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DIARY FOR DECEMBER.

1. Thursday .... Paper Day.
3. Saturday.... Michaelmas Term ends.
4. SUNDAY..... *2nd Sunday in Advent.*
8. Thursday .... { Last day for service of Writ for Tor. Winter Assizes, 1860. Last day for notice of Trial for County Court.
11. SUNDAY..... *3rd Sunday in Advent.*
13. Tuesday ..... Quarter Sessions in each County and Co. Court sittings.
14. Wednesday .. Last day for Collectors to return their Rolls.
18. SUNDAY..... *4th Sunday in Advent.*
19. Monday ..... Last day for decl. Toronto Winter Assizes, 1860.
20. Tuesday ..... University College and Trinity College M. T. ends.
25. SUNDAY..... Christmas Day.
28. Wednesday .. Last day for Notice of Trial for Toronto Winter Assizes, 1860.
31. Saturday...... { End of Municipal year. Last day on which remaining half of Grammar School Fund payable.

TO CORRESPONDENTS—*See last page.*

The Upper Canada Law Journal.

DECEMBER, 1859.

BUSINESS NOTICE.

All Subscribers are respectfully requested to examine the covers of their numbers of this Journal, and, as this number completes volume five, to send to our publishers without delay the amount due to us.

SIR JAMES BUCHANAN MACAULAY.

With feelings of the deepest sorrow, we proceed to record our tribute to the memory of one, whose loss none deplore more than ourselves.

In our number for January last, we were called upon to notice the decease of one who had held a most prominent position at the Canadian bar—one who had gained the esteem and respect of all, and whose loss to the legal profession and to the country generally was seriously felt—we mean the late Robert Baldwin. Hardly has another year completed its course, when we experience another loss, if possible more severe in its consequences, and more irreparable in its effects.

Sir James Buchanan Macaulay is dead. The upright and wise judge, the able and conscientious lawyer, has been taken from amongst us, and has gone to his long home.

Upon the death of a distinguished man, there is a natural and indeed a laudable curiosity to become acquainted with the history and peculiar abilities of the deceased.

We feel a melancholy pleasure in laying before our readers some of the most prominent facts relative to the important life and exemplary character of the late Sir James B. Macaulay.

Sir James Buchanan Macaulay was the son of Dr. James Macaulay, who emigrated to Canada about the year 1792. There is but little from which we can gather authentic information regarding the career of Dr. Macaulay. This we do know: he was among the most worthy and respected of his time, and had many friends. On his decease, so greatly was his memory esteemed, that the Legislature, who were sitting on the day of his funeral, adjourned, in order to pay a suitable tribute to his memory. He was particularly remarkable for his hospitable and benevolent disposition; and this, united with great kindness of heart, gained for him among those of his time the deserving appellation of "the good Samaritan."

Sir James was the second son of Dr. Macaulay, and was born at the town of Niagara, on the 3rd December, 1793. In 1795 or 1796 his father and family removed to Toronto (then Town of York), where they remained till the year 1805. In 1805 they removed to Quebec, and Sir James then being about eleven years of age, was placed at Cornwall under the tuition of the Rev. Dr. Strachan, the present Anglican Bishop of Toronto, where he formed the companionship of those who, together with himself, raised themselves to the most exalted positions in the country. It is a singular and interesting fact, that no less than three of his school-mates attained to seats on the bench—viz., Sir John Beverley Robinson, Mr. Justice McLean, and the late Mr. Justice Jones. At school he did not exhibit as much brilliancy as some of his companions; but what he lacked in brilliancy, he amply compensated by indefatigable industry, the faculty of reasoning, and strong powers of memory; so that on the occasion of any repetition, he was frequently found in advance of those whose study caused them less labor and anxiety.

When sixteen, he was removed from the school, to which he had become warmly attached, and entered the army as an ensign in H. M. 98th Regiment, then stationed at Quebec. To the profession of arms he was at that time devoted, though he by no means desired to relinquish school as soon as he did. In after-life he frequently adverted to his early removal with feelings of regret.

In the 98th Regiment he remained till the year 1812, and on the breaking out of the American war was promoted to a lieutenancy in the Glengarry Fencibles, which corps had been raised for the purpose of the defence of the country during the war. By his attention to business, his military exactness, and his application to his various duties, he soon attained the adjutancy of his regiment, and accompanied them through the battles of Sackett's Harbor, Ogdensburg, Fort Erie and Lundy's Lane, in each of which engagements he greatly distinguished himself by his undaunted courage. During the engagement at Sackett's Harbor he was slightly wounded by a rifle or musket ball in the left side.

It was not until his regiment was disbanded, on 24th June, 1816, that Sir James Macaulay turned his attention to more peaceful pursuits. He then went to the new settlement being formed at Perth, with a view of becoming a military settler, but soon relinquished that idea, returned to Toronto and commenced the study of the law. In 1816 he entered his name on the books of the Law Society, and commenced his professional education in the office of the late Mr. Justice Boulton. When Mr. Boulton was elevated to the bench, Sir James continued his studies with the Hon. Henry John Boulton, son of the Judge. At the end of three years he was admitted an attorney, and afterwards, in 1821, was called to the bar, and in December of the same year married Miss Rachel Gamble, an amiable and accomplished lady, who now survives him, and by whom he has left three daughters. For a short time he was in the office of Sir John B. Robinson, the present Chief Justice of Upper Canada, when Attorney General of the Province.

His career at the bar was marked by unusual success. Here his singular industry and superior abilities had a full field for action, and he was soon at the head of his profession. His attention to business, his upright course, together with his growing influence, were soon brought under the notice of Sir Peregrine Maitland, then Lieut. Governor of the Province, by whom he was, in 1825, honored with an appointment to a seat in the Executive Council. In 1827, he was appointed a temporary Judge of the Court of Queen's Bench, and acted as Judge of Assize on the circuit which included all the province west of Toronto. When the circuit was over he went back to his practice at the bar, and, in July, 1829, was permanently appointed a Judge of the Court of Queen's Bench. In this office he remained for twenty years; and in December, 1849, on the formation of the Court of Common Pleas, was transferred from the Queen's Bench to the Common Pleas, as Chief Justice of the new Court. In this exalted station he remained for seven years, and in 1856 announced his intention to retire into private life, and relinquish the arduous duties of the bench, which for the lengthened period of twenty-seven years he had so ably and so faithfully performed. The reason for his taking this step, was a slight imperfection in his hearing, though in other respects his faculties were unimpaired. In February 1856 he retired from the bench. From the year 1825 till 1856 he served on the Heir and Devisee Commission, first as an Executive Councillor and afterwards as a Judge.

A mind like that of Sir James Macaulay—so used to occupation, and so inured to toil—could not long remain idle; and upon being appointed chairman of the commissioners for consolidating the statutes of the Province, he applied himself to the arduous task with his wonted assiduity, and rapidly completed a work which will cause his memory to be cherished with feelings of profound gratitude.

After his resignation of the Chief Justiceship of the Common Pleas, he accepted the appointment of tenth Judge of the Court of Error and Appeal, and by the benchers of Osgoode Hall, on the death of the Hon. Robert Baldwin, was unanimously elected Treasurer of the Law Society of Upper Canada. To this latter office he was again elected, at the annual meeting of the benchers, held on Saturday morning, the 26th November, only a few hours previous to his decease. On leaving home that morning he complained of being unwell; but not considering his illness of sufficient consequence to remain at home, nor fearing anything alarming, he proceeded to Osgoode Hall, and presided at the meeting of the benchers. Feeling no better, he was advised to return. Accordingly a carriage was procured, and he was immediately driven home. Medical aid was sent for, but before it could be procured he had breathed his last.

The Courts of Queen's Bench and Common Pleas, then in session, upon learning of the sad news at once adjourned. Deep indeed was the sorrow depicted on every face, as the Chief Justice in each Court adjourned the business of the day, and the almost inaudible whisper, and the eager and astonished countenance, betrayed the shock which all experienced. Little did those who saw him that day performing his duties in his usual methodical manner, think that upon relinquishing them for the day it would be forever—that he had finished the entire work allotted to him in this life, and that he had forever departed from that arena which had so often witnessed his usefulness.

His death, though sudden, was peaceful. Possessed of the unimpaired use of his mental powers; performing to the last those duties in which he ever took the most lively interest, and, among the companions of his early boyhood, the associates of his manhood, remaining to the last within the precincts of that Hall from which his fame emanated; and, above all, well prepared, and long waiting for that moment in which he was to throw off this mortal coil and put on immortality—such a termination to such a career was truly happy.

The many and honorable positions held by the deceased, and the ability he displayed in performing the various and arduous functions of each, could not be without their rewards. Above all, he received the esteem and respect of every good man. In his own estimation, duty carried with it its own reward. Without an enemy, he had none to fear; and having never injured any, he had nothing to regret. But apart from these satisfactory results, he was still more

rewarded. He held successively the most important offices in the country, and, owing to the great services he had rendered to the country, was appointed by his Sovereign to a Companionship of the Bath, and subsequently knighted.

