DIARY FOR FEBRUARY.

1. Mon.. Hilary Term begins.
2. Tues.. Purification Blessed Virgin Mary.
3. Wed.. Meeting of Grammar School Board. Intermediate Examination of Law Students and Articled Clerks.
5. Frid.. Paper Day, Queen's Bench. New Trial Day, Common Pleas.
6. Sat. .. Paper Day, Common Pleas. New Trial Day, Queen's Bench.
7. SUN.. *Quinquagesima.*
8. Mon.. Paper Day, Queen's Bench. New Trial Day, Common Pleas.
9. Tues.. *Shrove Tuesday.* Paper Day, Common Pleas. New Term Day, Queen's Bench.
10. Wed.. *Ash Wednesday.* Paper Day. Queen's Bench. New Term Day, Common Pleas. Last day for setting down and giving notice for re-hearing. Last day for service for County Court, York.
11. Thur.. Paper Day, Common Pleas.
12. Frid.. New Term Day, Queen's Bench.
14. SUN.. *1st Sunday in Lent. St. Valentine.*
15. Mon.. Last day for County Treasurer to furnish to Clerks of Municipalities in Counties lists of lands liable to be sold for taxes.
18. Thur.. Re-hearing Term in Chancery commences.
20. Sat. .. Declare for County Court York.
21. SUN.. *2nd Sunday in Lent.*
24. Wed.. *St. Matthias.*
28. SUN.. *3rd Sunday in Lent.*

The Local Courts'
AND
MUNICIPAL GAZETTE.

FEBRUARY, 1869.

THE CHIEF JUSTICE OF THE COURT OF ERROR AND APPEAL.

The last day of the old year was the silent witness of an event which, though not attended with any display, was a noticeable one in the judicial annals of the province. It was the occasion of the ex-Chief Justice of Ontario taking his seat as President (or, as he is now to be called, the Chief Justice) of the Court of Error and Appeal, and of the official presentation to him of an address by the Law Society, commemorative of the event and expressive of the feelings of the profession on his retirement from the more active duties devolving on him as a Judge of one of the Superior Courts.

The address, which was presented by Hon. John Hillyard Cameron, on behalf of the Society, was as follows:

"To the Honourable William Henry Draper, C.B., President of the Court of Error and Appeal.

Her Majesty having been graciously pleased to accept your resignation as Chief Justice of Upper Canada, and subsequently to appoint you as President of the Court of Error and Appeal, we, the Law Society of Upper Canada, beg leave respectfully to address you, and to convey to you our sincere thanks for the unvaried courtesy and kindness which, in the exercise of your judicial office, the members of the legal profession have received at your hands, for a period extending over more than twenty years.

It is to us a subject of unfeigned satisfaction that your talents and learning are not to be lost to the country, but that you will hereafter preside in the Court of ultimate resort in this Province.

We trust that on an occasion like the present you will excuse our calling attention to the course of your professional life as an example and encouragement to those who devote themselves to the study of the law, as showing that, without any adventitious aid, but solely by the exercise of your own ability and industry, you have successfully with satisfaction and applause discharged the duties of Solicitor-General, Attorney-General, Puisne Judge, and Chief Justice.

That you may long continue to fill the dignified position which you now hold, is the sincere prayer of the members of the Law Society.

J. Hillyard Cameron,
Treasurer.

Osgoode Hall, Dec. 31, 1868."

It would be an easy and a pleasing task to enlarge upon the sentiments of the Address, and to speak of the feelings of admiration so universally entertained for one so eminent; but all we could say would be but a mere repetition of what has so often been said before in these pages, in acknowledgment of the distinguished services and ability of the learned Judge, whose sphere of usefulness has now been transferred from the Court of Queen's Bench to the less active but more honorable position of presiding over the Court of ultimate resort in this Province.

His Lordship, in answer to the address, made the following reply:

"Mr. Treasurer and Gentlemen,

I thank you very sincerely for this address. Since my first appointment to the bench, it has been my constant effort to cultivate the most friendly relations with the bar, and I feel no slight gratification at my success, as testified by this mark of your approval, in which you mingle the expression of your satisfaction at my past career with a kind wish that I may yet a while continue to discharge judicial duties.

I have, in my turn, to express my warm acknowledgments to the bar, generally, for their universal attention and respect to me in my intercourse with them as a judge, as well as for unnumbered marks of kindness and regard to me individually. If I have attained any success in my efforts to maintain that confidence in the

purity of the administration of justice in this Province, which existed in the days of my eminent predecessors, I owe it, first, to the co-operation of those learned judges who shared my labours, and next to the ability and assiduity of the members of the profession whom you represent.

Upwards of forty-five years ago I first entered my name on the books of the Law Society, of which I believe I have still the honour to be a bencher; and though I passed some years in the active duties of public life, I never severed myself from the diligent practice of my profession. I rejoice that while sinking into the vale of declining years, I am still thought able to be of use, and that I can maintain the connexion which has existed during the best part of my life. I trust that I shall be enabled to pursue the same course which has procured for me this flattering mark of your esteem, and I look forward with a hopeful confidence to a continuance of that support and assistance to which I have been so deeply indebted in my past career."

The following brief particulars of the career of the Ex-Chief Justice will be interesting to our readers. He was born on the 11th March, 1801, and is now therefore nearly sixty-eight years of age. He commenced life as a cadet or midshipman in an East Indiaman, and has never forgotten his early nautical training. He came to this country some years afterwards, arriving in Cobourg on the 4th June, 1820, and commenced the study of the law in 1823, having articled himself to Thomas Ward, Esq., of Port Hope. He subsequently went into the office of Hon. George Strange Boulton, of Cobourg, and was for some years Deputy Registrar of Northumberland and Durham. He afterwards came to Toronto, we believe at the suggestion of the late Sir John Robinson, then Attorney General.

He was called to the Bar on 16th June, 1828, nearly forty one years ago. On the 18th November, 1829, he was appointed Reporter to the King's Bench, which office he held until March, 1837, when, on 23rd March, he was appointed Solicitor General of Upper Canada, and made a member of the Executive Council in December following.

The union of the Provinces took place in February, 1841, and on the 13th of that month he became the first Attorney General for Upper Canada and Premier. He served in an official capacity at different times under the following governors, viz.: Sir Francis Head, Sir George Arthur, Lord Sydenham, Sir Charles Bagot, Lord Metcalfe, Lord Cathcart, and Lord Elgin.

In 1842 he was made a Queen's counsel, at the same time as Henry John Boulton, Robert Baldwin, Henry Sherwood and James E. Small.

On the 10th April, 1843, he was appointed a Legislative Councillor of Canada, which office he resigned at Lord Metcalfe's request, in January, 1845, and was elected to the Legislative Assembly, where he again sat as Attorney General until 28th May, 1847.

On the 12th June following he was appointed a Puisne Judge of the Queen's Bench, taking the place vacant by the death of Mr. Justice Hagerman, where he remained until 5th February, 1856, when he succeeded Sir James Macaulay, as Chief Justice of the Court of Common Pleas. He presided there until he was transferred to the Queen's Bench, becoming Chief Justice of Upper Canada on the retirement of Chief Justice McLean, who was made President of the Court of Appeal on 22nd July, 1863. He has thus, step by step, arrived at the goal of his ambition, a position he expressed his determination to win, when but a student in the Town of Cobourg.

His energy, perseverance and ability has taken him a step beyond the place he looked forward to as his own. Long may he continue to be an honour to it. Long also may he to enjoy that increased measure of health which we are happy to think has been vouchsafed to him, and the pleasure of knowing that his services are appreciated by an intelligent profession, and that the confidence and esteem of the public are still his own.

FEES TO ATTORNEYS IN DIVISION COURTS.

At the close of our last volume we published a letter criticising the soundness of a decision by a County Judge on the payment of fees to attorneys for work done by them, as such, in Division Courts. A letter was written in answer to this, which, however, did not throw much light on the subject, and "An Attorney," in another letter published hereafter, again returns to the charge.

We have taken the trouble to find out exactly what the learned Judge did say in his judgment, which appears to have been a written one. We allude to the case in which he lays down the rule which should, in his opinion, govern cases such as that spoken of by our correspondents. We do not gather from this judgment (which we apprehend "An Attorney" could not have seen), that the

Judge entertained the opinion which the letters of "An Attorney" would lead us to suppose. With the details of the cases neither we nor our readers are at all interested, but it is a matter of simple fairness that the views of the Judge should be given in his own words; the subject, moreover, is of some importance, and worthy of discussion.

The part of the judgment touching on the point before us was as follows:—

"It is difficult to arrive at what is a fair and reasonable or proper allowance to make for services as an Attorney in the Division Courts, for the Superior and County Court tariffs are fixed, and the retainer once proved, the amount can be ascertained by a reference to the proper officer. No tariff is fixed for the Division Courts, but it is not to be supposed that an Attorney is not to receive anything for practising therein. On the other hand I do not think him entitled to County Court costs (which the plaintiff appears to have charged,) for Division Court business. As there is a wide difference between Superior and County Court costs, which bear some relation to the jurisdiction of the respective Courts, so the costs in the Division Court, being of still more restricted jurisdiction, should be considerably less than those of the County Court. I have no authority, and do not feel inclined, to lay down or fix a tariff for all the items of Division Court business. I shall simply allow in each case a gross sum, and that not a large one, covering all charges in respect of the suit (except disbursements), and having some reference to the trouble taken and the interests involved. If members of the profession think my allowance too small, they can easily protect themselves by a previous arrangement with their clients, and this would, in all cases, be the fairest and most satisfactory way.

The plaintiff endeavours to shew that he came from ——— solely to attend to defendant's business. I do not think the evidence establishes this, and cannot allow the plaintiff anything for travelling expenses. I allow the plaintiff $5.00 for each of the two suits, one at ——— and one at ———, less $3.00 paid on suit at ——— Court, leaving $7.00, and I allow 40 cents for postage and $4.00 for subpœna and copies, making $11.40 in all for Division Court business.

