79 Pine Street; Boston, Crosby, Nicholls & Co.; Philadelphia, Barry & McMillan; Montreal, Benj. Dawson.

This magazine, of which the number for April is before us, though more particularly useful to underwriters and others engaged in the business of insurance, is not without value to the legislator and the lawyer. The business of insurance has now become one of such importance that it requires the especial attention of the legislature as much for its own sake as for that of the public. It is more than likely that during the present session of our legislature a bill will be introduced and passed for the purpose of compelling a registration of its affairs by each company doing business in Canada, so as to enable the public to judge of its solvency or insolvency, in fact its capability to do legitimately all that it professes, when it assumes risks.

Insurance now engrosses a great part of a lawyer's time. The infinite number of policies daily issued and the consequent litigation in a greater or less degree gives employment of an arduous and responsible nature to many of the profession. To enable a lawyer to discharge his duty to underwriters with credit to himself and advantage to his clients, a good general knowledge of the theory and practice of insurance is requisite. We need not add that a magazine which treats of insurance in all its phases is to such a person an invaluable aid. No less valuable is it to those who may be called upon to advise clients as against insurance companies, to reveal the rights of their clients as opposed to the liabilities of the underwriters in such a way that success—not ruin—may be the result.

The magazine before us abounds with information of this nature. It appears to be edited with ability and industry. Though published in New York, and though called "The United States Insurance Gazette," there is scarcely a number that does not make reference to the law of insurance in Canada. The recent statute allowing Coroners to hold inquests in cases of fire has not escaped attention.

The typographical appearance of the magazine could not be better. The paper is good and type excellent.

THE UNITED STATES INSURANCE ALMANAC FOR THE YEAR 1858. Vol. III. Edited by G. E. CURRIE. To be continued yearly. New York, G. E. Currie, 79 Pine Street; Montreal, Benj. Dawson.

We have to acknowledge the receipt of this work, which, though apparently issued rather late in the year for the purposes of an almanac, contains much useful information for the mercantile and commercial world.

It will especially be found of much advantage to underwriters and Insurance Companies, containing, as it does, compilations of several laws of the different States of the Union in respect to Insurance Companies, and in addition thereto, and as being on the same subject, the Canadian Law of last Session, providing for investigation by Coroners into the origin of fires. The volume abounds in statistical tables in reference to Population, Taxes, Banks, Losses by fire, Steamboat and Railroad accidents, Foreign Commerce, Specie Exchanges and Emigration, and Insurance Legal Decisions. These, although having reference principally to the United States, combine many features having reference to Canada.

The United States Insurance Almanac is the only publication in the form of an Annual which contains a full and correct statement of the United States Government, including the President, his Cabinet, the Members of the Senate, and the House of Representatives.

An Insurance Advertiser completes the volume, the price of which, numbering about 180 pages, is One Dollar.

APPOINTMENTS TO OFFICE, &C.

JUDGES.

ROBERT M. BOUCHER, of Osgoode Hall, Esquire, Barrister at-Law, to be Judge of the County and Surrogate Courts of the United Counties of Peterborough and Victoria, in the room of George B. Hall, Esquire, deceased.—(Gazetted, April 24, 1858.)

COUNTY ATTORNEYS.

THOMAS ROBERTSON, of Dundas, Esquire, Barrister-at-Law, to be County Attorney for the County of Wentworth.—(Gazetted, April 10, 1858.)

DANIEL McMARTIN, of Perth, Esquire, Barrister-at-Law, to be County Attorney, for the United Counties of Lanark and Renfrew.—(Gazetted April 24, 1858.)

REGISTRARS.

JOHN HOOD GREER, of Hamilton, Esquire, to be Registrar of the County of Wentworth, in the room of Alexander Stuart, Esquire, deceased.—(Gazetted, April 10, 1858.)

NOTARIES PUBLIC.

FRANCIS BRODIE, of Ingersoll, Gentleman; WILLIAM NELSON GARDEN, of Thorold, Gentleman; and ARCHIBALD L. CUMMING, of Merrisville, Gentleman, to be Notaries Public for Upper Canada.—(Gazetted April 3 1858.)

JOSEPH DOYLE, of Kingston, Gentleman, to be a Notary Public in Upper Canada.—(Gazetted April 10, 1858.)

CORONERS.

EASTON HAWKSWORTH, Esquire, M.D., to be an Associate Coroner for the United Counties of Huron and Bruce.—(Gazetted April 3, 1858.)