Few men have held so many public positions as Sir James Macaulay, and have acquitted themselves with so much credit. Whether we regard him as a soldier, a lawyer, a judge, or even in that more sacred character, a Christian, we can trace in all his actions the same beautiful harmony—the same entire devotion to the calls of duty. He was actuated in every instance by the same laudable motive, the same upright principle. As a soldier, he was brave, daring, loyal and submissive,—he never sought reward, nor looked after distinction, but suffered himself to be actuated by the sole impulse of duty; as a lawyer he was able, though his extreme modesty sometimes begat hesitation and doubts. His conscientious counsel was always valuable, and his solid judgment and unerring foresight were generally attended with unequivocal certitude. A natural distaste for the anxiety and turmoil attendant on politics, prevented him from taking a prominent part in the affairs of government; it was from the more peaceful capacity of a lawyer and a judge, that his fame chiefly arose. He studied law as a science; and being possessed of a vast extent of legal knowledge, his authority was second to none in the Province. His judgments exhaust the law which bears upon the questions decided, and evidence in every sentence the most patient, pains-taking and laborious research. He strove to prevent the strictness of the law prevailing against right, and always aimed to preserve intact the spirit of the law. He was ever careful to weigh words and sentences together, with the most scrupulous nicety. When satisfied upon the construction of any intricate point, he would express his conviction in a logical and forcible manner. When presiding in the courts, he was particularly noted for his extreme caution in giving his decisions. Though his first impressions were generally accurate, he seldom submitted them upon his own immediate conviction. He would have recourse to all decided cases, before he was finally satisfied as to the correctness of his own convictions. To counsel he ever paid full attention. During Nisi Prius trials, his modest and unassuming bearing was still the same. His address to the jury was always pains-taking and plain-spoken. When it became his painful duty to pass sentence on a criminal, the tender and compassionate nature of his disposition was clearly manifest; and his profitable advice, delivered in a sincere and devout spirit, and so free from any affectation or ostentatious display, never failed to produce the desired effect, and to edify those who happened to hear him.

His last work, and by no means the least important one that fell to his lot to perform, was, as we have already mentioned, the Consolidation of the Provincial Statutes, the completion of which was announced in the *Gazette* only a few weeks previous to his decease. He performed the revision of these statutes with astonishing rapidity, and their usefulness will be substantially augmented by their extreme accuracy. If Sir James was better versed in any one branch of the profession than another, it was in statute law. This he acquired in an eminent degree, from his having grown with the country, and carefully regarded its progress and various changes.

With such virtues, with such industry, with such capacity for work, and with such general ability, it is not to be wondered that his loss should be so deeply lamented, and still less can we marvel at the deep sorrow, felt by every branch of the profession. His brother Judges will esteem his memory, for his honorable and unbending integrity, and grieve the loss of an able adviser, an efficient and willing assistant. His loss, by the members of the bar, will be sorely felt, for as a sound and practical lawyer, he was ever regarded. Few can ever forget, that suavity and courtesy with which he treated every member of the profession. But by Law Students, his memory will be remembered with feelings of affection. To them, his kindness and attention could not be surpassed. There are many who are now practising at the Bar, who can fully corroborate this remark. There are others who even yet are passing their studies, who grieve the deprivation of the kindest, of most disinterested of friends, and the most patient and pains-taking of patrons. Whenever he saw a student endeavouring to raise himself in his profession, perhaps encountering many and discouraging impediments, he, unsolicited, was the first to offer generous assistance, and render material aid, by not only attending to the immediate wants of the student, but desiring him to approach him on all subsequent occasions, assuring him of a cordial welcome. So gentle was his manner, that none approached him with fear or anxiety. His extreme affability always caused him to overlook intrusion; when doing good he was always happy. His heart was as large as his mind was noble.

We cannot offer a better illustration of the high esteem in which Sir James Macaulay was regarded by every branch of the profession, than by a reference to the occasion when he retired from the Chief Justiceship of the Pleas. On that occasion, the Judges of all the Superior Courts assembled, and the Attorney General of the Province, on behalf of the Bar, presented him with an address, which appropriately bespoke the feelings of regret, experienced by each member of the profession. Never was there an assemblage

more sincere in its expressions of regard than were the members of the Bar upon that occasion, and so manifest was the feeling, that the learned Judge upon attempting to read his reply, was so overcharged with emotion, that he found it impossible to continue, and therefore was obliged to request Sir John B. Robinson to read his affectionate response. The Students, also, upon that occasion, suitably expressed in an address, their feelings of regret at the loss they were about to experience, and their due appreciation of his generous attention. The same evening, the members of the Bar honored him with a dinner, and a life size portrait of Sir James, taken in his robes of office, was presented to the Law Society. More recently the Bar assembled, and passed resolutions expressing their deep regret at the loss they have sustained, and tendering their feelings of sympathy, to the widow and family of the deceased.

We must now refer to the private life of the departed. We do so with feelings of delicacy, for in the general acceptation of the merits of a public man, we are, usually, only permitted to judge of his deserts by his public life. But a good man's private acts need never be allowed to remain undisclosed, and unassociated with his public virtues.

Sir James, in all the turmoil of life, never forgot the purpose and main end of his being. He was an upright and God-fearing man, a sincere Christian, and a zealous and faithful member of the church to which he belonged—the Church of England. The affection he bore to his church, was deep seated and unwavering, and one of his highest aims was to advance its welfare. His love, however, was not blinded by bigotry or fanaticism; he was most liberal to the views of others, and never allowed a man's persuasion to influence him as to his merits. His abilities were frequently enlisted in the service of his church, and one of the last acts of his life, was the adjustment of the differences of the Church Societies of Toronto and Huron, which had been previously entrusted to his award. Constant was the regularity with which he attended the House of God, and often has his name been blessed for bountiful deeds of charity.

In short, his was a practical religion; and his disposition comprised all the amiable and Christian virtues. A fond and affectionate husband, a kind and indulgent father, there never was a truer friend, and the spirit of animosity was as foreign to his nature, as a generous and forgiving heart was an essential element to his happiness. One of his chief characteristics, and one that could not but be noticeable to those who enjoyed his acquaintance, was the unaffected simplicity of his manners, which was the more remarkable considering his varied attainments. He always exhibited a total forgetfulness of self, and was ever eager to attain more information. His temperment was cheerful, though at times depressed; but when in health and not overburdened with cares, his conversation seldom failed to take a lively turn.

No one ever courted popularity less than he did, and so free was he from the influence of jealousy, that he was the first to rejoice at the successes and preferments of others. He was a man in whom the faculty of order was highly developed. He reduced every thing he took in hand to a perfect system. We have heard it stated, that the duties incident to the office of Treasurer of the Law Society, which before were many and onerous, involving much unnecessary time and labour, will, owing to his judicious management and systematic arrangement, be comparatively light to his successor.

We might indeed enumerate many more of the virtues of this exemplary man, but we feel that a perusal of those we have already noticed will convey an adequate idea of the excellencies of his disposition. If the appellation of "a good man and a just" could be applied to the character of any man, it might with much appropriateness be associated with the memory of Sir James Macaulay. In him Upper Canada has lost one of her great men—great in the wisest, purest and holiest sense of the word,—great as a defender of his country, great as an adviser in her councils, great as a powerful support to her free and loyal institutions. In him the Bench has lost one of its brightest ornaments, a wise, impartial and upright judge—one whose opinion all acknowledged, and whose inflexible integrity all admired. In him the Bar has lost a sound and conscientious lawyer, an able advocate, and a profound jurist. In him the student has lost a kind and generous friend, an assisting and disinterested benefactor.

NOTE.—Since the above was written, we have learned that at a most numerously attended meeting of the magistrates of the county of Simcoe, resolutions were passed expressive of their sorrow and sense of "the loss sustained by Upper Canada in the death of this most estimable man and upright judge." This is the only county we have heard from, but we doubt not that in due time we shall hear of similar expressions of feeling throughout Upper Canada. The resolutions of the Law Society—of the Profession—and of the magistrates in the county of Simcoe are published in other columns.

GARDINER v. GARDINER.

It is usual, and is certainly but courteous, for a disputant who seeks no unfair advantage, but is willing candidly to debate a legal question, to send a marked copy of the publication in which he has chosen to take the field, to the adverse party. "*Aliquis*" writes in the *Globe* newspaper, and has not thought fit to bestow on us this attention. A

recent letter of this writer we did not notice, till our attention was called to it within the last few days.

If *Aliquis* had in his first letter told us what he does apologetically in his last—that he is a person not professing a knowledge of law, but who is unfortunately afflicted with the bibliomania which leads him to read a few law cases, and that he labors under the disadvantage of having so defective a legal education as to be compelled with humility to confess himself unable to understand the distinction between a suggestion on the roll, a replication, and a *scire facias*—we should never have taken what would then from the first have appeared the unmanly course of wounding the susceptibilities of acknowledged weakness. We were only deluded into the contest by the supposition that we were contending with one of equal degree with ourselves; that is, who either had or professed to have a moderate knowledge of the law However, having commenced, it is now necessary for us to conclude the controversy, such as it is; and as the subject is nearly exhausted, we purpose to finish it in this number.

Whoever reads our first article, in the August number, will see we started with the avowed object of showing, not whether *Gardiner* v. *Gardiner* would or would not ultimately be decided to be according to or contrary to law, but that it was a case of *questionable authority*, by no means impossible to be still reversed by the Court of Appeal—that the doctrine it had partially introduced, without introducing enough of the nature of chattels into real property to make the case intelligible, or a practical guide in matters naturally dependent upon although partly collateral to the very point then decided—that even if the case should happen to be sustained by the Court of Error and Appeal, it had already created and must still create great confusion of legal principle, doubt and litigation; and that until that event happen, a painful sense of insecurity must exist in the minds of those who hold titles dependent on the legal validity of that case; while if reversed, without legislative provision for the change, consequences of nearly equal magnitude must follow; and that therefore it is desirable to pass an act to reverse if possible past, present or future, actual or possible difficulties;—also showing why we believe it quite possible to frame such a statute.