The witness fees, amount paid witnesses, and charge for copy of papers, appear to be covered by the $9.00 paid plaintiff by ———."

Without at present discussing the propriety of this ruling, it can scarcely be said that the Judge decided that an Attorney has no right to recover for services rendered, as such, in Division Court suits, or that the judgment was not given upon some principle, which the Judge considered was a sound one, and which he in a subsequent suit by same plaintiff expressed his intention to follow.

So far as this particular case is concerned, this must close any further reference to it. As to the amount of remuneration, the Judge may or may not have given less than was proper under the circumstances. He, however, was the judge of that, and it is idle to discuss that part of the matter here.

BAILIFF'S FEES.

A correspondent raises a question of fees under the new Act, which is of some importance to Bailiffs of Division Courts, and as to which it would be well to have the practice settled as soon as possible

Sec. 18 of the Act, provides that

"Notwithstanding any of the provisions of the said Act, when there is no bailiff of the court in which the action is brought, or when any summons, execution, subpœna, process or other document, is required to be served or executed elsewhere than in the Division in which the action is brought, they may in the election of the party, be directed to be served and executed by the Bailiff of the Division in or near to which they are required to be executed, or by such other Bailiff or person as the Judge, or Clerk issuing the same, shall order, and may, for that purpose, be transmitted by post or otherwise, direct to such Bailiff or person, with being sent to or through the Clerk."

The question is, whether a Bailiff can claim the fee which under the former practice would have been payable to the clerk for receiving papers from another county, &c. The provision in the tariff of fees for clerks which is referred to, is as follows:—

"Receiving papers from another County or Division for service, entering same in a book, handing the same to the bailiff, and receiving his return to be paid when the claim is filed or defence, 20 cents."

We should be glad if the law could be interpreted to give a fee to bailiffs for the additional trouble and responsibility which this section may sometimes throw upon them. But we do not think this section read in connection with the tariff of fees to clerks, can be held to give to bailiffs the same fees which are given to clerks alone, and that for services, some of which bailiffs are not called upon to perform. We apprehend, however, that as the duties under this section are disconnected from

any correlative duties of the clerk of the Division in which each bailiff is acting, that the affidavits of service may be made before any commissioner, and not necessarily before the clerk, and the commissioner's shilling will be a legitimate part of the fees chargeable on the service.

A subsequent section of this Act, gives power to the judges who may hereafter be appointed for that purpose, to make rules for the guidance of clerks and bailiffs, and in relation to their duties and services and the fees therefor. This Board will doubtless take into careful consideration as well the defects in former procedure, as provisions for the more convenient working of the practice under this Act.

SELECTIONS.

CONVICTION UPON CIRCUMSTANTIAL EVIDENCE.

The injustice of convicting persons of capital offences upon circumstantial evidence has been a fruitful theme of discussion time out of mind. We believe it is now generally conceded that crimes diminish in a country in proportion to the mildness of its laws. Evils certainly arise in having laws on the statute-book which are at variance with the universal instincts of mankind, and which are therefore continually evaded. The abolition of a bad law is attended with less injury to a community than its constant evasion. Heinous crimes are usually committed in secret, and the proof, therefore, is necessarily circumstantial. Evidence so precarious in its nature should indeed be closely scrutinized. In Scotland, long ago, they refused to convict of capital offences upon such evidence; and in England, since the conviction and execution of Eugene Aram—upon whose character and the circumstances of whose death, the versatile Bulwer founded a readable novel, and the gifted Hood wrote a touching poem—the courts have been prone to analyze carefully a case resting entirely upon such evidence. Aram, it will be remembered, was indicted for killing one Daniel Clarke, and was convicted of his murder by a chain of circumstantial evidence, fourteen years after Clark was missed. The *corpus delicti* was not proved. The concatenation of circumstances which led to his conviction is among the most peculiar and remarkable on record.

In the trial of capital cases there are two time-honoured maxims which have always obtained. (1.) That *circumstantial evidence falls short of positive proof:* (2.) That *it is better that ten guilty persons should escape than one innocent person should suffer.* The first qualified by no restriction or limitation is not altogether true. For the conclusion that results from a concurrence of well authenticated circumstances, is always more to be depended upon than what is called positive proof in criminal matters, if unconfined by circumstances, *i. e.*, the oath of a single witness, who, after all, may be influenced by prejudice, or mistaken; and if by the word "better," in the second maxim, is meant more conducive to general utility, it would also seem to be unsound. And here we may endeavour to ascertain clearly what is understood in legal parlance by "circumstantial evidence." It may be observed that, every conclusion of the judgment, whatever may be its subject, is the result of evidence, a word which (derived from words in the dead languages signifying "to see," "to know,") by a natural sequence is applied to denote the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved; circumstantial evidence is of a nature identical with direct evidence, the distinction being, that by direct evidence is intended evidence which applies directly to the fact which forms the subject of inquiry, the *factum probandum:* circumstantial evidence is equally direct in its nature, but, as its name imports, it is direct evidence of a minor fact or facts, incidental to or usually connected with some other fact as its accident, and from which such other fact is inferred. Upon this general definition jurists substantially agree. For an illustration, then, of direct and indirect evidence, let us take a simple example.

A witness deposes that he saw A. inflict a wound on B., from which cause B. instantly died. This is a case of direct evidence.—C. dies of poison, D. is proved to have had malice against him, and to have purchased poison wrapped in a particular paper, which paper is found in a secret drawer of D., but the poison gone. The evidence of these facts is direct, the facts themselves are indirect and circumstantial, as applicable to the inquiry whether a murder has been committed and whether it was commited by D. The judgment in such a case is essentially deductive and inferential. A distinguished statesman and orator (Burke's Works, vol. II., p. 624), has advanced the unqualified proposition that when circumstantial proof is in its greatest perfection, that is, when it is most abundant in circumstances, it is much superior to positive proof. At one time great injustice was done by condemning persons for murder when it had not been proved that a murder was perpetrated. The now well-recognised principle in jurisprudence that no murder can be held as having been committed till the body of the deceased has been found, has terminated this form of legal oppression. A common cause of injustice in trials for murder is the prevarication of the party charged. Finding himself, though innocent, placed in a very suspicious predicament, he invents a story in his defence and the deceit being discovered, he is at once presumed guilty. Sir Edward Coke mentions a melancholy case of a gentleman charged with having made away with his

niece. Though he was innocent, in a state of trepidation he put forward another child as the one said to have been destroyed. The trick being discovered, the poor man was executed, a victim of his own disingenuousness.

NOTE.—The following case occurred in Edinburgh (*vide* 2 Chambers' Miscellany).

Catherine Shaw encouraged the addresses of John Lawson, which were insuperably objected to by her father, who urged her to receive the adresses of one Robertson. One evening being very urgent thereupon she peremptorily refused, declaring she preferred death to being Robertson's wife. The father became enraged, the daughter more positive, so that the words "barbarity, cruelty, and death," were frequently pronounced by the daughter. He locked her in the room and passed out. Many buildings in Edinburgh are divided into flats or floors, and Shaw resided in one of these flats, a partition only dividing his dwelling from that of one Morrison. Morrison had overheard the quarrel, and was impressed with the repitition of the above words, Catherine having pronounced them emphatically. For some little time after Shaw had gone out all was quiet; presently Morrison heard groans from Catherine. Alarmed, he ran to his neighbor, who entered Morrison's room with him and listened, when they not only heard groans, but distinctly heard Catherine murmur, "Cruel father, thou art the cause of my death." They at once hurried to Shaw's apartment, knocked but received no answer, and repeated the knocks, but no response came. A constable was procured, and an entrance forced, when Catherine was found weltering in her blood, a knife by her side. She was alive, but unable to speak, and on being questioned as to owing her death to her father, was only able to make a motion with her head, apparently in the affirmative, and expired. At this critical moment Shaw entered the room; seeing his neighbors and a constable in his room he appeared much disordered, but at the sight of his daughter, turned pale, trembled, and was ready to sink. The first surprise and succeeding horror left little doubt of his guilt in the breasts of the beholders; and even that little was removed when the constable discovered blood upon the shirt of Shaw. Upon a preliminary hearing he was committed. On his trial he acknowledged having confined his daughter to prevent her intercourse with Lawson; that he had frequently insisted on her marrying Robertson; and that he had quarrelled with her on the subject the evening she was found murdered, as the witness Morrison had deposed; but averred he left her unharmed, and that the blood found on his shirt was there in consequence of his having bled himself some days before, and the bandage becoming untied. These assertions did not weigh a feather with the jury in opposition to the strong circumstantial evidence of the daughter's expressions of "barbarity, cruelty, death," together with that apparently affirmative motion with her head, and of the blood so seemingly providentially discovered on Shaw's shirt. On these concurring statements Shaw was found guilty, and executed at Leith Walk. Was there a person in Edinburgh who believed the father guiltless? No, not one, notwitstanding his latest words, at the gallows, "I am innocent of my daughter's murder." A few months afterwards, as a man who had become the possessor of the late Shaw's apartments, was rummaging, by chance, in the chamber where Catherine died, he accidentally perceived a paper which had fallen into a cavity on one side of the chimney. It was folded as a letter, which on opening contained the following:—

"Barbarous father, your cruelty in having put it out of my power ever to join my fate to that of the only man I could love, and tyrannically insisting upon my marrying one whom I always hated, has made me form a resolution to put an end to an existence which is become a burden to me. I doubt not I shall find mercy in another world, for sure no benevolent Being can require that I should any longer live in torment to myself in this. My death I lay to your charge; when you read this, consider yourself as the inhuman wretch that plunged the murderous knife into the bosom of the unhappy

CATHERINE SHAW.