WILLIAM MILLIKEN, M.D., and WILLIAM H. HURD, M.D., Esquires, to be Associate Coroners for the County of Carleton.—(Gazetted April 17, 1858.)

PATRICK EDWARD McKEON, Physician and Surgeon, and ALEXANDER HARVEY, M.D., Esquires, to be Associate Coroners for the United Counties of Peterborough and Victoria.—(Gazetted April 24, 1858.)

RICHARD LEECH, Esquire, to be an Associate Coroner for the United Counties of Leeds and Grenville.—(Gazetted April 24, 1858.)

SPECIAL COMMISSIONERS.

JAMES McLEAN, of the Township of Oneida, Esquire, to be a Commissioner for the protection of the Indian Lands in Upper Canada from trespass and injury &c.—(Gazetted April 17, 1858.)

TO CORRESPONDENTS.

"C." under DIVISION COURTS. "D. G.," "A CORONER," "J. T. C.," under GENERAL CORRESPONDENCE. "J. T., London, too late for this number.

NOTICE.

WHEREAS Twenty-five persons, and more, have organized and formed themselves into a Horticultural Society for the Village of Elora, in the County of Wellington, in Upper Canada, by signing a declaration in the form of Schedule A annexed to the Act 20 Viet. cap, 32, and have subscribed a sum exceeding Ten pounds to the funds thereof, in compliance with the 48th Section of the said Act, and have sent a Duplicate of said declaration written and signed as by law required to the minister of Agriculture;

Therefore, I, the Minister of Agriculture, hereby give notice of the formation of the said Society as the "Elora Horticultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agriculture, &c.

Bureau of Agriculture & Statistics,
Toronto, 10th March, 1858.

WHEREAS Twenty-five persons, and more, have organized and formed themselves into a Horticultural Society for the Parishes of St. Joachim, Ste. Anne and St Fereol, in the County of Montmorency, in Lower Canada, by signing a declaration in the form of Schedule A annexed to the Act 20 Vict. Cap. 32, and have subscribed a sum of not less than Ten pounds to the Funds thereof, in compliance with the 48th Section of the said Act, and have sent a Duplicate of said declaration written and signed as by law required to the Minister of Agriculture;

Therefore, I, the Minister of Agriculture, hereby give notice of the formation of the said Society as "The St. Joachim Horticultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agriculture, &c.

Bureau of Agriculture & Statistics,
Toronto, 9th March, 1858.

CROWN LAND DEPARTMENT.

Toronto, 21st Oct. 1857.

NOTICE is hereby given that the Lands in the Township of Barrie in the County of Frontenac, U.C., will be open for Sale on and after the 17th of next month, on application to the Resident Agent, Allan McPherson, Esq., at Kingston.

For list of Lots, and the conditions of Sale, see the Canada Gazette, or apply to Mr. McPherson.

ANDREW RUSSELL,
Asst. Commissioner.

11—6 in.

CROWN LAND DEPARTMENT.

Toronto, Oct. 13th, 1857.

NOTICE is hereby given that the Lands in the Township of Rolph in the County of Renfrew, U. C., will be open for sale on and after the 11th next month, on application to the Resident Agent, William Harris, Esq., at Admaston near Renfrew.

For list of Lots, and the conditions of Sale, see the Canada Gazette, or apply to Mr. Harris.

ANDREW RUSSELL,
Asst. Commissioner.

11—6 in.

INSPECTOR GENERAL'S OFFICE.

Customs Department,
Toronto, October 30, 1857.

NOTICE IS HEREBY GIVEN, That His Excellency the Administrator of the Government in Council has been pleased, under the authority vested in him, to direct an order that, in lieu of the Tolls now charged on the passage of the following articles through the Ottawa Canals, the Tolls hereinafter stated shall be hereafter collected, viz:

Iron Ore, passing through all or any portion of the Ottawa Canals, to be charged with a toll of *Three Pence* per ton, which being paid shall pass the same free through the Welland Canal.

Rail-Road Iron, to be charged *One Shilling* per ton, including Lachine Section, St. Ann's Lock and Ordinance Canals, and having paid such toll, to be entitled to pass free through the Welland Canal, and it having previously paid tolls through the Chambly Canal, such last mentioned tolls to be refunded at the Canal Office at Montreal.