If the discussion has gone further, and cleared the doubt by proving the case clearly erroneous, the fault (if it be one) is not ours, but of those who provoked the discussion; and we hardly think any lawyer or practical man who holds lands on such a title will have all his doubts removed, and rest completely satisfied in his own mind that all is as perfectly secure without any such statute being passed, as if the question were set at rest by legislative interference, merely because he is told the case is undoubtedly contrary to all legal principle, and incapable of being defended in any other manner than by attempting to galvanize into life the long defunct law of the dark ages, not only resuscitating the obsolete doctrine, "*communus error facit jus*," but even perverting it from its original use, which was to stifle judicial qualms of conscience as to deciding contrary to what the presiding judges believed to be the true principles of law. by an uninterrupted course of legal decisions of the same, or a superior, or exclusive, or at least equal tribunal, on the very point, extending back to time immemorial, and forcing the unfortunate maxim to do duty against the judges of the Court of Error and Appeal by estopping those superior court judges with the erroneous decisions upon a point recently raised upon the construction of what in law is considered a modern statute of the inferior courts, the legality or error of which very decisions of such inferior courts would be then directly under investigation, and for the express and sole purpose of rectifying which, when erroneous, such superior court was created, and alone has existence.

Or even if he should be still further informed that in the process of reasoning by which, apparently, *Aliquis* has at length brought himself to agree in substance with us on all points, except as to the validity and applicability of the maxim, "*communus error facit jus*," to the present dispute, he has convinced himself by a different mode, or at least by different words from those used by us—he meaning by "a general charge" upon the lands of the deceased debtor, precisely what we mean in saying that, supposing no judgment to have been recorded against deceased in his lifetime, "the statute does not, either before, or at, or after the death of the owner, charge the debts absolutely on the lands, so as to affect the lands before placing in the sheriff's hands the attachment or *fi. fa.* lands for execution," "or filing a creditor's bill:"—in other words, that the creditors have no lien, but a mere right to sue, and by judgment and execution obtain satisfaction out of the lands before as well as after the decease of such debtor, provided always such right has not been disappointed (as it is capable of being) by such lands having been, even after such debts were contracted, but before placing such writs in the sheriff's hands or filing such bill, sold and conveyed by such debtor while alive, or his real representative since his death. We waive all comment on the legal nature of the right or "charge," when considered with reference to the undoubted principle of law, that all persons are bound to notice the provisions of a public statute, and the manner in which it affects persons and property; and we are willing to forget that it is a contradiction in terms (*see* Toml. Law Dict. tit. "Charge"), unless you deprive the words of their meaning by defining it to be, a general, contingent, destructible charge, depen-

dent and determinable upon and at the will of the person charged.

We take leave of the subject for the present, in the hope and belief that enough has been said on both sides to satisfy all persons that there is great need of some legislative interference, and that too as early as possible.

NOTE.—*Hamilton* v. *Beardmore*, 7 Chancery Rep. U. C. 286. Plaintiffs sued at law the administratrix with the will annexed of the deceased debtor, recovered judgment against her for the debt of the deceased, registered the judgment against the lands of the deceased, issued *fi. fa.* lands on it, and the execution by sale of land being obstructed at law, the plaintiff filed a bill praying aid of equity, on account of the legal difficulty, by decreeing a sale of those lands to satisfy such judgment. *Held, per Cur.*, the judgment was worthless and created no lien; that a creditor "canno by obtaining and registering a judgment against the executor or administrator acquire a lien on the real estate of the debtor;" and our own Statute, 18 Vic. ch. 127, s. 1, enacts *that "no judgment of any Court of Record* in Upper Canada "shall create a lien or charge upon any lands, &c., or interests in lands, &c., until registered, &c."

A LEGAL ABUSE.—A SUGGESTED REMEDY.

The Toronto *Leader*, of the 31st October last, contains an article intitled "An abuse and a contrast." As it appeared on the last day of the month, we could not notice it in our last number.

In the article before us, attention is drawn to "an abuse, for which a speedy remedy is demanded."

"In a great number of cases," says the *Leader*, "there is reason to believe that the salaries of the Division Court Clerks are nearly double those of the Judges under whom they serve, and to whom they owe their appointments. The emoluments of the Division Court Clerk in the County of York, cannot be much less than the united salaries of the two Chief Justices. For all we know, the occupant may discharge his duties in a satisfactory manner, for it happens that it is an office which does not require intellect or learning—a mere clerkship, which, as things go, would be well paid at $1200 a year. Any member of the legal profession in Toronto will point out to you a common bailiff, who, in precisely half the time that Chief Justice Robinson has been on the bench, has accumulated from his emoluments property worth $6000 a year. * * * It may possibly be urged that the cases to which we refer are few and far between, and that the tariff of fees payable to the lower classes of officials connected with the administration of justice, is not, as a general thing, too high. If we accept the argument on this ground, it does not get rid of the special difficulties. There still remain special abuses to be corrected. A tariff which could afford no more than a fair compensation when the community is small, becomes, with the increase of population and judicial business, extortionate in its proportions. Thus it is that progress creates a necessity for the revision of laws; and most assuredly that necessity has arisen in the cases to which we have referred."

With some opportunities for forming a judgment, we must dispute the allegation that "in a great number of cases the emoluments of the Division Court Clerks exceed the salaries of the County Judges." It is true in reference to a few cases, we admit;—indeed the assertion has special weight in reference to the Clerk of the Court in Toronto—and we quite agree with our cotemporary that it is unnecessary to dwell on the injustice of such an anomaly—that it is apparent on the surface of the facts. We must also admit that the fact of the Division Court officers generally not being overpaid, "does not get rid of the special difficulties"—that "there still remain special abuses to be corrected." Though fully alive to the fact that a Division Court clerk requires more than an average amount of ability, and thorough business habits, in order to the proper discharge of the duties of his very important office, yet we do think that it is a discredit to our judicial system that ministerial officers should in any instance receive a larger return for their services than the Judges under whom they act.

We are very far from thinking with the *Leader* that a Division Court clerk requires neither intellect nor learning, although certain it is that a clerk in such a place as the city of Toronto, with his hundreds of suits every month, stands less in need of these requirements than a clerk in the back woods, with his six or eight hundred suits in the year. Moreover, we have a very general knowledge of the Division Court Clerks in Upper Canada, numbering over 250, and are bold to say that, taken as a class, a more intelligent, more respectable, better educated body of men will not be found in any department of the public service. Nine-tenths at least of the Division Court clerks are men of high standing in their counties, and have occupied positions of trust by the suffrages of the people, having served as wardens of counties, reeves, or councillors of municipalities.

In cities and large towns the Division Court clerks have more business than clerks in rural divisions, but the latter require even more than the former an intimate acquaintance with the system under which they act, and a knowledge of business generally.

In England the clerks of similar courts *must* be attorneys; in Upper Canada the law provides, perhaps wisely, that *no practising barrister or solicitor shall be clerk.*

In cities, claims are brought in generally by business men, by attorneys, or by persons who make "collection" in the Division Courts their business. They know the form in which accounts and claims are to be shaped—the time when they are to be brought in—need no information from the clerk on any point, and the clerk has comparatively little trouble with them. In rural divisions such is not the case. The great bulk of persons resorting to the courts require the assistance of the clerk in putting their claims into proper shape for suit, and information from him as to time, mode of bringing on a case, preparing for defence, &c. &c. In such divisions the clerk virtually acts as the

attorney for both parties, in the preparation of documents and notices, suing out process, and in doing other like ministerial acts, which, in this country at least, must for a long time devolve on clerks in courts wherein lawyers are not recognized, or, in other words, wherein fees are not taxable for their services.

We do not mean that clerks are called upon to act or advise in respect to the merits of a case, but merely that they assist both parties in bringing the subject matter involved in the case into a complete and intelligible form for the judge's adjudication. Thus all clerks are receivers of suitors' monies, in some instances to an enormous amount yearly, and the office itself is one of great trust and responsibility in other respects Good character and respectable standing are amongst the indispensable qualifications for the office. In this office, more than most others, there is much to be learned by experience; and unless the incumbent profits by his experience, so far as to enable him better to serve the public every year he holds office, he ought not to be continued as clerk.

Our experience has enabled us to know that the body of Division Court officers gladly avail themselves of every opportunity of adding to their knowledge; and by means of this journal, clerks of large experience have given the benefit of it to their fellow-clerks and others, and by inter-communication of this kind have largely contributed to promote uniformity of procedure, and to render more perfect the detailed machinery of the courts.

Our readers will have noticed from time to time very many communications in this journal, from educated and intelligent clerks of courts, but, so far as we remember, in no single instance from a clerk of any of the *mammoth* courts. It would appear from this that they do not appreciate the means of improvement as much, or take the same interest in improving themselves, as their country brethren. We speak of improvement, for we hold that a clerk who does not go on improving will necessarily fall behind his fellows, to the public injury; and we much fear that some of the overpaid clerks answer but too well to the *Leader's* designation of "regular-built money grubs," indifferent to everything but the gains of office.

Division Court clerks are not supplied with books, forms or stationery; these must be procured at their own cost. In courts having say under eight hundred cases in the year, the fees do not fairly and fully compensate for the labour, responsibility and outlay. With that or even a less number of suits yearly, the clerk must give constant daily attention to the office, and can with comparatively little additional labour or expense, work the business of an office having two thousand suits yearly. The same preparation must be made for conducting the office with its eight thousand cases, as the office with its two thousand cases. The clerk must in both cases be at his post at the proper times, and the difference in outlay for forms and books is not considerable—not exceeding on the average one-eighth of the fees payable in each case.

Now, two thousand cases will give a return of between four and five hundred pounds per annum, and, if the question be reviewed on its merits, we think that is by no means too much for the duties, responsibilities and outlays. True, it would not be in proportion to the salaries of the County Judges; but if these officials are underpaid, which we think they are in many cases, their salaries should be increased. If Judges are underpaid, it is no argument for the underpayment of clerks. But the truth is, that while in the great majority of cases clerks are not properly remunerated, in some few cases they receive an enormous income.