A few years ago a poor German came to New York, and took lodgings, where he was allowed to do his cooking in the same room with the family. The husband and wife lived in a perpetual quarrel. One day the German came into the kitchen with a clasp-knife and a pan of potatoes, and began to pare them for his dinner. The quarrelsome couple were in a more violent altercation than usual; but he sat with his back towards them, and being ignorant of their language, felt in no danger of being involved in their disputes. But the woman, with a sudden and unexpected movement, snatched the knife from his hand and plunged it in her husband's heart. She had sufficient presence of mind to rush into the street and scream "murder." The poor foreigner in the meanwhile, seeing the wounded man reel, sprang forward to catch him in his arms, and drew out the knife. People from the street crowded in, and found him with the dying man in his arms, the knife in his hand, and blood upon his clothes. The wicked woman swore in the most positive terms that he had been fighting with her husband, and had stabbed him with that knife. The unfortunate German knew too little English to understand her accusation, or to tell his own story. He was dragged off to prison, and the true state of the case was made known through an interpreter; but it was not believed. Circumstantial evidence was extremely strong against the accused, and the real criminal swore unhesitatingly that she saw him commit the murder. He was executed, notwithstanding the most persevering efforts of his counsel, John Anthon, Esq., whose convictions of the man's innocence were so painfully strong, that from that day he refused to have any connection with a capital case. Some years after this tragic event the woman died, and on her death-bed confessed her agency in the diabolical transaction.

One of the most remarkable cases of conviction upon circumstantial evidence that has occurred in this country, is that of one Ratzky, who was tried and convicted in 1863, at the Oyer and Terminer in Brooklyn, N. Y. The case is known as the "Diamond Murder," and the circumstances of the case were in brief as follows:—

Ratzky boarded at a house in Carrol Street in said city, where one Fellner also boarded, who had a short time before come from Mentz, Germany. Fellner was about fifty years of age, had been a large dealer in diamonds in his native place, but, as shown, he had for certain causes absconded and fled to this country. On his passage over he became enamoured of one Miss Pflum, who was in company with her sister, a Mrs. Marks. On his trip over his gallantry and attentions gained for him, from the passengers, the appellation of "Don Juan," and Miss Pflum that of "Zerlina." Arriving at New York the two ladies engaged rooms at a house in East Broadway, and it was shown on the trial that their characters were not the most exemplary.

On Friday morning, a few days after Fellner and he had commenced to board in Carrol Street, Ratzky and he went to New York together. Fellner never returned to the house. His body was found washed ashore at Applegate Landing, near Middletown, N. J., four days after. On examination of the body it was found that the deceased had been murdered, there being twenty-one wounds on his breast. The body was identified by one Mrs. Schwenzer, who boarded in the same house where Ratzky and Fellner had boarded. Ratzky fled under an assumed name, but was arrested in St. Louis, and finally brought to trial. His story of the affair is, in short, that, on the evening of the morning when he went to New York with Fellner, they called at the house where Mrs. Marks and Miss Pflum were. That Fellner and Miss Pflum were engaged in conversation for an hour, and that during the evening Fellner gave him a gold watch which Miss Pflum handed him from a jewel case belonging to Fellner. It was a little after 8 o'clock that evening when Ratzky informed Fellner that it was about time for them to go home. That he urged Fellner several times to go, but he and Miss Pflum were engaged in a lively conversation, and that at last upon further urging Fellner rose to go, kissed Miss Pflum with great *nonchalance* before those present, telling her that to-morrow he should leave for Chicago, and desiring her to answer his first letter from there. He embraced Miss Pflum, at the same time whispering something in her ear. They then left—arriving at the ferry, no boat was in, and they sat down on the cross-beam of the ferry dock; that Fellner took off his hat and wiped the perspiration from his forehead, at the same time handing his cane to Ratzky. When the boat came they went on board, he Ratzky, still retaining the cane. In a moment or two Fellner rose from his seat and walked up and down the cabin once or twice, then went on the deck, as Ratzky supposed, for the sake of breathing the cool air; that the boat shortly after started, and if Ratzky's story be true, he never after saw Fellner alive. That he waited for him to come off the boat when it reached Brooklyn side, but not seeing him asked the ferry-master if he had seen a man pass answering the description given. That he called out the name of Fellner at the top of his voice in order to find him, but concluded that he had gone home. If this story had been confirmed Ratzky would doubtless have been acquitted. It appeared on the trial that when the body was found Mrs. Schwenzer proposed to go and see it, when Ratzky endeavored to dissuade her from doing so. She visited Mrs. Marks, at Ratzky's request, who begged her not to say anything about the matter, giving her at the same time a sum of money to secure her silence. Ratzky soon after left the city. Fellner's body being identified, Mrs. Marks and Miss Pflum were arrested on suspicion as being *particeps criminis*. Miss Pflum committed suicide by hanging herself in the cell of a New York station-house a few days after her arrest.

(Webster, in his elaborate argument in the Knapp Case, declared that "suicide is confession.")

On the trial the prosecution argued upon the theory that Fellner and Ratzky crossed on the Hamilton Avenue ferry-boat to Brooklyn; that Ratzky induced Fellner to go to the club-house, which stands near the water at the foot of Court Street, in order to get drinks; that they had been there before, and that Ratzky having got him there he inflicted the stabs and dragged the body to the water's edge or into the water, and from that point Fellner's body floated into the bay and finally was thrown ashore four days after on the Jersey side. It was shown that Ratzky reached home the night in question at 10 o'clock, that he was heated when he got home, and had Fellner's cane and a parcel belonging to him in his possession; that he inquired if Fellner had come, and on being answered in the negative, he told the story as above. To some in the house he said that Fellner had gone to Chicago. The prosecution argued that Ratzky was the last person with Fellner; that he knew he had wealth—a motive for murder; that Fellner's disappearance on the ferry-boat was wholy irreconcilable with Ratzky's subsequent conduct. If he had mentioned the fact that he had missed Fellner on the boat, why is not the ferryman produced? If Ratzky did not know that Fellner had been made away with, would he have had his trunk broken open next morning and taken his clothes, while making no effort to avoid the risk he ran in case of Fellner's return? Do honest men break into trunks, tell conflicting stories, try to keep dead bodies from being identified, run away, assume disguises, and change their name?

The prosecution examined witnesses on the stand who swore that under a conjunction of favorable circumstances a body thrown into the water on Brooklyn side might float to Jersey shore, But four days had elapsed from the night on which the murder was committed, according to the prosecution, until the body was found. It was not decomposed when found; on the contrary, the blood came from the wounds when probed. It is generally known that a dead body will sink when thrown into the water, and will not rise until decomposition sets in and gases are generated to float it to the surface. The theory is, that it could not have floated, and if not, it was impossible that it could have been carried by the tide from Brooklyn to the Jersey shore. No witnesses were called in behalf of Ratzky, and the jury, after a consultation of fifteen minutes, returned a verdict of guilty. By the law of 1860, a person convicted of murder in the first degree must be confined in the state prison one year, and at the expiration of that time, the governor might order the death penalty to be enforced. By throwing the *onus* of enforcing the penalty on the governor, it was anticipated that the death penalty would be virtually abolished in the state. This law was in force when the murder was committed, but was repealed in 1862; Ratzky was convicted in 1863, and Judge Brown sentenced him to be hanged under the law then in force. On appeal, a new trial was denied, and it was further held, that the court erred in sentencing Ratzky under a law not on the statute-book when the murder was committed. Ratzky was, therefore, sent back for a re-sentence, and under the law of 1860, he is now in prison at the pleasure of the governor of the state, who may execute the sentence at any time, though an effort is being made to have him reprieved.

PROTECTION TO WIVES.

The *Times* has, with much humanity, invited public attention to the case of Susannah Palmer, who has been convicted of wounding her husband with intent to do him grievous bodily harm. It was the old story—a respectable woman, with a host of children, striving to earn an honest livelihood, and a husband, who visited her occasionaly, for the purpose of knocking her down, selling her goods, and drinking the money. The woman in a fit of passion stabbed the man. With the nature of her act we have nothing to do. But what deserves attention is the fact that this woman never seems to have known that she could obtain from the law any protection for her person or her savings. Here is pretty strong evidence that the law on this matter is not understood by the only classes of society for whose beneh it could possibly have been intended, because the ignorance of it must have prevailed among the neighbours of the woman. She, indeed, thought that her only resource was *ferre patique*. Yet the statute protecting her was passed in the year 1857. The truth is that the law has not struck at the root of these gigantic evils. This case is not an isolated one; on the contrary, it is only an example of thousands in London alone. The remedy is to be found in that which we have again and again advocated, namely, the abolition of the control of the husband over the property of the wife. If such a law was once made, the most poor and simple would appreciate their rights, as everything would be reduced to a mere question of *meum* aud *tuum*, a matter intelligible to the meanest intellects.—*Exchange.*

MAGISTRATES, MUNICIPAL, INSOLVENCY, & SCHOOL LAW.

NOTES OF NEW DECISIONS AND LEADING CASES.

INSOLVENT ACT 1864 — FOREIGNERS. — The plaintiff had been engaged in business in Canada, though not permanently resident there. He was arrested by the defendant, a constable, who took possession of money found on him; and being discharged, he sued the defendant for the money, A writ of attachment having issued against him. one M. was appointed official assignee, and applied, under sec. 4, sub-sec. 9 of the Insolvent Act of 1864, to be allowed to intervene and represent the plaintiff in the suit. The plaintiff objected, contending that as a foreigner he was not liable to the Insolvent laws.

The point being one of great practical importance, raised for the first time, the court, with a view to have it properly brought up, left the assignee to sue the defendant for the money, so that the defendant might apply under the Interpleader Act, and the question be presented on the record in a feigned issue.—*Mellon* v. *Nicholls*, 27 U. C. Q. B. 167.

INSOLVENT—CHATTEL MORTGAGE—INSOLVENT ACT, 1864, SEC. 8, SUB-SECS. 1. 2, 3, 4.—Declaration in detinue and trover for goods. Plea, that one J., the owner, being a debtor unable to meet his engagements and in contemplation of insolvency, mortgaged the goods to the plaintiff, and within thirty days thereafter made a voluntary assignment in insolvency to the defendant, the official assignee: that the mortgage was made to the plaintiff as a creditor of and security for J., whereby the plaintiff obtained an unjust preference over J.'s other creditors, who were thereby injured and obstructed, wherefore the mortgage was void, and the defendant as assignee took the goods.