The toll on Barrel Staves to be *Eight Pence* on the Ordnance Canals, and *Four Pence* on the St. Ann's Lock and Lachine Section, making the total toll per thousand, to and from Kingston and Montreal, the same as by the St. Lawrence route, viz: *One Shilling* per thousand.

By command,
R. S. M. BOUCHETTE
Commissioner of Customs.

NOTICE.

WHEREAS Twenty-five Persons, and more have organized and formed themselves into a Horticultural Society for the Village of Fergus, in the County of Wellington in Upper Canada, by signing a declaration in the form of Schedule A, annexed to the Act 20 Vic., cap. 32, and have subscribe a sum exceeding Ten Pounds to the funds thereof, in compliance with the 48th Section of said Act, and have sent a Duplicate of said declaration, written and signed as by law required, to the Minister of Agriculture.

Therefore I, the Minister of Agriculture, hereby give notice of the formation of the said Society, as "The Fergus Horticultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agr.

Bureau of Agriculture and Statistics.
Toronto, dated this 8th day of Feb., 1858.

NOTICE.

PROVINCIAL SECRETARY'S OFFICE,
14th January, 1858.

TO MASTERS OR OWNERS OF STEAM VESSELS.

NOTICE IS HEREBY GIVEN, That on and after the opening of Navigation in the Spring of the present year, a strict compliance with the requirements of the several Acts relating to the inspection of Steam Vessels will be insisted on, and all penalties for any infraction thereof rigidly enforced.

By Command,
E. A. MEREDITH,
Asst. Secretary.

NOTICE.

WHEREAS Twenty-five persons, and more, have organized and formed themselves into a Horticultural Society for the Town and Township of Niagara, in Upper Canada, by signing a declaration in the form of Schedule A, annexed to the Act 20 Vic. cap. 32, and have subscribed a sum exceeding Ten Pounds, to the Funds thereof, in compliance with the 48th Section of the said Act, and have sent a Duplicate of said declaration written and signed as by law required to the Minister of Agriculture.

Therefore I, the Minister of Agriculture, hereby give notice of the said Society as "The Niagara Horticultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agr.

Bureau of Agriculture & Statistics,
Toronto, dated this 18th day of January, 1858.

NOTICE.

WHEREAS Twenty-five persons, and more, have organized and formed themselves into a Horticultural Society for the City of Hamilton, in Upper Canada, by signing a declaration in the form of Schedule A, annexed to the Act 20 Vic. cap. 32, and have subscribed a sum exceeding Ten Pounds to the Funds thereof, in compliance with the 48th Section of said Act, and have sent a Duplicate of said declaration written and signed as by law required to the Minister of Agriculture.

Therefore I, the Minister of Agriculture, hereby give notice of the formation of of the said Society as "The Hamilton Horticultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agr.

Bureau of Agriculture and Statistics,
Toronto, dated this 18th day of January, 1858.

NOTICE.

WHEREAS Twenty-five persons, and more, have organized and formed themselves into a Horticultural Society for the City of Kingston, in Upper Canada, by signing a declaration in the form of Schedule A, annexed to the Act 20 Vic. cap. 32, and have subscribed a sum exceeding Ten Pounds to the Funds thereof in compliance with the 48th Section of said Act, and have sent a Duplicate of said declaration written and signed as by law required to the Minister of Agriculture:

Therefore, I, the Minister of Agriculture, hereby give notice of the said Society as "The City of Kingston Agricultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agr.

Bureau of Agriculture & Statistics.
27th January, 1858.

OPINIONS OF THE PRESS.

The Upper Canada Law Journal.—The April number of this excellent legal periodical has been sent to us; and it may be very justly pronounced as a more than average part, abounding in valuable matter, such as can only expected from gentlemen most eminent in the legal profession. The talented writers who have lately exercised the editorial control of this publication, have contributed much interesting information, and many sound commentaries, which are of incalculable advantage to the public. The reputation founded on previous issues is fully sustained in the present number. The article headed "Trial by Jury on its Trial," involves so many peculiar views on this time-honored institution, that we may at the earnest opportunity apply ourselves to a further consideration of them, and again refer to the subject at length. That section of the number devoted to "The Magistrate's Manual," will be found to present features of great interest to to Justices of the Peace, whose ministerial and judicial authority are therein clearly defined. The first portion of this work is devoted to a consideration of the *ministerial duties* of Justices of the Peace, and their general authority as conservators of the peace. There are several other editorials, and the contents throughout are of especial importance to the profession, as a record of events involving the most novel and learned arguments and divisions of the various Upper Canada Courts.—*Colonist.*