Admitting, then, a special abuse, and trusting with the *Leader* that it will be reformed next session, let us consider the remedy suited to the evil. Our cotemporary says, all that is necessary "is to fund the fees, and pay by salary wherever the former exceeds an amount that will fairly and amply compensate for the services required," but does not discuss the manner in which this is to be done, and doubtless details of the kind more properly fall within the scope of publications specially devoted to the law and its administration.

The fee system, as applied to services by clerks of courts, is not without strong objections; and the plan of payment by salary instead of fees is certainly sounder in principle, for the general funds of the country ought to bear all the expenses of the establishment of courts of justice. Then, why should a person seeking his rights be charged in his individual capacity, when all the requisite legal machinery is in existence, and his claim creates no fresh public expense? This view may admit of some qualifications, and with reference to political considerations, we do not look for any present sweeping alterations from the fee system to that of paying by salary.

The fees at present payable are small enough—much less than in England or the United States—not exceeding an average of $5 for clerk, fee fund, and bailiff service charge on a judgment for $100, and for less sums in proportion.

Suppose we assume sixteen hundred dollars as a maximum yearly remuneration to clerks for their services and disbursements, all the fees received by them above that amount to be accounted for to the fee fund. Now, clerks might work diligently enough in the collection of fees till the amount of their salaries was realized, but with such a provision would they not be indifferent about receiving suits or accommodating the public? Would they be as

diligent as they now are in issuing summonses, wanting the incentive in the shape of fees? If they did issue summonses, &c., sufficient to make a fund far beyond their salaries, the necessary printed forms should be supplied to them, and some allowance made towards court books. All this would involve a complication in the clerk's accounts, and a difficulty in securing proper audit; and on the whole we think this plan would be attended with serious difficulties in the audit of accounts, and in the end would not be found very advantageous for the fee fund.

Another plan is this: Clerks to take the whole fees for the first thousand cases, two-thirds of the fees up to the second thousand, one-half the fees up to the third thousand, and one-third of the fees on all suits over three thousand, for each year. This we think would secure a fair remuneration to clerks, and a handsome return *to the fee fund*, and would present fewer difficulties in the way of audit, and would be freed of most of the complications which attend the other plan.

The same principle might be applied to bailiffs; for in the divisions in which it would be brought to bear, there would be no mileage.

There will be sufficient time before the meeting of Parliament to enable those interested in the good working of our Division Courts, to give their views as to the best and fairest mode of carrying out this necessary reform. We are by no means wedded to the plan we suggest; but as some action will be taken, a proper discussion of the subject in the meantime cannot fail to be of use.

The public are indebted to the *Leader* for bringing the subject so prominently forward. Efforts of the lay press in favor of sound and safe reforms in the administration of justice, are few and far between; and we hail with great satisfaction the article referred to (*not* the first of the kind) as an able, valuable and judicious contribution in furtherance of the public good.

THE 91st CLAUSE.

Elsewhere in this number, will be found a tabular statement showing the actual working of the Judgment Summons clauses, in the Division Court of Simcoe, (before Judge Gowan,) for the eighteen months ending with the last half year.

From the resolutions accompanying the statement, we see that the Clerks in this County, as in other Counties we have heard from, think that the 91st clause works well and advantageously. The Division Court Clerks, generally, and we speak on actual knowledge, are men of great intelligence, and their statements are entitled to all respect; for in addition to capabilities for observing, they have the best opportunities for forming an opinion as to the practical effect of the provisions of law affecting their Courts.

They are generally, too, men of experience and good business talents, and very many of them have served the public in other offices. For example, let us take the Clerks sending the statements of which we speak, one of them is now the Warden of the County—another is an Ex-Warden—two more, we believe, are or were Township Reeves—one has held the office of Deputy Clerk of the Peace, for many years, and with two exceptions, all are in the Commission of the Peace.

Nor is the County of Simcoe singular in this respect, as an examination of the list of officers in Upper Canada will show, and our readers may remember, as Warden of the Counties of York and Peel, a gentleman who now holds the post of Division Court Clerk—one of the ablest and most constant of our correspondents.

We have, on previous occasions, expressed ourselves as opposed to the repeal of the power of commitment under the 91st clause, believing then, as we do now, that if discretely and intelligently administered, it operates most beneficially for creditors, and that without harshness or injustice to debtors.

But from the statement before us, and other statements previously published, we are left to speculate as to the actual working. We have facts and figures which dissolve completely, the fancy sketches of certain sentimental writers, who picture in such glaring colours, the horrible effect of this dreadful 91st clause.

Looking into this statement from the County of Simcoe, we find, that in the eighteen months it embraces, 10,061 cases were entered for suit—the total amount claimed in these cases, being $297,304 52c., (an average of $30 to each case.) During the same time, 602 Judgment Summonses were issued, the amount of claims involved, being on the whole $20,349, (an average of nearly $34 in each case.) On these 602 "91st clause Summonses," $7,735 82 were realized, equal to 38 per cent.

Now in these 602 cases, execution must have been sued out, and returned "no goods." There was no property to reach—it was, in very many cases, concealed, held in trust, or covered by fradulent bills of sale, or the defendant had means of paying which the writ of execution could not reach. The creditors of these parties would be obliged to write their claims down as "*bad debts*," but for the aid of the 91st clause. Under it, however, they realized 38 per cent., nor is it improbable that a considerable portion of the claims, over and above the 38 per cent, may have been realized by plaintiffs, without the fact coming officially before the Clerks.

Then we may venture to say, that many claims were

settled, after execution being returned "no goods," without serving out Judgment Summonses, through a wholesome fear on the part of defendants, of being brough up under it. Why? because (to use the language of Judge Gowan, in his published exposition of the law,) "the powers given are for the *discovery* of *property* withheld or concealed; the enforcement of such *satisfaction* as the debtor may be able to make, and for the *punishment* of fraud."

Is it not a fact, patent to every one acquainted with the Courts, that a legion of "genteel swindlers," so soon as the law came into force, began to feel qualms of conscience respecting "little accounts" due their Tailors, Hatters, Bootmakers, &c., &c., and by timely payment, saved their creditors, from the fashionable "out fitter" downwards, "the painful necessity of a resort to the 91st." And that swindlers of every grade, suddenly thereafter, found it just possible by reducing their expensive pleasures, to save something for their creditors. And ingenious fabricators of fictitious bills of sale, found it very inconvenient when called upon to explain how it was that they were surrounded with this world's goods, while the Bailiff of the Courts declared they had "no goods whereon to levy."

But the great cry against the Judgment Summons clauses, was the number of commitments under it, and the long periods of imprisonment. Now what do we find in the statement before us? 142 warrants issued on all grounds, (default in appearance—not applying means—fraud, &c.,) or one warrant to every 71 cases! Then as to the actual commitments, only 11 persons found their way within the walls of the gaol—or one actual commitment to every 909 cases!!! Now how comes it that only 11 out of 142, were actually committed. The plain inference is, that 131 of these defendants, found means of payment at the last moment, rather than go to gaol.

Well, for how long were these 11 actually confined? for 76 days in all, the longest term of any of them being 20 days—the greatest number under 10 days.

Surely here is no evidence of harsh dealing by creditors, or suffering by debtors. The Toronto *Leader* took a fair view of the question when it was before the Legislature, and did not join in the onslaught upon the valuable provision referred to. The editor of that journal, will see in the facts set down, strong evidence that his course was the wise one; and the trading community are greatly indebted to it, for giving the weight of its influence against hasty legislation.

We have been informed, that at the next session, another effort will be made for the repeal of the 91st clause. Last session it was modified, perhaps improved, but we reiterate, that with careful and judicious exercise of the jurisdiction, the provision needed no alteration—that if injustice was wrought under it, the fault lay not in the law, but the way in which it was administered. We look upon it as the backbone of the small debt Court system, and the only effective means of reaching unprincipled debtors owing debts under $100; and we hope, for the sake of creditors, that evidence such as the above, will have its due weight.

The same effort is being made in England, as in this country, to do away with a similar clause.

Our former articles on the subject, were republished by the *Law Times*, as "a valuable contribution to the controversy" going on, and it adds, in no small degree, to the strength of our position, to find that the views we advocate, are also those of one of the first legal periodicals in Great Britain.

EXECUTIONS FROM THE DIVISION COURTS.

In the November number, (page 250) we answered a question put by Mr. Jones, as to the priority of executions.

Our attention has been directed to a recent communication in the *Leader*, questioning our views. As we do not pretend to be infallible, any more than others of the legal fraternity, and are very far from being "more in love with our own opinions than with truth," we would have been happy to have given a place in our columns to the communication in question, which, for aught we know, may have been written by the paid legal adviser of some of the parties concerned.

Lawyers differ frequently, and Judges occasionally, and it would not be a matter of surprise, if amongst the numberless questions appearing in the *Law Journal*, there were some, the correctness of the answers to which were questioned.

The *Law Journal* has been in existence five years, and we do not remember more than two or three instances, in which our views were objected to. Yet we would very gladly induce discussion on important topics, with well informed parties actuated by a like motive with ourselves, viz., to inform and assist officers of the Courts We are willing to assume that such was the motive of the *Leader's* correspondent, although his method of showing it was not the usual one in such cases.

The really important ground we took, is found in the first paragraph of our answer, that we know of *no decision* that executions from the Division Courts, do not take priority from the time of delivery to to the Bailiff, but only from the time of actual levy; adding, that in absence of any such decision, "we are inclined to doubt if such is the law."

Our opinion remains unchanged, and we have yet to learn that the point has been decided.