The plaintiff replied that J. being a retail dealer, and wanting goods to carry on his business, asked the plaintiff to endorse notes to ena-

ble him to purchase them: that the plaintiff consented, on condition that J. on receiving the goods should secure him against loss by a mortgage thereon, and on the other goods in J.'s store, who was to sell them at his store only, and out of the proceeds retire the notes, and if he should sell otherwise the plaintiff might sell the goods for his own protection: that the plaintiff endorsed, and J. with the notes purchased goods, which he mortgaged to the plaintiff, as agreed on, with other goods, for the *bona fide* and sole consideration of perfecting the said agreement: that J. afterwards, without the plaintiff's consent, assigned to the defendant, who took with notice of the mortgage, and was proceeding to sell the goods, when the plaintiff forbade him, and demanded them.

Held, that the replication was good, for that the plaintiff only became a creditor by the actual transaction, in which he gave the equivalent in the new goods purchased and procured by his credit; and under these circumstances, the plaintiff being ignorant of J.'s position, the mortgage was not avoided by the Insolvent Act, (sec. 8, sub-secs. 1, 3, 4,) though its effect might be to delay creditors.

Quære, whether it was voidable under sub. sec. 2.—*William Mathers* v. *John Lynch*, 27 U. C. Q. B. 244.

INSOLVENT ACT—DISCHARGE—FRAUD. — To a plea of discharge under the Insolvent Act, confirmed by the judge, the plaintiff replied a corrupt agreement between the insolvent and D. & Co., parties to the deed of composition and discharge, that in consideration of executing it D. & Co. should receive an additional sum above the composition, for which the insolvent gave them his note; and that the plaintiff and other creditors had no knowledge of such agreement until after the confirmation.

Held, a good answer, the confirmation not being made conclusive by the Act, under such circumstances.—*Thompson* v. *Rutherford*, 27 U. C. Q. B. 205.

GRAMMAR SCHOOL MONEY—RECEIPT BY COUNTY TREASURER—LIABILITY AND RIGHT OF ACTION FOR.—There being in a village a Joint Board of Grammar and Common School Trustees, on the 7th July the Chairman of the Board of Grammar School Trustees received a circular from the Education Office, advising him of the payment of $202 for that school. This money had been paid into the Bank of Upper Canada at Toronto, as agents for the defendant, the Treasurer of the County, prior to its suspension, and the Bank sent him an order on their Hamilton branch, which was not presented before the Bank stopped payment in September. It was not asked for until the 25th September, when the Treasurer of the Joint Board called for it. On the 26th defendant wrote to the Treasurer of the Joint Board enclosing this draft, saying it had been received by him for the grammar school, and had been lying in his office for their demand as usual since the 11th July. The plaintiffs having refused to accept the draft,

Held—1. That an action for this money would lie against defendant as Treasurer, it having been paid to his agents at Toronto, and he having admitted its receipt for the special purpose.

2. That as the Board of Grammar School Trustees, notwithstanding the union, still existed as a separate corporation, the action should have been by them, not by the Joint Board.

3. If the action had been rightly brought, defendant would have been liable for the loss on the draft, for the payment was made to his agents at Toronto in money.—*The Joint Board of Grammar and Common School Trustees of the Village of Caledonia* v. *Farrell*, 27 U. C. Q. B. 321.

SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

NOTES OF NEW DECISIONS AND LEADING CASES.

PROMISSORY NOTE PAYABLE IN U. S.—IN WHAT CURRENCY PAYABLE.—A note made here, payable in the United States, but "not otherwise or elsewhere," is payable generally, and the law and currency of the place of contract must govern.

Declaration on a note, made at Toronto, payable to plaintiffs, for $302 79. *Plea*, that the note was payable in Rochester, in the United States, where the plaintiff resided; that when it fell due, Treasury notes of the United States Government were a legal tender in payment of all notes; that if the defendant had then tendered the amount of the note in Treasury notes, it would have been a good tender; that 144 53 of lawful money of Canada then equalled in value Treasury notes to the amount of the note, and defendant brings that sum into court.

Held, assuming the note to have been payable at Rochester, but without the words "not otherwise or elsewhere," that the plea was bad.—*Hooker et al.* v. *Leslie*, 27 U. C. Q. B. 295.

SUBPŒNA—NON-ATTENDANCE.—A County Court judge being served with a subpœna *duces tecum* to produce a deed, did not attend: and on motion for an attachment excused his absence on the ground of important private business, urging also that he obtained the deed and became pos-

sessed of his information as an attorney, that he had a lien on the deed, and that he was entitled to witness fees as an attorney.

Held, that he was not so entitled, and should have attended; and the rule was made absolute. —*Deadman* v *Ewen*, 27 U. C. Q. B. 176.

RAILWAY CO. — ASSESSMENT — AVOWRY. — In avowing for a distress for taxes due upon land belonging to a Railway Company, it is unnecessary to allege that in the assessment the value of the land occupied by the Railway was distinguished from that of their other real property, or that they had no other real property, or that the assessment was communicated to the Company. Such objections should form the subject of a plea.—*The Great Western Railway Co.* v. *Rogers*, 27 U. C. Q. B. 214.

WORK AND LABOUR. — RELATIONSHIP. — EVIDENCE OF HIRING.—The plaintiff sued her brother for wages during several years that she had lived with him on his farm, keeping house for him while he was unmarried.

Held, that from this alone the law would not, under the circumstances, imply a promise to pay, and there being no other evidence of any hiring or promise, that there was nothing to go to the jury.—*Redmond* v. *Redmond*, 27 U. C. Q. B. 220.

PRINCIPAL AND AGENT.—SALE OF LAND.—A. and B. advertised an estate for sale. The advertisement stated "to treat and view the property applications are to be made to A. or B."

Held, that this did not give A. authority to sell the estate, so as to bind B., without his concurrence.—*Goodwin* v. *Brind and others*, 17 W. R. 29.

INFANT, CONTRACT WITH—Goods were supplied to an infant who, after he came of age, signed, at the foot of an account containing the items and prices, the following memorandum:—"I certify that this account is correct and necessary."

Held, that this was no more than an admission of the correctness of the items and charges, and did not amount to a ratification, on which the defendant could be charged under 9 Geo. IV., c. 14, s. 5.—*Rowe* v. *Hopwood*, 27 W. R.

FAMILY RELATIONSHIP — HIRING. — Where a family relationship exists, as, for instance, between father and son or grandson, or uncle and nephew, or even more remotely, no implied promise to pay for services rendered in such relation between the parties, arises

In such cases a contract or promise to pay for services, must be established in order to enable the claimant to recover, and the evidence ought to be clear and satisfactory, otherwise the services will be referred to the relationship.

But where there is evidence of a contract, if it be unwritten, it is always for the jury to say whether it establishes the claim of the plaintiff or not.

If the testimony show that the family relation once existing has been changed to a contract to pay wages, the claimant will be entitled to recover: and if no sum be fixed he may recover as per a *quantum meruit*.

Where an amendment to the *narr.* would have been allowed on trial, if objection had been made, after verdict it will be treated as amended in accordance with the evidence and trial.—*Neel's Administrator* v. *Neel*, U S Rep.

ONTARIO REPORTS.

INSOLVENCY CASES.

(In the Co. Court of Prince Edward & Court of Chancery.)

IN THE MATTER OF JOHN THOMAS, AN INSOLVENT.

Upon an application for discharge of Insolvent under sub-sec. 10 of sec. 9 of Act of 1864, a creditor objected that it did not appear that Insolvent had any estate, and therefore, did not come within provisions of the Act, and also, that Assignee had not given the notice mentioned in sec. 10, sub-sec. 1 of same Act.

Held, on appeal to Court of Chancery, reversing decision of the Judge of the County Court, that the discharge of insolvent should not have been refused on above grounds.

[Chancery, June 8th, Sept. 9th, 16th, 1868.]

This insolvent made a voluntary assignment in March, 1867, to official assignee of County of Prince Edward a few days after all his property had been sold by the Sheriff. At the expiration of two months the assignee applied to the insolvent for funds to pay for advertising meeting of creditors for examination of the insolvent under sec. 10, sub-sec. 1 of Act of 1864. The insolvent replied that he had no money to give for the purpose, and the meeting was not called.

At the expiration of a year from date of assignment, insolvent not having obtained from the required proportion of the creditors a consent to his discharge, or the execution of a deed of composition and discharge, applied to the Judge of the County Court of Prince Edward for a discharge, having given notice of such application by advertisement as required by sub-sec. 10 of sec. 9 of Act of 1864.

Allison, for the only opposing creditors, objected, 1st, that it did not appear that the insolvent had any estate to assign, and therefore did not come within the provisions of the Act; 2nd, that the notice required by sec. 10, sub-sec. 1, had not been given by the assignee.

Ollard for insolvent, contended that the act applied to all persons unable to meet their engagement as mentioned in sec 2 of the act, and it was not necessary that insolvent should be possessed of any estate at the time of assignment, otherwise a person in insolvent's position with several writs of executions hanging over him could never obtain the benefit of the act As to the second objection, that it was a question between creditors and assignee: that creditors who had notice of his assignment could at any time before discharge,

and upon application for discharge, of which they also had notice, examine insolvent if they desired to do so: that insolvent could not be prejudiced by the omission or neglect of the assignee who might possibly be one of the principal creditors, and so, naturally opposed to insolvent's being discharged.

The learned judge of the County Court held that both objections were good, and refused the discharge. Upon this the insolvent applied for leave to appeal, which was granted by Mr. Justice Adam Wilson. The case was subsequently heard in the Court of Chancery, by way of petition.

J. C. Hamilton, for the appellant, argued that the only grounds which any creditor could take on the application for discharge under section nine, sub-section ten, were those set forth in preceding sub-section six, which does not include the grounds acted on by the learned Judge. As to the second reason of the Judge, he argued that could not be valid under our law, which expressly applies in Ontario to all persons, whether traders or not, and that, consequently the decisions under the English bankruptcy law, prior to 1862, could not apply. It is stated that this was expressly so held by the late Judge of the County of York (The Hon. S. B. Harrison), in the case of Robert H. Brett, an Insolvent.