We have received the January number of this very useful periodical being number one of the fourth volume It is edited by W. D Ardagh, and R. A. Harrison B. C. L., Barristers-at-Law. This Journal contains a large amount of useful legal matter—reviews of important cases, decisions of the Judges, &c.,—which will be found highly beneficial to persons engaged in mercantile and other business pursuits, as well as to gentlemen belonging to the legal profession It is a work that should receive an extensive patronage and wide circulation. The price is $4 per annum in advance, or $5 if not so paid. Maclear & Co. Publishers, Toronto.—*Bowmanville Star.*

The Upper Canada Law Journal for January, has been received. As usual, its contents are exceedingly valuable.—*Kingston Whig.*

This is a very useful monthly, containing reports of important law causes, and general information connected with the administration of justice in Upper Canada Although more particularly intended for the profession, yet every man of business may learn much from it that may be of real advantage to him. It has hitherto been published in Barrie, but will henceforth be in Toronto. We rejoice to see that Robert A. Harrison, Esq B C L., is to be connected with the journal. He is a young gentleman that has already highly distinguished himself in his profession and with literary talents of no ordinary kind, he will prove to be of great advantage to the Law Journal.—*Brampton Times.*

We are pleased to notice that this able monthly is, for the future, to be edited and published in Toronto, and that Robert A. Harrison, Esq., B.C.L., is become a joint Editor. His accession to the editorial staff must prove to the profession to whom he is now so well known as the author of so many works in general use, no small gain. With Mr. Harrison is associated W. D. Ardagh, Esq., who has for some time been favorably known as an Editor of the *Journal*. Notwithstanding the public caution of the *Journal* in Barrie, it has under the management of the Hon. James Patton acquired a very wide and extended circulation. Now that it is to be published in Toronto, it is reasonable to expect that its circulation will be increased. It is a paper which should be in the hands of every Judge, Lawyer, Coroner, Magistrate, Clerk, and Bailiff in Upper Canada. We hope, however, that the conductors will see fit to widen the list of their exchanges and so increase the circle of their usefulness.

It is a great mistake to suppose that Judges, Lawyers, Division Court Clerks, or Bailiffs are the sole persons interested in the administration of justice. The public at large have a deep interest in, and feel a lively sympathy with the sentiments of a writer who propounds measures of law reform calculated to advance the public good. No discussion however well attended upon subjects of legal interest, can be satisfactorily carried on by the lay press.

The public require to be informed not only as to the existence of an abuse which needs a remedy, but as to the nature of the remedy required For such information the more proper and more prudent course is to turn to the columns of a newspaper conducted by men whose whole lives and training peculiarly befit them for the expression of sound views. The number of the *Journal* before us which is that for August is replete with legal lore The Editorial Department bears marked evidence of knowledge and ability.—*Toronto Times.*

Upper Canada Law Journal, edited by Messrs. Ardagh and Harrison. The office of publication of the above excellent journal has been removed to Toronto The *Journal* contains a variety of legal decisions and information interesting to solicitors, conveyancers, insurance agents, division court clerks and municipal officers, which cannot be obtained elsewhere. —*Stratford Examiner.*

We subjoin an article from the *Law Journal*, a legal periodical—indeed the only one published in Uppper Canada—shewing the immense progress of the Division Courts.

This periodical, which is now published in Toronto, is conducted with much ability and is very useful to all having business in the Superior and Division Courts.—*Advance.*

Somewhere it has been said that to know a people thoroughly, it is necessary to study their laws—to ascertain how life and property are protected. This ably conducted Journal tells us how the laws enacted by government are administered in Upper Canada. It tells us—what every body knows—that law is expensive, and it adds that cheap justice is a curse, the expense of the law being the price of liberty. Both assertions are certainly truisms, yet a litigious and quarrelsome spirit is not invariably the result of that combativeness which belongs to such men as those who, under any circumstances, and at whatever cost, will assert their rights. It is not our purpose to review the *Journal*, but to praise it; seeing that praise is deserved. The articles are well written, the reports of cases are interesting, and the general information is such, that the *Journal* ought not only to be read, but studied by the members of the bar, the magistracy, the learned professions generally, and by the merchant.