The writer in the "*Leader*," refers to the language of the Chief Justice in *Culloden* v. *McDowell*, 17 U. C. Q. B., 359, and couples the remark by the Chief Justice, "it is not to be assumed that an execution from an Inferior Court, binds from the time of delivery to the Bailiff," with a statement of his own, "*and* the appeal was allowed, and the judgment of the Court below reversed."

Now the judgment of the Court below was reversed, because founded on a misconception of the facts. The learned Judge below "assumed that it had been proved that the execution from the Division Court *came to the Bailiff* before the assignment had been made, under which the plaintiff claims." Whereas the evidence was, that although a writ had issued in January, he did not receive the execution until the 2nd of March, just one month *after the assignment* under which the plaintiff claimed, which assignment was made on the 2nd of February.

Take the language of the Chief Justice without omission. He says, "the writ, indeed, was issued in January, but that did not signify. It could not bind the property *before it came into the Bailiff's hands.* If, indeed, it could before an actual seizure was made, for it is not to be assumed that an execution from an Inferior Court, binds from the time of its delivery to the Bailiff."

The reportor's head note, goes quite as far as the case warrants. It is, "Executions from a Division Court, do not bind the property *before they are placed in the Bailiff's hands;* quære whether before actual seizure." The *quære* seems scarcely to be warranted by the incidental remark, "for it is not to be assumed, &c." That point was neither argued nor decided. But then, the recent Statute, 20 Vic. ch. 57, sec. 24, contains a provision which apparently settles the point. It enacts as follows:

> Where a writ against the goods of a party has issued from either of the said Courts, or from any County Court, and a warrant of execution against the goods of the same party has issued from a Division Court, the right to the goods seized shall be determined by the priority of the time of the delivery of the writ to the sheriff to be executed, *or of the warrant to the bailiff* of the said Division Court *to be executed;* and the sheriff, on demand, shall, by writing, signed by him or his deputy, or any clerk in his office, inform the bailiff of the precise time of such delivery of the writ; and the bailiff, on demand, shall show his warrant to any sheriff's officer; and such writing, purporting to be so signed, and the endorsement on the warrant showing the precise time of the delivery of the same to such bailiff, shall respectively be sufficient justification to any bailiff or sheriff acting thereon.

The substance of the provision is, that priority of time is to govern precedence in all cases; and it assumes, and impliedly requires, that the precise time of the delivery of the warrant to the Division Court bailiff is to be endorsed on the warrant.

The other point is not so important. The question of abandonment is a matter of evidence. What is commonly called by officers a receipting bond, is in the nature of a receipt for the goods seized, as having been delivered over to certain named parties, and to be returned for sale at a day named—making, in fact, these parties bailees of the goods for safe-keeping till the time for sale; at least such is the tenor of the instruments called "receipting bonds" which we have seen. Our opinion was, "the fact of the bailiff who first seized not having removed the goods or put a keeper in possession, cannot be construed into an abandonment of the seizure."

In the case put, both of the Division Court executions *were in force* at the time of the last seizure, and there was a bailment of the goods, as we understood the facts. In the case of *Castle* v. *Ruttan* (4 U. C. C. P. 252), the sheriff allowed the debtor not only to remain in possession, but to *carry on his business* (that of a druggist), as before seizure. It was *after the return day of the first writ had expired*, that the second execution came to the sheriff; and under these circumstances it was that the second writ was held to take precedence of the first. In several other particulars this case differs from the one put by Mr. Jones.

But after all, the main question is, whether Division Court executions take priority from the time of delivery or the time of actual levy. The point is one of general importance, and we should like to see the question raised before the courts. Until decided to the contrary, we must retain the opinion we expressed.

THE UPPER CANADA LAW REPORTS.

The subscription price to the Queen's Bench, Common Pleas, and Chancery Reports of Upper Canada, has hitherto been a cause of much complaint. The sum of twenty-eight dollars per annum for three volumes of law reports, was more than some could afford, and more than many would pay.

The cost of purchasing the back numbers of these reports (about £70) is really more than any beginner can afford to expend. This, followed by an annual tribute of twenty-eight dollars, deterred, we have no doubt, many from availing themselves of the decisions of the courts in which they practise, and without a knowledge of which decisions there can be no certainty in the practice of the profession.

The high price is now to be abated, but the abatement is only an experiment. The three volumes, instead of $28 per annum, will now be $15 only. The wider the circulation, the less will be the price; and it is hoped that the less the price, the wider will be the circulation: the rule should work both ways. The sum of $5 per annum for the reports of each court, is a tax of which none can complain as exorbitant. Those who have heretofore held back, either from

want of means or other similar cause, will now be left without excuse. All such, therefore, should without delay subscribe, and so secure the permanency of the present reduction in price.

In the profession of the law in Upper Canada, there are at least five hundred persons who might and ought to become subscribers; and yet, up to this time, not much more than one-third of this number availed themselves of the Reports. We believe that an increase of one hundred subscribers will enable the reporters to do what they are willing to do if properly supported.

The high price of law and medical works in all countries is not so much owing to their intrinsic value as to their limited circulation—circulation among a class. So the more limited the class, the greater the price. For this reason, law books are more expensive when published in Upper Canada than either in England or the adjoining republic. The cost of composition, that is of printing a book, is the same whether the edition is two hundred or two thousand; but each copy sold beyond the two hundred, increases the profit of the undertaking, and so compensates author and publisher for their trouble and outlay. This is known to all who know anything whatever of the publication of books.

The legal profession of Upper Canada now have it in their power to secure the reports of their courts at little more cost than is paid for similar publications in the United States, and no more than is paid in England. If the members of the profession exert themselves, and show a proper appreciation of the reduction in price by a corresponding increase of the number of subscribers, the reduction will be permanent—otherwise, not. The remedy is now in the hands of the profession themselves, and if they fail to apply it they will have none but themselves to blame. One man in each town or village with little trouble may obtain several subscribers, and (if generally done) so make sure of the accomplishment of what all desire—the publication of our law reports at a price within the reach of all who require them, and at a price so moderate that none can object.

We should like to see the price of the Practice Court reports reduced in the same manner and upon the same terms as the Queen's Bench, Common Pleas and Chancery reports.

A "JUDGESHIP" IN UPPER CANADA.

The *Leader*, in the following words, gives a graphic but by no means exaggerated view of the prospect before those who obtain a seat on the judicial bench:

"He would find enough, and no more than enough, to live upon in the position which he would be required to sustain in society; a life of severe mental labour, demanding great physical endurance, and chaining him to the judicial bench in crowded, ill-ventilated court-houses for a given number of hours in the day, with sometimes an encroachment upon the night; high social position, purchased at the high price of the difference between his salary and what he might have won by the continued exertion of his talents at the bar; a retiring pension, consisting of the small end of his salary, when mind and body have been worn out in the service of his country; and the prospect, which must in spite of himself sometimes press heavily upon his heart, of leaving behind him a family with slender provision against the accidents and casualties of life,—whose education had absorbed all his means, and left him at the close of a life of severe labour little more than would pay his funeral expenses."

The above would be equally applicable to a "County Judgeship," with this difference — the County Judge receives no retiring pension.

THE LATE SIR J. B. MACAULAY.

THE LAW SOCIETY.

At a meeting of the Benchers, held on 30th November, the following resolution was adopted :

Moved by J.W. Gwynne, Q.C., seconded by John Crawford, Esq., and resolved—

"That the members of this Society in convocation assembled desire to record their deep regret for the death of their late Treasurer, the Hon. Sir James Buchanan Macaulay, who, during the short period he presided over their deliberations, added to the esteem and affection that they had ever entertained towards him, by his constant endeavours to raise the character of the profession, of which in his whole career, both at the bar and on the bench, he had been one of the brightest ornaments, and that the Treasurer do communicate this resolution to Lady Macaulay."

THE BAR.

At a meeting afterwards of the Bar, the following resolutions were adopted :

Moved by S. B. Freeman, Esq., Q. C., seconded by D. B. Read, Esq., Q. C., and resolved—

"That the members of the bar of Upper Canada, now assembled, on behalf of themselves and their professional brethren throughout the province, express their deep regret for the loss that the community has sustained in the death of the late Treasurer of the Law Society, the Hon. Sir James Buchanan Macaulay."

Moved by Dr. Connor, Q.C., seconded by John Wilson, Esq., Q. C., and resolved—

"That the members of the bar do attend the funeral of the late Sir J. B. Macaulay, to-morrow, at two p. m., in their robes, and do wear mourning for the space of thirty days in respect to his memory."

Moved by Henry Eccles, Esq., Q. C., and seconded by H. C. R. Beecher, Esq., Q. C.

"That these resolutions be communicated to the family of the late Sir J. B. Macaulay, and that the Benchers of the Law Society be requested to insert the same in the minutes of their proceedings."

MAGISTRACY OF SIMCOE.

At the Court of General Quarter Sessions of the Peace for the County of Simcoe, holden at Barrie the 14th day

of December, 1859, the following Resolutions were unanimously adopted:

Moved by James Dallas, Esq., and seconded by George Lount, Esq.:

"Whereas it has pleased Almighty God to remove from this world, in a sudden and striking manner, the Hon. Sir James Buchanan Macaulay, formerly Chief Justice of the Common Pleas for Upper Canada, this Meeting (judicially assembled) feel it to be a melancholy yet imperative duty to express the deep sorrow with which they learned of the loss sustained by Upper Canada in the death of this most estimable man and upright Judge. The firmnes, the principle, the legal knowledge and uprightness of the Judge; the honorable bearing, courtesy and kindheartedness of the man—all endeared him to his country, and render his memory revered. Nor can this Meeting refrain from expressing their admiration of the man who, in advanced years, and after having spent almost a lifetime in the faithful discharge of his legal and judicial duties, bestowed his time, his talents and his energies on the noble work of the consolidation of the statutes; and so conferred a boon upon the people of this Province, the value of which it would be difficult adequately to express."