The following authorities were also cited: *Re Holt* and *Gray*, 13 Grant, 568; *Ex parte Glass* and *Elliott*; *Re Boswell*, 6 L T Rep. N. S 407; *Re Parr*, 17 U. C. C. P. 621; *Ex parte Mitchell*, 1 DeGex Bankruptcy Cases, 257; *Re Williams*, 9 L. T. N. S. 358.

VanKoughnet, C.—I think the County Court Judge wrong in the reasons assigned by his order refusing the certificate of discharge. The assignee's neglect of duty is no reason for depriving the debtor of his discharge. Any of the creditors could have applied to the Assignee, or to the Judge, to compel the Assignee to call a meeting for the examination of the Insolvent; and, I apprehend, this can yet be done, if the Assignee or Judge thinks it proper.

This want of assets does not appear to me to be, in itself, a sufficient reason for refusing the discharge.

Order of Judge reversed, and matter remitted to him to deal with in accordance herewith.*

Hillborn v. Mills et al.

(In the County Court of the County of Elgin—Before His Honor Judge Hughes.)

Insolvency—Practice—Service of Papers—Irregularity, who may object to—Setting aside proceedings—Affirmation by Quaker—Taken before plaintiff's Attorney—Plaintiff, a surety and joint maker, taking up a note before due, so as to take proceedings in insolvency against joint maker.

[St. Thomas, 6th October, 1868.]

The plaintiff was surety for the defendants upon a promissory note given to McPherson & Co., for $195, which was not yet payable. The defendants owed the plaintiff a debt of $50, and in order to make up a sufficient sum whereon to found an attachment against the defendants, who had absconded, the plaintiff paid the note to McPherson & Co, and then made affirmation to his debt amounting in the aggregate to a sufficient sum within the meaning of the 7th sub-section of the 3rd section. The plaintiff was a Quaker, and his affirmation commenced as follows:—"I, William Dillon Hillborn, of the township of Yarmouth, &c, do solemnly, sincerely and truly declare and affirm that I am one of the society called Quakers. I am the plaintiff in this cause. The defendants are indebted to me in a sum of $385, currency, which sum is made up as follows," &c. Then followed the detail, and the particular note of McPherson & Co. is thus described: "A promissory note for $195, including interest, dated 24th April last past, *and payable on the 1st November next*, to McPherson, Glasgow & Co., or order, which said note I signed as a joint and several maker with the said defendants, but only as a surety for them, the amount of which note I have paid to the said McPherson, Glasgow & Co.," &c., &c

The attachment issued in the usual way to the sheriff, who seized all the property of the defendants, which was already in the hands of the bailiff of the Division Court, under seizure upon executions issued upon judgments in that court against the defendants, at the suit of one Backhouse and others, judgment creditors.

Mr. Ellis, attorney for Jugurtha Backhouse, one of the judgment creditors, presented a petition to the judge of the court, setting forth, 1st, his judgment and execution; 2nd, that the affidavits upon which the fiat for the attachment was issued were insufficient, and the proceedings thereon irregular, because, 1st, the plaintiff, being a Quaker, had not complied with the 1st section of the Con. Stat. of U. C., cap. 32, in first affirming that he was a Quaker, and, 2ndly, in affirming to the contents of the affirmation in the form of words prescribed by the statute: "I, A. B, do solemnly, sincerely and truly declare and affirm that," &c.; and that, in the absence of observing the form prescribed, the affirmation could not have the force and effect under the Insolvent Act of an affidavit, as required in the 7th sub-section of the 3rd section; and because, 2nd, the affirmation, such as it was, was sworn before the plaintiff's attorney; and because, 3rd, the affidavits of the other witnesses, proving the fact of defendants' insolvency, bore date before the plaintiff's so-called affirmation; and because, 4th, there was no sufficient debt to constitute plaintiff a creditor, so as to justify the adoption of these proceedings, by which defendants' estate was sought to be placed in compulsory liquidation. There were other objections taken to the proceedings, which it is not necessary to enumerate.

A summons was granted in the usual way for plaintiff or his attorney to show cause why the proceedings should not be set aside. The summons and petition were served on Saturday, the 10th October, returnable on the next Tuesday forenoon, the 13th October.

On Tuesday, the 13th October, Mr. McLean, attorney for plaintiff, attended to show cause, and objected, 1st, that the service of summons was insufficient under section 11, sub-section 9, of the Insolvent Act, which requires one clear day's notice, and cited the case of *Leffur* v. *Pitcher*, 1 Dow. N. S. 767; *Francis* v. *Beach*, 9 U. C. L. J., 266. 2nd. That the copy served was not a true copy. 3rd. That the petitioner here cannot, and that none but defendants can object to any irregularity in the proceedings, and

* The case on appeal is reported in 15 U. C. Chan. Rep. 196.—Eds. L. J.

cited section 3, sub-sections 3 and 4, and Arch. Prac. 12th edition, 1472; *Parker* v. *Howell*, 7 U. C. L. J., 209. 4th. That the informality or insufficiency complained of should be clearly set out on the affidavits, petition and summons, and cited section 11, sub-section 13, of the Insolvent Act, and Arch. Prac. 12 ed. 1476 and 1475. 5th. That the mode whereby a creditor is to obtain rights under his execution are provided for by the Insolvency amendment Act of 1865, section 16, by petition, signified to the assignee and others interested. And lastly, as to the debt which constituted the plaintiff a creditor, in so far as the note of McPherson & Glasgow was concerned, that there is an implied promise to pay the plaintiff on the part of the defendants, so soon as an act of insolvency was committed.

Ellis, in reply, insisted that there was an implied authority for the petitioner to move to set aside the proceedings under sub-section 10 of section 3, the words "*any petition*," &c., also under the amended act, 1865, section 16, and cited *Parker* v. *McCrae*, 7 U. C. C. P. 124; and as to the liability of defendants for money paid by plaintiff, as their surety, cited *Andrew* v. *Hancock*, 5 E. C. L. R. 490; *Sprague* v. *Hammond*, 6 E. C. L. R. 37; *Gibson* v. *Bruce*, 44 E. C. L. R 214; *Howlby* v. *Bell*, 54 E. C. L. R. 284.

On the same day the following judgment was delivered by

HUGHES, Co.J.—As to the service of the petition upon plaintiff's attorney, I consider it was quite sufficient to give the plaintiff one clear day's notice of it, to serve it as it was alleged to have been served on the evening of Saturday, returnable on Tuesday morning, within the meaning of the 9th sub-section of the 11th section, in the absence of any rule of court requiring papers in insolvency to be served before a particular hour. I do not know, and it was not shown, at what hour the petition and summons were served, nor is it shown by any affidavit that the copy served was not a true copy. The affidavit put in for the petitioner shews that Mr. Charles Ermatinger served them on Saturday, the 10th October, instant. Mr. McLean pointed out, in the copy of the petition he produced, some trifling and unimportant verbal defects and clerical errors, (just such as a clerk recently articled, and unaccustomed to copy legal documents, often makes.) but which in this case were not calculated to mislead; it was a sufficiently perfected copy to enable the plaintiff's attorney fully to understand what the purport of the petition and application were. I therefore overrule that objection, for he received all the notice that was necessary.

As to the 3rd objection to the petition, I have met with some difficulty in satisfying myself, in view of there being no provision authorising the setting aside proceedings for irregularity at the instance of any other than the defendant. I know that it was at one time doubted whether a judge of a District Court, in vacation, had authority to set aside an interlocutory judgment, or give time to plead, because the District Court Act then existing, which constituted the court, and its practice did not specially prescribe such authority, and therefore the defect was subsequently supplied by the passing of 9th Vic. cap. 2, of the statutes of Canada. The judge of an inferior court is always held by the superior courts to be confined to the powers and jurisdiction conferred upon him by statute.

There is no doubt whatever that were this a proceeding which I could amend, I have full power conferred upon me by the 14th sub-section of the 11th section of the Act of 1864. On the other hand, it has been urged that the proceeding is so manifestly without foundation, because there is not a sufficient compliance with the requirements of the 7th sub-section of section 3 (Act 1864), that any court must be held to have such an inherent jurisdiction as to require the law and practice of the court to be substantially complied with.

The judge of an inferior court cannot grant a new trial on the merits unless the statute gives him the power to do so: 1 Mosely on Inf. Courts, 283, but it has been held that if a judgment had been obtained by a fraudulent surprise, the judge may grant a new trial, *Bayley* v. *Bourne*, 1 Str. 392; so it has been held that the judge of an inferior court may grant a new trial for matters of irregularity, as where proceedings have been contrary to the practice and rules of the court; *Ib.*; and *vide Jewell* v. *Hill*, 1 Str. 499.

I find it laid down in Archbold's Bankruptcy Practice, 10 Ed. 378, for certain irregularities the court will annul the fiat, as for a misdescription of a place of residence of the petitioning creditor, but this was done by the Court of Review in Bankruptcy (see same Vol., p. 376). There is no Court of Review for Insolvency proceedings here, (as there used to be under the Bankrupt Act,) excepting in the way of an appeal from the decision of the judge, so that unless the judge has the power to set aside proceedings for irregularity it cannot be done at all, no matter how irregular they may be.

The strict wording of the 12th sub-section of the 3rd section gives no more right to the defendant than to this petitioner to move the judge, nor power to the judge to set aside proceedings for irregularity; the sole ground upon which defendant can petition to have the proceedings set aside is on the ground that his estate has not become subject to compulsory liquidation, which involves merely in strictness an enquiry upon the merits.