The *Law Journal* is beautifully printed on excellent paper, and, indeed, equals in its typographical appearance, the legal record published in the metropolis of the United Kingdom. $4 a year is a very inconsiderable sum for so much valuable information as the *Law Journal* contains.—*Port Hope Atlas.*

We have to return our thanks to the conductors (or publishers, we do not know which,) of this valuable publication for the present January number, together with an ample index for, and list of cases reported and cited in the second volume of these reports for the year 1850.

The ability with which this highly important and useful periodical is conducted by W. D. Ardagh and Robert A Harrison, B. C. L., Esquires, Barristers at Law, reflects the greatest credit upon these gentlemen, and shews that the esteem in which they are held by their professional confreres and the public, is deservedly merited and nothing more than they are entitled to. We have much pleasure in earnestly recommending the members of the bar for this section of the Province to support the Upper Canada Law Journal, by their subscriptions.—taking leave to assure them that it is well worthy of it, and that they will find it a valuable acquisition to their libraries as a legal work of reference and high authority. It is printed and published by Messrs. Maclear, Thomas & Co., of 16 King Street East, Toronto, and the typographical portion is very creditable to that firm.—*Quebec Mercury.*

The Upper Canada Law Journal, and Local Courts Gazette, is a publication of which the legal profession of the Province need not be ashamed The *Journal* has greatly improved since the removal of the office of publication to Toronto. It is edited with ability by W D Ardagh, and R A. Harrison, B. C. L., Barristers-at Law The January number, which is the first of the fourth volume, appears in a considerably enlarged form. The fourth volume will contain at least one-third more reading matter than its predecessor. A very important question, "Shall we have a Bankruptcy Law?" is discussed at length in a well written editorial in the January issue, to which we shall refer on a future occasion. "License of Counsel," is an original article which probes barristers in many tender spots. The *Law Journal's* circulation should not be confined entirely to the legal profession.—the Merchant, and general business man would find it a very useful work. The price is $4 a year in advance, or $5 otherwise. Now is the time to send in orders.—*Port Hope Guide.*

In its first number of the fourth volume this interesting and valuable publication comes to us highly improved in appearance with a much wider range of editorial matter than formerly The *Journal* has entered upon a broader career of utility, grappling with the higher branches of law, and lending the strength of a full, fresh intelligence, to the consideration of some very grave wants in our civil code. The necessity of an equitable and efficient "Bankruptcy Law" is discussed in an able article, instinct with astute and profound thought, coupled with much clear, subtle, legal discrimination.

It is the intention of the Proprietors to institute in the pages of the *Journal* a "Magistrate's Manual:"—provided that that body meet the project in the proper spirit, and contribute an adequate subscription list to warrant the undertaking. To prosecute this contemplation, could not fail to be productive of incalculable advantage, as well to the community as to the Magistracy. We sincerely hope that his latter body will bestow a generous patronage, where so laudable an effort is made for their advantage.

The *Law Journal* is presided over by W D Ardagh, and R. A Harrison, B. C. L., Barristers-at-Law It is a periodical that can proudly compete with any legal publication on this Continent. We wish it every success. —*Catholic Citizen.*

This Journal which is published monthly, appears this week much improved in size, appearance and matter. It was formerly published in Barrie, but has for some numbers back been published in Toronto, and has acquired aid in the editorial staff by the addition of Mr. Harrison, who is well known in the profession from his numerous publications on legal subjects. Under the management of Mr. Ardagh and Mr Harrison, this Journal promises fair to become an important publication, not merely to the legal profession, but to other important classes of the community, as particular attention is given to Municipal affairs, County Courts and Division Courts; Magistrates' duties also receive a considerable share of consideration. It will contain original treatises and essays on law subjects, written expressly for the *Journal*, besides reports from the Superior Courts of Common Law and the Court of Chancery. Proper selections will also be made from English periodicals. To the profession the reports from Chambers of decisions under the Common Law Procedure Acts and the general practice, are of particular interest. These the *Journal* supplies, being formerly reported by Mr. F. Moore Benson, and latterly by Mr. C. E. English, M. A. We would advise all municipal officers, Division Courts officers, Magistrates, and particularly the profession, to patronize this publication, as it cannot be sustained without their aid. The subscription is only $4 a year in advance.—*Leader.*

The January number of this valuable Journal has come to hand, and is as usual replete with legal decisions, articles on commercial law, &c., &c. We republish from this number, an able article on the subject of a Bankrupt Law for Canada.—*Canadian Merchants' Magazine.*