Moved by Thomas D. McConkey, Esq., Reeve of Barrie, seconded by W. C. Little, Esq., Reeve of Innisfil:

"That the Chairman be requested to communicate the foregoing resolution to Lady Macaulay."

Moved by John Alexander, Esq., seconded by John McWatt, Esq., Mayor of Collingwood:

That the foregoing resolutions be recorded in the Minutes of the Court.

CORRECTION.

The conclusion of "The Canary and County Judge" in our last should read as follows: "There is always danger from pernicious example, and we are accustomed to look to the East (*not* "past," as printed) for light."

THE LAW AND THE LAWYERS.

Lincoln's Inn has refused to accept the proposal of the Committee of the Benchers, recommending a compulsory examination previously to a call to the Bar. This is very much to be regretted, not only for the sake of the proposition itself, which was fraught with advantage to the Profession, for reasons so often stated here that we need not repeat them now, but for the dignity of the Bar itself. That which should have been adopted voluntarily, and therefore gracefully, will now be imposed by Parliament. Recommended as it was by a Committee of the House of Commons, supported by a Committee of the Benchers of all the Inns of Court, adopted by the two Temples and by Gray's-inn, it is not likely that the single opposition of Lincoln's-inn will be permitted to put an end to an improvement elsewhere so unanimously desired.

How well it would work in practice may be seen from the curious fact that, fearing the adoption of it, a greater number of students have entered at all the Inns of Court during the present term than in any term for five years past. They anticipated that an examination, if adopted, would not operate retrospectively. They knew what would be its effect upon themselves, and sought accordingly to escape it.—*Law Times.*

DIVISION COURTS.

OFFICERS AND SUITORS.

At a meeting of Division Court Clerks for the County of Simcoe, held (as the first of a series of annual meetings) at the Court House in Barrie, on the 19th and 20th October last, George McManus, Esq., presiding, and John F. Davies, Esq., acting as Secretary;

The following, among other subjects connected with their office, were discussed, and resolutions, founded thereon, adopted:

The endeavour to obtain a uniformity of practice in the taxation of costs, the orderly conducting of the courts while sitting, and the routine of their several duties as Division Court Clerks; thereby as far as practicable assisting their worthy Judge in his continued efforts to make the Division Courts in this county what they were designed by their framers—"The People's Court," where the poor, in their various contracts and engagements, can obtain justice at a trifling cost.

The necessity of some provisions being made by the Legislature, for protecting from fire the large amount of valuable documentary papers now in their custody as Division Court Clerks, and yearly accumulating.

The advantage to the public, in extending the power and authority of reviving judgments over a year old, in these Courts, to the Clerks.

The expediency of extending the jurisdiction of these Courts to sums of £50, and allowing a limited fee to attorneys pleading causes in them to be taxed as costs in the cause.

The result of all the judgment summonses issued in the county during the eighteen months prior to the 1st July last, from actual returns.

The latter subject being considered by the meeting as of some importance, a considerable portion of their time was taken up in its consideration, from which it appeared to be their unanimous opinion that the provisions for enforcing payment of judgments in these Courts were not found to act unnecessarily harshly or oppressively on debtors in this county. On the contrary, it was considered that in the majority of cases where these provisions were sought to be enforced, that debtors had really obtained a more advantageous arrangement for the settlement of their debts, than if the judgment summons had not been issued.

The peculiar position of Division Court Clerks in their relation between plaintiff and defendant, should entitle their opinion to some consideration.

The following resolutions, bearing on this subject, were unanimously carried:

Resolved, That from information now before the meeting, a tabular statement be drawn up, showing the actual working of all the judgment summonses issued in this county during the eighteen months prior to the first day of July last, and that a copy of the same be forwarded to the Editors of the *Law Journal* for publication.

Resolved, That the thanks of this meeting are due an hereby tendered to the Editors of the *Law Journal*, for callin

the attention of Division Court Clerks to the subject, as well as for their able and continuous efforts to effect an improvement in the law, to promote uniformity of procedure, and to inform and assist officers of the courts and the public resorting to them.

GEORGE McMANUS, *Chairman.*
JOHN F. DAVIES, *Secretary.*

Statement showing the Actual Working of all the Judgment Summonses issued in the County of Simcoe, from the 31st day of December, A.D. 1857, to the 30th day of June, A.D. 1859.

Division Courts and Names of Clerks.		Number of Suits entered during the 18 months prior to the 30th June, A.D. 1859.	Total Amount of Claims.	Number of 91st Clause Summonses issued from 31st December, 1857, to 30th June, 1859.	Amount of Claims Involved in 91st Clause Summonses	Amount of Money Realized.	Number of Orders for Commitment for default in appearance, not applying means, fraud, &c. &c.	Number of actual commitments thereunder.	Number of days committed.
			$ cts.		$ cts.				
Thomas Loyd,	Clerk of 1st Division Court	1760	57277 60	167	6389 98	2000 26	36	3	12
John F. Davies,	" 2nd "	1790	45637 00	115	3103 20	1338 25	28	2	11
Frederick S. Stephens,	" 3rd "	1615	45063 60	108	2610 00	1320 00	34	1	20
Andrew Jardine,	" 4th "	1061	28341 60	88	3267 35	956 70	17	2	10
John Craig,	" 5th "	487	12680 50	20	1252 48	521 85	3	None.	None.
Adam Patterson,	" 6th "	449	10516 50	12	457 77	155 50	None.	None.	None.
John Little,	" 7th "	525	11673 40	None	None.	None.	None.	None.	None.
George McManus,	" 8th "	2121	66152 32	92	2938 32	1443 26	24	3	23
		10061	277314 52	602	20349 10	7735 82	142	11	76

Average amount realized 38 per cent. to date.

[We have very great satisfaction in publishing the above communication and statement.

It is just the thing required, and the facts it exhibits have been used in a n article on another page.

It did not oc ir to us, or we should have suggested a general statement fr m each county, such as has been furnished by the officers of t he courts in the County of Simcoe. It is obvious that infor ation given in this condensed form, is more easily appreciated d likely to be read, than a number of independent statements upon no uniform plan. If a similar one could be procured from every county in Upper Canada, it would furnish an array of facts sufficient to stop all cavil, and enable persons to form a correct judgment for themselves. There surely could be no great difficulty in having a meeting of clerks in each county, with a view to a uniform statement.

It appears that the clerks in the county of Simcoe intend to meet annually for the discussion of matters connected with their office—an admirable idea—one which, if acted on generally, would be followed by most beneficial results to the officers and to the public. It would be also an advanced step towards concert of action, and organized inter-communication. Let some leading officer in each county take the thing in hand. It would, if properly explained, meet universal favor.

We cannot make room now for notice of other topics discussed at the Barrie meeting, but will probably refer to them at length on a future occasion.

The representations and views of the Division Court clerks in the County of Simcoe are entitled to much weight: they are all gentlemen of superior intelligence and large experience.

We are obliged by their united expression in reference to the editors of this journal. EDS. L. J.]

U. C. REPORTS.

QUEEN'S BENCH.

Reported by CHRISTOPHER ROBINSON, Esq., *Barrister-at-Law.*

IN THE MATTER OF THE CORPORATION OF THE TOWNSHIP OF ASPHODEL, AND WILLIAM SARGANT, EDWARD PATTERSON, HUGH EWING, AND TIMOTHY MURPHY.

Contested election—Delay in making the declaration—New election—Refusal to act—Mandamus—22 Vic., ch. 99 sec., 122, 124, 130, 181

Five township councillors were elected at the general election in January. At their first meeting on the 17th, only one made the declaration of qualification, and a doubt having been raised as to the other four in consequence of some employment held by them under the corporation, they delayed in order to consult the county judge. On the 19th they met again and organized themselves, but on the same day the Reeve for the previous year issued his warrant to elect four other councillors, who were returned, and on the 31st these four with the man who had first qualified, met and claimed to be the council.

Held that the second election was invalid, for the parties first elected not having *refused* to qualify, but only delayed, and having done so within the twenty days allowed, there was no ground for a new election.

A mandamus was ordered to the clerk to deliver up the papers to the council first chosen.

This was an application on the part of the corporation against four individuals, to shew by what authority they pretended to be the councillors of the township, and to exercise the powers of the corporation when the offices were full by the election of others at the general election in January last

The facts were these: five councillors were elected at the general election in January and returned to serve for the year. At their first meeting on Monday, the 17th of January, they all appeared. One of the five made and presented his declaration of qualification, and no question was raised with regard to his being properly a councillor for the township. With respect to the remaining four an objection was made—but how, or in what manner, and by whom or for what purpose did not clearly appear—that these four were disqualified to act as councillors in consequence of their being engaged during the year previous as commissioners for the expenditure of township moneys, for which services it seemed they had received some remuneration. The four persons delayed qualifying themselves on that day, in order that they might consult or have the opinion of the judge of the county court upon the subject. Nothing was done on the 17th of January, there being only one councillor who had qualified himself. It did not appear that any adjourned meeting was appointed, but the four on that day declined to qualify themselves. On the 19th of January a requisition was signed and presented to the person who had been reeve of the township for the year 1858, requiring him to issue his warrant, and four others were under that authority elected and returned, and on the 31st of January the four new elected councillors, with the fifth who had been elected at the general election, met and organised themselves as the council of

the township. In the meantime, however, the four persons elected at the general election met again on the 19th of January, and filed their declarations of qualification, and organised themselves as the council of the township.