I apprehend, however, that the power to control and enforce the practice of the court must exist somewhere, and must be primarily in the judge, subject to an appeal: that is what I must, therefore, hold at present, until I am better advised, and that the 7th section of the amended Act of 1865, with reference to the "*contesting of proceedings*," applies to the different modes by which proceedings in Insolvency might be contested, as they are in England, by actions of trespass and trover, and the like, notwithstanding proceedings of adjudication in the Court of Bankruptcy there—and which, but for that 7th section, might be instituted here for the same purpose. Here, that section makes all such proceedings conclusive for all purposes after a certain time, which, to my mind, argues in favor of, instead of against the application of this petitioner, and of all such applications by those who may be interested in the proceedings or in the defendants' estate.

In England a creditor may pray to annul a fiat, even although privy to the very act on which he grounds his objection to the fiat, (see Arch. Prac. in Bank. 394,) or any party not a creditor who can shew he sustains a grievance from the fiat, as a trustee under a deed which the fiat will overreach (idem 395); even a stranger summoned to give evidence before the commissioner, can petition to annul the fiat, and the plaintiff in an action to which an attorney (the bankrupt) had been attached for not putting in bail in pursuance of his underta ing, had a sufficient interest to annul the fiat (idem 395); an adjudication must be supported by all the legal requisites (see *ex parte Brown*, 1 D. M. & G. 456; 1 Doria & Macrae, Bankruptcy, 322,) so that on the whole I think the petitioner here, who swears he is, and whose petition sets forth how he is a creditor, has in this court a sufficient interest to give him a *locus standi* upon an application of this nature, notwithstanding the decisions of the judges at Common Law in the cases cited, and of *Wilson* v. *Wilson*, 2 Practice Rep. 374.

Then it was further objected that the informality and insufficiency complained of should have been clearly set out in the petition, or affidavit, or summons. This no doubt would be a sufficient objection in an ordinary court of law, with an established set of rules or practice; but in the absence of all such, and with a summons referring to a petition and papers filed and served, specially setting forth that plaintiff's affirmation was informal and insufficient in law in several respects, I think it is all that any court or rules of practice could reasonably require

The first of these objections is that the plaintiff, a Quaker, did not affirm as required by law. The 1st section of the C. S. of U C., cap 32, is a permissive enactment for the *relief and benefit of particular sects*, and after having first made the declaration presented as to their membership of the particular society, provides that they "may make the affirmation or declaration in the form therein following," that is to say: "I. A. B., do solemnly, sincerely and truly declare and affirm," &c Both declarations are requisite, and the making of the one and dispensing with the other does not so comply with the statute as to give the affirmation of such privileged persons as the plaintiff the same force and effect as an oath taken in the usual form. In Upper Canada the creditor, under the 7th sub-section of the 3rd section, must, by "*affidavit*" of himself or any other individual, show, to the satisfaction of the judge, that he is a creditor of the defendants, &c. There were three ways in which he might have acted: either by swearing to the necessary affidavit himself, or getting some one else to act as his agent and make the affidavit, or to have complied strictly with the 1st section of the Con. Stat. of U. C., cap. 32, whereby "*the affirmation or declaration would have the same force and effect, to all intents and purposes, in all courts of law and equity, and all other places, as an oath taken in the usual form.*" He did neither; and in the absence of either I think the attachment, and all proceedings under it, irregular, and must be set aside.

As to the objection that the plaintiff's affirmation was made before Mr. McLean, the plaintiff's attorney prosecuting the attachment, the case of *Ex parte Coldwell*, 3 DeG. & S, 664, cited in 1 Doria & McRae, 322, shews that it is invalid and unsustainable, because the mere circumstance of the affidavit filed in support of the petition for adjudication being sworn before a Master Extraordinary in Chancery in England, who was solicitor to the petitioning creditor, was held to be not sufficient for annulling the adjudication; and in the absence of any rule of practice I must hold the 25th section of the amendment Act of 1865 has been sufficiently complied with here.

I do not think it necessary, at present, to go into the other grounds taken on the petition, as to the existence of a sufficient debt whereon to ground a fiat for attachment so as to constitute the plaintiff a creditor of the defendants, because it would take up more time than I have at my disposal. I will, however, say that I have very strong doubts as to whether a person who is a surety, as this plaintiff was, can legally go and pay up a promissory note before it is due, for the purpose of adopting proceedings in insolvency, and claim to be a creditor of the defendant, as this plaintiff has done. He might, perhaps, upon a regular transfer of a negotiable note, on which he is endorser, but I doubt if he could where he is merely the joint maker with the defendants, as their surety. (See *Ex parte Brown*, 1 D. M. & G., 461, and *Ex parte Greenslock*, DeGex., 230).

It is therefore ordered that the judge's fiat and the writ of attachment be set aside and quashed, and that all proceedings under it be also set aside and annulled, with costs.

QUEEN'S BENCH.

Regina v. Law and Gill.

Conviction—Practice.

On applications to quash convictions the convicting Justice must be made a party to the rule.

McMichael obtained a rule calling on Law and Gill to shew cause why certain convictions against them should not be quashed, and the prosecutor be permitted to proceed with the complaint against them, on the ground that the magistrate had no jurisdiction in the matter, for several reasons set out in the rule.

On the rule being moved absolute, *Harrison*, Q. C., shewed cause, and objected that the convicting magistrate was not made a party to the rule, and that he had no notice of this application, referring to the case of *Regina* v. *Peterman* (23 U C R. 516).

McMichael supported the rule, contending that it was unnecessary the Justice should be notified of the application.

Morrison, J., delivered the judgment of the Court.

The books of practice afford very little information as to the form of the rule in applications of this nature. We have looked into many of the reported cases of motions to quash convictions, both in the English Courts and our own. During the last few years applications of this nature have been frequently made, and we find that in cases in this country the convicting Justice is called upon in the rule to show cause. See *Regina* v. *Shaw* (23 U. C. R. 616), *Regina*

v. *Dawes* (U. C. R. 340), *Regina* v. *Craig* (21 U. C. R. 552), *In re Joice* (19 U. C. R. 197), *Regina* v. *Huber* (15 U. C. R. 589)

In *Regina* v. *Peterman*, the convicting Justice was not notified of the *certiorari*, nor was he a party to the rule to quash, the only parties called on to show cause being the complainant and the Justices of the Sessions, who affirmed the conviction on appeal; and the note of the case shews that the Court there held that it was proper in them to see that the convicting Justice was apprised of the proceedings, inasmuch as he was exposed to an action if the conviction should be quashed. If there is any meaning or object in that decision, it is that the Justice should have notice of the application to quash. By Statute he was entitled to notice of the *certiorari*.

In England the general practice appears to be, that when the record of the conviction has been returned its validity is brought under formal discussson, by the case being inserted in the Crown paper, and argued on certain days called Crown Paper Days in due order; *Chitty's* General Practice Vol. II. p. 226; and Mr. Paley in his work on conviction says, when the conviction is returned the case must be set down for argument on the Crown paper, &c.; and we find in several reported cases the case on a *concilium* argued to quash the conviction; but the proceeding to quash by motion, as in this case, is also adopted in numerous reported cases, and where the terms of the rule appear we find the convicting Justice called upon to shew cause as well as the complainant, &c. We refer to *Rex.* v. *Walsh* (1 A. & E. 482;) *Regina* v. *Cridland*, (7 E. & B. 853.)

It is only just and reasonable that the Justice whose conviction is impeached and moved against should have an opportunity of supporting it if he so thinks proper, the step to quash in the majority of cases being taken with a view of bringing an action against the Justice.

In the case before us the conviction is sought to be quashed on grounds which, if true, shew gross improper conduct on the part of the Justice who made these convictions, and we are aware that a rule for a criminal information was granted during last term against the same Justice for acting corruptly in the matter. It would be most unreasonable that he should not be apprised of proceedings which are calculated to affect most materially his character, as well as any ulterior action to be instituted against him. Were we to hold that in such cases it was not necessary to make the convicting Justice a party, great injustice in many cases might result to magistrates.

As no authority was cited to support the view taken by the applicant's counsel, and as we find it is the practice in our own Courts as well as in England to make the Justice a party to a rule of this nature, and as there is an obvious reason why the practice shall be so, we are of opinion that the rule *nisi* must be discharged. It was said that it was not competent for the parties to the rule to object that the Justices were not parties, but, as said by Patteson, J., in *Rex.* v. *Rattisbaw* (5 Dowl. 542), the objection being brought under the notice of the Court, we are bound to deal with it.

Rule discharged, without costs.

ENGLISH REPORTS.

COMMON LAW

BEARDMAN v WILSON.

If lessee for years demises the residue of his term, the demise shall operate as an assignment, and not as an underlease. [17 W. R. 54, Nov. 5, 1869]

This was a case tried on June 29, at Guildhall, before Byles, J.

There was a verdict for the defendant, and leave was reserved to the plaintiff to move to enter a verdict for himself

The actions had been for dilapidations, and the facts were these:—

The defendant, who was the lessee of the plaintiff, had disposed of the residue of his term to a stranger by an instrument in the form of an indenture of demise, which limited the term so demised by dates, but the dates were such that the residue of the defendant's term was in fact thus conveyed to the stranger. The question was whether this amounted to an assignment or to an underlease.

[The present case is reported because some doubt was thrown on the doctrine on this point by the case of *Pollock* v *Stacy*, 9 Q B 1033.]

Charles Pollock, Q. C., now moved for a rule on the part of the plaintiff.—The lease is an indenture in solemn form, whatever its effect as an assigment. The defendant's argument is, that as the lessors by this lease have parted with the whole of the remainder of the term they had no reversion, and that therefore what was in form a lease was in fact an assignment. I submit, on the other hand, that there can be a lease without a reversion, and that this Court will not go against the clear intention of the parties because of a mere formality. Here it was on accident that the whole term was conveyed by the lease of 1829. I lay great stress on the clear intentions of the parties. Of course if the Court holds that under no circumstances can there be a lease without any reversion, my contention must fail. But I submit that this is not the doctrine of the Court: *Wollaston* v. *Hakewill*, 3 Scott's N. R. 593. [BOVILL, C. J.—There is not a word about *intention* in that case. It is a mere question of operation of law.] There is a great deal of learning upon this point in a note by Serjeant Manning to the case of *Rex* v. *Wilson*, in 5 M. & R. 158–162. I submit that there is a great difference between holding that to be an assignment which would be bad as a lease, and holding that to be an assignment which would be perfectly good as a lease * The modern case in my favour is that of *Pollock* v *Stacy*, 9 Q. B. 1033, and I may refer to 1 Sm. Lead. Cas. 6th ed. 86, the notes to *Spencer's case* †

BOVILL, C. J.—It was decided in *Parmenter* v. *Webber*, 8 Taunt. 593, as early as 1818, that where lessee parts with his whole term, though he affect to let, yet he shall be taken to have assigned his term. That was considered as settled law in note (*a*) to Shep. Touch. 226. The question was elaborately argued in *Wallas-*

* The argument, so far as *Pollock* v. *Stacy* is any authority, is really the other way. See Lord Denman's judgment.