In connection with this application, a rule *nisi* was obtained for a mandamus to James Foley, who was the township clerk, and who had been chosen again by the councillors elected under the warrant issued by the reeve, to deliver up to the parties claiming under the first election the seal of the corporation, and all books and papers in his possession.

Read, Q. C., for those elected at the general election of the township, obtained a rule *nisi* calling upon the four persons thus elected under the warrant of the reeve, to shew cause why an information in the nature of a *quo warranto* should not be filed against them in the name of the corporation.

Eccles, Q. C., shewed cause.

The clauses of the statute bearing upon the case are referred to in the judgments.

McLEAN, J.—The affidavits filed do not shew an absolute refusal to make and subscribe the declaration of office required by the 176th section; on the contrary, they shew that they only declined for the time *until* they could see the judge of the county court relative to the objections raised against them, and that within the twenty days allowed to them they did make and subscribe the the declaration of office. The whole difficulty appears to have arisen from the reeve of 1858 having issued a warrant for the election of four members of the council when in fact there were no vacancies in that body. If indeed it could be shown that the four persons just elected had absolutely refused to qualify or to accept office, then the issuing of a warrant for a new election would be quite right under the 124th section of the act 22 Vic., ch. 99, which provides for the filling up of vacancies which may occur previous to the organisation of the council for the year. Whether there was such absolute refusal as to justify the issue of a warrant to fill up so many vacancies may be tried and decided on the information which is now applied for. It is therefore proper that the rule obtained to shew cause why an information should not issue should be made absolute.

In connection with the application in this case is one for a mandamus to the clerk of the township council, to deliver over to parties claiming to be the council under the election held on the first Monday in January, all books, papers, and records in his possession. From the affidavits filed, it certainly appears that the issuing of a warrnt on the 19th of January for the election of four members of the council, as if there were so many vacancies, was wholly unnecessary, and that the elections held under such warrant cannot be upheld. If so, the council legally elected must be entitled to have possession of the records and books of the township, and the clerk has no right to withhold them. Upon the mandamus *nisi* this point may be contested and decided, should it not be sooner done on the information with respect to the election of members. A mandamus *nisi* will in the meantime issue as moved for.

BURNS, J.—The question presented for adjudication upon this motion is whether the election of the four newly elected persons is legal, or, in other words, whether the four persons who declined to qualify upon the 17th of January, but who did qualify themselves upon the 19th, had vacated their seats in the council of the corporation by such neglect or refusal.

We see, by the 183rd section of the Municipal Corporations Act, that twenty days are allowed to every person within which to make and complete his declaration of qualification before he is liable for the penalty imposed under that section. These twenty days within which the declaration shall be made are to be computed from the time of the person knowing of his election. When the four persons, or any or either of them, knew of their election as councillors at the general election is not shewn, so that we do not know whether they have or not incurred any penalty for not qualifying themselves. The 175th secti n declares that no one shall enter upon the duties of office until he makes and subscribes the declaration required. Nothing could therefore have been done in the discharge of township duties on the 17th of January, when the five councillors met, for only one qualified himself. It was under the 122nd and 124th sections of the act that the reeve of the former year acted, and issued his warrant for a new election, conceiving that what was done on the 17th of January completely vacated the seats of the four persons who declined to qualify. Whether the former reeve be right in that view must depend upon the construction to be put upon the 130th section. Now it is clear enough that the council is not bound to organize itself on the third Monday in January, for that statute says that it may be done on some day thereafter at noon. It might so happen that it would be impossible for a majority of the elected councillors to be present on that day. Nothing is said whether those present shall adjourn to another day, or that the clerk should give notice thereof. I suppose that might be regulated by the standing orders and rules of the council, as a matter of internal government. The question is therefore whether what the four persons did was equivalent to a positive refusal to take office. It does not appear that they did decline the office: they only declined making the declaration, and that, as stated, until they could have the opinion of others upon the point of objection raised against them. It is an important point to consider upon what evidence it shall be that the reeve of the former year shall act in ensuing a warrant for another election under the provisions of the 122nd or 124th sections of the act. In the case before us there is nothing to shew at what time these persons were aware of their elections; and if it were to happen that in any case the person elected did not become aware of his election until a day or two perhaps before the third Monday in January, we could not hold that he was bound, at the risk of losing his seat, to qualify himself on that day, when we see that he may do it within twenty days after knowledge of his election. If he would lose his seat by reason of not qualifying on that day, and that a new election must be the legal result of his doing so, then this absurdity would follow, either that he would be liable for not qualifying within the twenty days, or if he did qualify within that time then there was was no use in it, for that by reason of neglecting or delaying to do so on the third Monday in January his seat might be filled by another person to his exclusion.

It is impossible to lay down any rule as to what amount or what kind of evidence or information should be laid before the former reeve to enable or authorise him to issue his warrant to hold another election, but in this case it does not appear from the information laid before us that he could have had sufficient information or evidence before him. It was a mistake for him to suppose, because the four persons elected did not qualify on the 17th of January, that he had a right to consider the seats so vacated that he should issue his warrant. If the time had then expired within which they should make the declaration of qualification, and it appeared and was made known to him that these persons had unreservedly declined to qualify, of course he then would have been quite right in issuing his warrant. The statute, however, says that the council may organize upon another day desides the third Monday in January; and there appears to be nothing whatever unreasonable, when an objection was made upon the 17th of January to these persons taking their seats as councillors, that they should desire a day or two to consult whether they might not be liable to be unseated on account of disqualification. The reeve was premature in granting his warrant. The elected persons did again meet on the 19th of January, and took upon themselves the duties of councillors. We do not see any thing that should prevent them from doing so.

The rule should be made absolute for an information in the nature of *quo warranto*, and if the defendants desire to contest the matter they can plead to the information, and thus take the formal opinion of the court upon the subject.

In answer of the Clerk to the application for a mandamus we do not understand him to make any resistance to it, provided those under whom he acted do not legally constitute the council, and all he desires to do is to deliver the seal to the body which in law is entitled to have the control of it.

We need not further enter into the particulars than as contained in the judgment already given. The result of that application renders it necessary that the rule *nisi* for the mandamus should be made absolute. The defendant, if he contests the right, and contends further that the persons last elected were properly the council of the corporation, may plead to the mandamus, and thus formally take the opinion of the court Rule absolute.

COMMON PLEAS—CHAMBERS.

(Reported by C. E. English, Esq., M.A., Barrister-at-Law.)

McLean v. Maitland.

Debtor in close custody—Application for discharge—Assignment.

Although a debtor in close custody execute an assignment of what purports to be all his debts and effects to the plaintiff, yet his answers may be so unsatisfactory as to warrant his further detention in close custody.

Quære: As to the right of an attorney to detain books of account belonging to his client, on an alleged claim by the attorney against his client.

(26th September, 1859.)

The defendant applied to be discharged from execution, having been in close custody since some time in January last (1859).

He was examined on the 31st December, 1858, before Mr. Anderson, a barrister; and after that examination, a *Ca. Sa.* was allowed to issue.

Interrogatories were filed by the plaintiff on the 8th August, 1859, which were answered on the 10th August; and then the prisoner made an application to be altogether discharged from custody.

Robinson, C. J.—I cannot but say that the defendant's answers to the questions put to him, and his account of his transactions upon his previous examination, are extremely unsatisfactory. It is scarcely credible that he could not, from memory, even without reference to his books, have given more particular and satisfactory information than he has given.

No plaintiff could be expected to place confidence in the statements made of his disposition of his claim, under the award referred to, to Mr. Munro, or in the account given of the sale of his household furniture in execution, and what was done with the alleged proceeds.

The matter has been kept open for some time, to give an opportunity to the plaintiff to have the defendant's books examined; and this examination, which is yet unfinished, cannot, it is complained, be satisfactory, for want of a cash book, kept by the defendant, for the year 1857, and also certain other books belonging to the defendant, which are in the hands of Mr. C., an attorney, and are detained by him on account of a claim which he has against this defendant for costs due to him.

That may or may not be a legal detention of the books, according to the circumstances; but I cannot understand how Mr. C. can think it right to allow third persons to suffer injury from the non-production of these books, whatever ground he may have for withholding them from Mr. Maitland till he has paid his charge.

This difficulty however, being thrown in the way, I can only say that, taking the case as it stands, I am not satisfied with the defendant's answers, and am not convinced that he is entitled to his discharge, although it is sworn that he has executed an assignment of all his debts and effects to the plaintiff.

The answers are more vague and unsatisfactory, I think, than any I have seen on any similar occasion; and I am sorry to be obliged to add, that there are grounds afforded by some of the answers for believing that the defendant has made arrangements with a view to prevent the plaintiff from obtaining satisfaction of his judgment.

I shall be willing to have this case opened again before me, whenever any new matter can be shown; and can have no objection to the parties going before any other judge, in case I shall be absent.

So far as my opinion is concerned, if nothing material can be shown besides what is now before me, the application must stand till term, when it can be determined whether the books can be properly withheld, as they now are. Order refused.

In the matter of John McPeasley and Messrs. Eccles, Carroll & Doyle, Attorneys.

Taxation of costs—Bill of items—Charges for conveyancing.

Attorney's bills for conveyancing may be referred to the Master to tax.

Bills containing the items of the attorney's charges for professional service, must be obtained before a reference to the Master can be ordered.

When conveyances are prepared under an agreement for the allowance of a specific sum for such services, this agreement will bind the Master on taxation.

(September 24, 1859.)

This was an application to tax an attorney's bill, which contained charges for conveyancing.

It was opposed on two grounds: first, that a previous application had been made, and the summons discharged by Mr. Justice Richards, on the ground that no bill of the items composing the charge for conveyancing had been delivered; secondly, that the items composing the charge for conveyancing cannot be made up in items, for that an agreed sum had been settled for that part of the attorney's charges; and as to the business in court in the suit, that it has been already referred to the Master, to be taxed under an order for that purpose.