† The opinion indicated in Smith is against the present contention.

ton v. *Hakemill*, 3 M. & Gr. 297, and a very learned and able judgment delivered to the same effect by Chief Justice Tindal. I should have thought, therefore, that the matter was as well settled as anything could be. The question was, it is true, somewhat sought to be raised in *Pollock* v. *Stacy*, 9 Q. B. 1033; but the action there was brought for use and occupation. It was not necessary in that case that there should have been a lease. Thus understood, I agree with that case; but if it be understood to controvert the earlier decisions on the point now under consideration, I certainly do not agree with it. The rule therefore cannot go.

BYLES, KEATING, and BRETT, JJ., were of the same opinion.

Rule refused

CORRESPONDENCE.

Bailiffs fees under late Act.

TO THE EDITORS OF THE LOCAL COURTS GAZETTE.

SIRS,—Enclosed please find my subscription for the current year. In the Division Court Amendment Act of last Session there is a clause which says that all foreign services of summons shall be directed to the Bailiff direct, instead of as heretofore to the Clerk. Now Mr. Editor I would feel much obliged by your answering the following queries. 1st. Is the Bailiff entitled to the fee formerly allowed the Clerk for receiving? 2nd. After the Bailiff has served the summons, to whom is he to apply to take his affidavit of service? if to a Commissioner, he is entitled to his fees, and will the Bailiff be refunded the amount paid to such Commissioner

I am sir, your obedient,

THOS. TOBIN,

Bailiff No. 1, County of Perth.

Stratford, Feb. 17, 1869.

[We refer our correspondent to a former page where the subject is discussed.—EDS. L. C. G.]

The right of Attornies to fees in Division Courts.

TO THE EDITORS OF THE CANADA LAW JOURNAL.

GENTLEMEN,—A correspondent signing himself "J. T." in your January number, has undertaken to explain away, and give the particulars of one of the cases tried in a Division Court, before a certain County Judge, as detailed by me in your December number, 1868. Your correspondent apparently knows nothing of the facts of the case alluded to by him,—if he does he mistakes them.

It is true, as he says, that I had been retained to attend to a suit before the judge in question at a country town, but I made no allusion to that suit, for my bill of costs had no relation to the first retainer or business done therein, which had ended and been paid for before the second retainer. The retainer on which I brought my suit was given afterwards, a written one, not ambiguous at all, and the judge founded his judgment upon it, as he said at the time, not upon any other evidence. All my evidence before the judge was written evidence and could not be misunderstood. In my letter I had no intention to accuse and did not accuse the judge of any improper motive. I do not think him capable of anything of the kind; nor did I suppose it possible that he could have any enmity to me, since we always have been upon the best of terms. If I am to suppose any thing against him, it would be a mistaken view not only of the law, but of the equity of the two cases and the facts in evidence. There were two cases to which I alluded in my letter, decided by the judge at different courts; and in deciding the last case, he took occasion to say *he decided it upon the same principle* as the first. The principle I supposed to have been in his mind was, that an attorney has no right to recover in his court for attendances, letters and affidavits written, and arguments before a judge in new trial cases. Therefore if he gave judgment upon some principle, upon what principle did he give it? Certainly it must have been given for work done as an attorney, and not as a mere labourer—and if as an attorney, why strike off proved attorney's work, or allude to some principle in his mind of deciding attorneys' cases? The case now in question to which "J. T." alludes was brought by me upon a written retainer filed in the court, *as explicit as it could be*—for applying upon special affidavits for a new trial, in which important law points were involved, and where the amount sued for was about $100.

It was necessary for me to make out a brief, and put down cases in point (the brief itself was worth $4), and the judge looked over it and it is filed among the papers. The judge knew that I went out on the train to a country town to argue the case, and spent most of the day to do so; and when he tried the case, he had before him the affidavit of a barrister (the county attorney of his county), swearing that my services in going out, &c., were worth $7. Yet in this case, setting aside all attendances, letters and affidavits, the judge only allowed

me $6, not even that which the barrister swore I was entitled to for arguing the case. Now I have a copy of the bill presented before the judge, every item of which was fairly proved. Here it is:—

1868, May 6.	£	s.	d.
Letter, &c., to client, and attendance about result of arbritration.....	0	2	6
Instructions to apply for new trial (on new retainer)..	0	5	0
Drawing affidavit of client of facts of case 2s, 6d., copy 1s. 3d.....	0	2	9
Drawing my affidavit (special) of facts and for new trial 5s., copy 2s. 6d., attending to swear and paid 2s. 3d.	0	9	9
Letter forwarding, same to———, to have served and attendance	0	2	6
Paid postage	0	0	7½
Affidavit of service of affidavits drawn	0	2	6
Attending at———to see that——— had served the affidavits.....	0	1	3
Telegraph to———paid 1s. 3d., attendance 1s. 3d.....	0	2	6
Attendance and argued case at——— argued for the defendants, and expense to the country and back to—	1	15	0
Writing a letter to client of result of new trial, and attendance, notifying him	0	2	6
Also writing to his brother, his agent, &c	0	2	6
	£3	19	4

I purposely leave all names and places in blank.

There is not an item in this bill to which I am not fairly entitled. It may be a question whether the letters should be with attendance more than 1s. 3d. But some items are omitted, and under all the circumstances considering the small sum I charge for going into the country, and that my application for a new trial was successful, the judge should have allowed the whole bill. Then he had before him an affidavit in which a barrister and county attorney of his county, swears thus:—

That ——— in this suit acted as counsel for the within defendant in that suit, and the within defendant stated to me he had retained or employed him to do so.

That in my opinion *seven dollars would be a reasonable* fee for counsel going from ——— to ———, and arguing an application for a new trial there, &c."

The judge read the affidavit, and took it as regularly before him. Urgent business kept the county attorney at home, but the affidavit was not objected to on that ground. All the original papers and affidavits were before the judge. He knew of the difficult argument and that I had to expend in serving bills and going to sue, certainly at least $4; yet all he gave me was $6. What attorney would go into court under such circumstances? I would not have sued in the judge's court at all, if the cause of action having arisen there, had not obliged me to do so.

Now I again repeat that the judge admitted that he was bound by the written retainer; and although "J. T." wished to confound my first employment with the last, the judge told him the *evidence proved the contrary*, and he did not give his judgment upon any such views put forward by "J. T."

"J. T," is pleased to say that the judge in question is a young man and beloved in his county. That is not the question however; I am not dealing with character, age or position in this matter. The profession has rights as well as the judge, and it would be well for all judges to remember, that like me and many others, they and their families once depended on the fair earnings of their profession for a livelihood.

I believe in judges protecting lawyers in those rights. It is all very well for people to talk of the great fees and earnings of lawyers, but every man knows, who has looked thoroughly into it, that taking education, study, talents, and time into account, no profession upon the whole is worse paid than that of the law. There may be a few law firms that make money, but how many are there who deserve better things, who only make a "bare annual living?"

My letter of December was not written alone for myself, but for the rights of a learned body of men, who ought to be fairly and equitably paid by those who employ them, and who have a right to expect better treatment from judges than I have received from the one who "dealt out lame equity" to me.

AN ATTORNEY.

February 9, 1869.

[We speak of the subject matter of this in another place. Our correspondent also alludes to another suit in which he was allowed only $1, but we have given more space to these matters than we can well afford, and it is only because they are of some interest, as to the question of what fees attorneys should be allowed for Division Court services that we insert them at all.—EDS. L. J.]

School Trustee—Neglect of duty.

To the Editors of the Local Courts' Gazette.

Gentlemen,—B., a resident of the township of T., in school section 5, the trustees of which section have been accustomed to collect their school rates instead of requiring the township council to do so, for the last 12 years has been accustomed to go to the trustees, and say "my school rate for this year amounts to $5 or $6," whatever he might think fit to pay, at the same time paying this amount. Strange to say the trustees for all this time took his word, and amount offered as sufficient. On the election of a new trustee, he discovers that B., during these 12 years has not paid the full amount of his school rate in any one year. Some years he having paid very little over half of what he should have paid. Can the school section recover from B. amounts he should have paid? and if so, for how many years back? and what is their proper remedy? or will the section have to bear the loss, or make trustees pay? By answering soon, you will oblige,

Yours truly. G.

[We think there is nothing to prevent a school Corporation recovering the balance of rates still unpaid. The remedy would be probably by action.—Eds. L. C. G.]

Promissory note—Where action to be brought.

To the Editors of the Local Courts' Gazette.

Gentlemen,—The following question has arisen and caused some dispute, and I submit it for your opinion, if you will be kind enough to give one.

A. of the town of G., being about to change his residence to H., a great distance off, sells his goods and chattels; for some of which he takes notes; for vendor's convenience he makes them payable at H. The maker and indorser of one of these notes for $25, both reside at G. Can C., a holder of this note, bring his action on it at H., where payable, under the Division Court Act, sec. 71, on the ground that making it payable at H., makes a sufficiedt cause of action arise there? Your giving an early answer will much oblige,

Yours truly,

An Enquirer.

[We do not think the cause of action can be said to have arisen at H.—Eds. L. C. G.]

CHANCERY SPRING SITTINGS.

The Hon. Vice-Chancellor Spragge.

Toronto	Tuesday	Mar. 16.
Goderich	Thursday	April 8.
Stratford	Monday	April 12.
Sarnia	Friday	April 16
Sandwich	Tuesday	April 20.
Chatham	Friday	April 23.
London	Friday	May 7.
Woodstock	Thursday	May 13.
Simcoe	Tuesday	May 18.

The Hon. The Chancellor.

Guelph	Tuesday	April 6.
Brantford	Tuesday	April 13.
St. Catharines	Friday	April 16.
Hamilton	Tuesday	April 20.
Whitby	Tuesday	April 27.
Barrie	Tuesday	May 4.
Owen Sound	Tuesday	May 18.
Cobourg	Wednesday	May 26.

The Hon. Vice-Chancellor Mowat.

Ottawa	Tuesday	April 27.
Cornwall	Friday	April 30
Brockville	Friday	May 7.
Kingston	Tuesday	May 18.
Belleville	Friday	May 21.
Peterboro'	Friday	May 28.
Lindsay	Monday	May 31.

SPRING CIRCUITS, 1869.

Eastern Circuit.

The Hon. Mr. Justice Morrison.

Kingston	Tuesday	Mar. 16.
Brockville	Wednesday	Mar. 24.
Perth	Tuesday	Mar. 30.
Ottawa	Tuesday	April 13.
L'Orignal	Tuesday	April 27.
Cornwall	Monday	May 3.
Pembroke	Tuesday	May 11.

Midland Circuit.

The Hon. Mr. Justice A. Wilson.

Napanee	Wednesday	Mar. 17.
Belleville	Monday	Mar. 22.
Cobourg	Monday	April 6.
Whitby	Tuesday	April 13.
Peterborough	Tuesday	April 20.
Lindsay	Tuesday	April 27.
Picton	Tuesday	May 4.

Niagara Circuit.

The Hon. The Chief Justice of the Common Pleas

Hamilton	Monday	Mar. 15.
Welland	Tuesday	Mar. 30.
St. Catharines	Monday	April 5.
Barrie	Monday	April 12.
Milton	Tuesday	April 27.
Owen Sound	Monday	May 10.

Oxford Circuit.

The Hon. The Chief Justice of Ontario

Stratford	Tuesday	Mar. 30.
Berlin	Tuesday	April 6.
Guelph	Monday	April 12.
Woodstock	Monday	April 19.
Brantford	Monday	April 26.
Cayuga	Tuesday	May 4.
Simcoe	Tuesday	May 11.

WESTERN CIRCUIT.

The Hon. Mr. Justice John Wilson.

Sarnia	Tuesday	Mar. 16.
Goderich	Tuesday	Mar. 23.
London	Tuesday	Mar. 30.
St. Thomas	Thursday	April 8.
Chatham	Tuesday	April 13.
Sandwich	Tuesday	April 20.
Walkerton	Tuesday	May 11.

HOME CIRCUIT.

The Hon Mr. Justice Gwynne.

Brampton	Tuesday	Mar. 16.
City of Toronto	Monday	April 5.

APPOINTMENTS TO OFFICE.

NOTARIES PUBLIC.

WALTER HOYTFUTTEN, of the Town of Guelph, Esq., Barrister-at-Law. (Gazetted July 25, 1868.)

MORGAN CALDWELL, of Walkerton, Esquire, Barrister-at-law. (Gazetted September 12, 1868.)

JAMES DAVID EDGAR, of Osgoode Hall, Barrister-at-Law. (Gazetted September 19, 1868.)

EDWARD H. TIFFANY, of the City of Hamilton, Gentleman, Attorney-at-Law. (Gazetted September 26, 1868.)

EBENEZER W. SCANE, of the Town of Chatham, Gentleman, Attorney-at-Law. (Gazetted Oct. 17, 1868.)

WILLIAM WELLAND BERFORD, of the Town of Perth, Gentleman, Attorney-at-Law. (Gazetted October 24, 1868.)

JOHN MORISON GIBSON, of the City of Hamilton, Esquire, Barrister-at-Law. (Gazetted October 31, 1868.)

JOHN MUDIE, of City of Kingston, Esquire, Barrister-at-law. (Gazetted November 7, 1868.)

GEORGE PETER LAND, of the City of London, Esq., Barrister-at-Law. (Gazetted November 14, 1868.)

WILLIAM BARCLAY McMURRICH, of the City of Toronto, Esquire, Barrister-at-Law; JOHN McLEAN, of the Town of St. Thomas, Esquire, Barrister-at-Law; and ROBERT GRAHAM, of the Village of Enterprise, Gentleman. (Gazetted November 21, 1868.)

DALTON McCARTHY, Jun., of the Town of Barrie, Esquire, Barrister-at-Law; ROBERT CASSELS, Jun., of the City of Toronto, Barrister-at-Law; FREDERICK BISCOE, of the Town of Gulph, Esquire, Barrister-at-Law; ROBERT R. WADDELL, of the City of Hamilton, Gentleman, Attorney-at-Law, and ROBERT HICK, Jun., of the City of Ottawa, Gentleman, Attorney-at-Law. (Gazetted November 28, 1868.)

JAMES EDWIN O'REILLY, of the City of Hamilton, Gentleman, Attorney-at-Law. (Gazetted Dec. 12, 1868.)

JOSEPH JAMIESON, of the Village of Almonte, Gentleman, Attorney-at-Law. (Gazetted December 19, 1868.)

CHARLES ROBERT HORNE, of Windsor, Esquire, Barrister-at-Law. (Gazetted January 9, 1869.)

JOHN PAUL CLARK, of Brampton, Gentleman, Attorney-at-Law. (Gazetted January 23, 1869.)

ASSOCIATE CORONERS.

JOHN PHILLIP JACKSON, Esquire, M.D., for the County of Perth. (Gazetted August 1, 1868.)

JAMES McLAREN WALLACE, of the Village of Spenceville, Esquire, M.D., for the United Counties Leeds and Grenville. (Gazetted August 22, 1868.)

JAMES PATRICK FOLEY, Esquire, M.D., for the County of Ontario. (Gazetted September 5, 1868.)

JAMES WATERFORD STUART, of Port Dover, and WILLIAM HENY MILLER, of Vittoria, Esquires, M.D., for the County of Norfolk, and JONATHAN McCULLY, of the Township of Howard, M.D., for the County of Kent. (Gazetted September 19, 1868.)

CHARLES DOUGLASS, of the Town of Streetsville, Esquire, M.D., for the County of Peel. (Gazetted October 24, 1868.)

WILLIAM K. KERR and THOMAS WEBSTER, of the Town of Brantford, Esquires, for the County of Brant. (Gazetted October 31, 1868.)

JAMES McBRIDE WOODS, of the Village of Streetsville, Esquire, M.D., for the County of Peel. (Gazetted December 5, 1868.)

JOHN COVENTRY, of the Village of Wardsville, and DANIEL CLINE, of Belmont, Esquires, M.D., for the County of Elgin. (Gazetted December 19, 1868.)

WILLIAM F. ROOME, of the Village of Newbury, and JOSEPH MOTHERSILL, of the Village of Strathroy, Esquires, M.D., for the County of Middlesex. (Gazetted December 19, 1868.)

JOHN MUIR, of the Township of Wolford, Esquire, M.D., for the United Counties of Leeds and Grenville. (Gazetted December 19, 1868.)

JOHN F. HICKS, of the Village of Duart, Esquire, M.D., for the County of Kent. (Gazetted Dec. 19, 1868.)

WILLIAM CHARLES HAGERMAN, of Lyndock, Esq., M.D., for the County of Norfolk. (Gazetted Jan. 9, 1869.)

JOHN O'SULLIVAN and ROBERT KINCAID, of the Town of Peterborough, Esquires, M.D., for the County of Peterborough. (Gazetted January 16, 1869.)

ROBERT J. SLOAN, of Wingham, Esquire, M.D., for the County of Huron. (Gazetted January 16, 1869.)

It is somewhat strange that a superstition should still linger in the commercial world that the words "value received" are essential to the validity, or at least increase the security of a bill of exchange or promissory note. Some commercial men are under the mistaken impression that without these words appearing on the face of a bill or note, it is invalid; but the majority entertain the equally erroneous idea that these words estop a party sued upon a bill or note from denying his liability. The fact is simply this, that the words are either mere surplusage or worse than surplusage. A bill or note always imports a consideration, and the party suing is not obliged to prove the consideration; but the party sued is not estopped from showing that he received no consideration. This is equally true whether the words "value received" appear upon the face of the document or not.—*Solicitors' Journal.*

"IT'S ALL A MISTAKE."—An incident almost unprecedented in the annals of courts of justice occurred at the Surry Sessions on Thursday. A man named William King was put on trial, charged with stealing a bag and the sum of £3 6*s.* 6*d.* The man had been admitted to bail. In the course of the morning Mr. Cartridge, the officer of the court, directed him to be called upon to surrender. No response being made to the summons, Mr Cartridge, in a somewhat sharp voice, called out in the court, "Is William King here?" Thereupon a respectably-dressed man in the body of the court responded, "Hear I am." Mr. Cartridge: "Go into the dock." The gaoler placed the man in the dock. Mr. Marshall (the clerk of the peace) then said: "Prisoner at the bar, you are charged that you, on the — day of October, did wilfully and feloniously steal from the person of John Barrow—" Prisoner (who was trembling, apparently with fear,) here said *sotto voce* to the gaoler: "Please, sir, it's all a mistake." The gaoler: "Oh, there's no mistake; you listen to the indictment." The clerk of the peace having read the indictment, asked in the usual form: "Prisoner, how say you—are you guilty or not guilty?" Prisoner: "If you please, my lord, there is some mistake." The clerk of the peace: "We shall see that presently. Are you guilty or not guilty?" Prisoner: "If you please, my lord, I am a juryman." This announcement was received with a roar of laughter from the crowded court, during which the unhappy juryman was liberated from his unpleasant and somewhat dangerous position.—*The Law Times.*