Burns, J.—I have been furnished with the reasons of Mr. Justice Richards for discharging the former summons, and I find the ground he considered fatal was, that the papers and affidavits were not sufficiently intitled. He thought if he expressed his opinion upon the rights of the parties, there might be no occasion for any further proceedings; and he did express his opinion, that the charges for conveyances might be referred for taxation, but to do so an application must be first made for the items of the bill, and then after being obtained they might be referred to be taxed.

I quite agree with my brother Richards, that the charges made for conveyancing may be referred to be taxed, and it is no ground to prevent it that the attorneys allege the sum had been agreed upon between the parties at the time the work was done. The amount being agreed upon between the parties may be a guide for the Master to adopt; and indeed if the sum was in truth agreed upon and settled between the parties, the Master would have no right to question it; but still, that matter is one on which the Master must inquire at the taxation. In *Smith* v. *Dimes* (4 Ex. 32), Chief Baron Pollock, in giving the judgment of the court, says, "Where the bill is for conveyancing, and business not done in court, the Master or taxing officer must ascertain the remuneration as well as he can, according to the contract between the parties, express or implied."

The summons must therefore be absolute to refer the charges made for conveyancing to the Master to be taxed; and perhaps the better method will be, that the order now to be made shall embrace the whole of the charges to be referred, rather than these be in separate orders.

Order accordingly.

Davidson v. Gordon.

Debtor—Examination—Contempt—Ca. Sa.

If a defendant, under an order for examination as to any and what debts are due and owing to him, and that he produce all papers or writings in his custody or control in any way relating to such debts, refuse to produce promissory notes, though under the advice of his attorney, a ca. sa. may be issued against his body.

The facts sufficiently appear in the judgment.

Burns, J.—The defendant in his examination says that he did not produce the *notes*, which he admitted were under his control, because he was advised by his attorney that he was not bound to do so.

I think he was bound to do so by the terms of the order of Chief Justice Draper. The order is, that the defendant should submit to be examined as to any and what debts are due and owing or accruing due to him, and that on such examination he should produce to the judge all papers and writings in his custody or control in any way relating to such debts.

The defendant's examination shows that a debt was due to him from his brother-in-law Gunn, and which was secured by the promissory notes of Gunn, and under the defendant's control. Why the defendant may have chosen to withhold them upon advice taken, I cannot tell; but I can only suppose it must be for some purpose he does not choose to disclose. The effect of that is, he must take the consequence of his own deliberate act of disobeying the order of the Chief Justice. The notes were papers or writings respecting the debt. Chapter 24, section 41, of the Consolidated Acts, enacts, that if the debtor, upon being examined, shall refuse to disclose his property, or his transactions respecting the same, he may be ordered by the judge to be committed for a time not exceeding twelve months, or that a writ of *capias ad satisfaciendum* may be directed to issue. There can be no question that so far as we see, upon the defendant's examination, the promissory notes in question were liable to be seized by the sheriff as securities belonging to the debtor, and if they had been produced at the defendant's

examination possibly might have been then seized by the sheriff's officer, and if seized would have been retained by the sheriff until the notes matured. It may have been to prevent this taking place that the debtor withheld them. The sheriff's officer, it appears from his affidavit, demanded the notes on the 21st November, upon the *fi. fa.* against goods, and they were refused him.

The consequence of all this is, I think, that the plaintiff is entitled to an execution against the defendant's person, as has been asked for. Let an order be drawn up, therefore, that a writ of *ca. sa.* be issued.

Order accordingly.

CHANCERY—CHAMBERS.

DALLAS v. GOW.

Practice—Foreclosure—Costs at Law—Orders.

8th February, 1858.

This was an application under the orders of 8th February, 1858, in regard to costs of proceedings at law, the plaintiff, some time after the filing of the bill, having, by legal process, ejected the defendants, A. & J. Gow. *McCarthy* moved, on behalf of the Gows to vary (the minutes of) the decree, as to that portion of it, which directed the taxation and allowance of the plaintiff's costs in the Chancery suit, and read in support several affidavits, for the purpose of shewing, that the Gows had not been guilty of any wanton or reckless dealing with the property, but on the contrary had kept it in as good a state of repair as their means permitted, and that in fact the premises had been kept sufficiently repaired: that the plaintiff had brought his action without giving them notice, while the foreclosure suit was going on.

Cattanach contra, read an affidavit of the plaintiff's agent shewing that the main portion of the morgaged premises was a mill, some 20 years old, which from want of repairs, was daily becoming less valuable as a security; and was, in fact, when the action of ejectment was commenced, in such a condition, as that a few weeks after possession was recovered, it stopped altogether, and required the expenditure of a large sum of money, to put it in working order; that the plaintiff, while disavowing all intention of imputing wanton or reckless conduct to the Gows, in relation to their means, conceived that the recovery of possession was essential to the preservation of the property; and that the action was not brought for the purpose of harassing the Gows, but was an act of mere prudence, as well to preserve the property as to make it productive to the plaintiff, whose debt was large and long outstanding.

SPRAGGE, V. C., having taken time to consider the motion, stated, that he conceived the order was made merely for the purpose of preventing unnecessary and harassing proceedings against mortgagors, and not for the purpose of preventing a prudent or reasonable exercise by the mortgagee of his right to bring an action at law, contemporaneously with or prior to a suit in Equity: and that where the mortgage brings an action, in good faith, this Court will not enter too nicely, into the question of the necessity or propriety of the action; the main question being, whether the mortgagee has acted *bona fide*, or for the purpose of making costs.

IN THE SUPREME COURT AT MICHIGAN.

IN RE TYLER.

(Concluded from our last number.)

CHRISTIANCY, J.,—The two questions reserved for the consideration of the court may be considered as together involving substantially this question: Had the Circuit Court of the United States for the District of Michigan jurisdiction, under the act of March 3rd, 1857, (for none is claimed otherwise,) to try as a crime the charge contained in the indictment set forth on the plea of former conviction—the place where the mortal wound was given being admitted to have been on board the schooner Concord, in St. Clair River, beyond the boundary line, and without the limits of the United States, and within the county of Lambton, in the province of Canada. By the treaty of 1783 the middle of St. Clair River was established as the boundary between the two countries. By various acts of Congress, the State of Michigan extends to said boundary line, and as the jurisdiction of the State is "co-extensive with her territory—co-extensive with her legislative power," (*United States* v. *Bevans*, 3 *Wheat.* 336,) if the offence was committed, as the indictment alleges, "in the River St. Clair, out of the jurisdiction of any particular State," it must have been committed on the British side of the line.

So, also, the act of Congress in question can only apply to that part of the River which lies entirely without the United States, on the British side of the line, since by its very terms all the waters within the jurisdiction of any particular State are excluded from its operation.

The Federal government has no general criminal jurisdiction, but only of such crimes as for national purposes the constitution has given it the right to punish. The criminal jurisdiction of its courts is still more restricted. They can punish no act as an indictable offence (unless specifically declared such and sufficiently defined by the constitution or treaty) until Congress shall have declared and defined it. When the offence has thus been created, no court has jurisdiction to try it until Congress has by the same or some other statute conferred that jurisdiction.

It is well settled that the laws of no nation have any extra-territorial force, and this is especially true of criminal laws. Hence, to give to any government or its courts the right to punish any act as a crime, the act must have been committed within its territorial limits, and by the common law criminal offences are considered as entirely local. (*Story's Conl. Laws*, s. 620.) This principle is subject to this qualification that every sovereignty has the right within certain limits to protect itself from, and to punish as crimes, certain acts which are peculiarly injurious to its rights and interests or those of its citizens, wherever committed. Such would be the case of treason committed abroad, or criminal conduct on the part of crews or passengers of its ships in a foreign port, whereby its commerce or its specific relations with other Powers would be endangered.

But such cases, being exceptions to the general rule of the locality of crimes, are not understood to be included in the general provisions of criminal statutes, and require to be specifically mentioned and defined. The general provisions of criminal statutes should always be construed with reference to the general rule, and not as intended to operate within a foreign jurisdistion, unless the intent that they should so operate is apparent from the face of the statute, expressly or by plain implication. Statutes for the punishment of crime upon the high seas do not constitute an exception to this rule, since vessels upon the high seas are considered as a part of the territory of the nation to which they belong. Congress took the same view of this rule in enacting the act of March 3rd, 1825, (4 *Stat. at large*, 115) by which the provisions of the several acts of Congress relating to crimes upon the high seas were extended to offences committed on board American vessels in foreign ports and places within the jurisdiction of any foreign state or sovereign, by any person belonging to the company of any ship or a passenger upon any other of the ship's company or a passenger. This enactment would certainly have been useless if the general provisions of statutes providing for punishment of offences upon navigable waters had been understood to operate in a foreign jurisdiction.

As offences committed by the subject of one government in the territory of another would generally be liable to punishment in the jurisdiction where committed, it is reasonable to require that enactments rendering the offender liable to punishment in the home jurisdiction should contain a provision against a trial and punishment at home when the offender had already been tried abroad. That the act of 1857 does not contain such a provision, is an argument that it was not intended so to operate.

Again: Congress, in passing the act of 1857 as an addition to the act of 1825, must have been aware that neither the act of 1825 nor that of 1790 rendered any act criminal if committed in a foreign jurisdiction, unless committed by one of the ship's company or by a passenger upon another person sustaining the same relation to the ship. (*United States* v. *Imbat*, 4 *Wash. C. C. R.* 702.) Why, then, if the act of 1857 was intended to operate in

a foreign jurisdiction, was it made general, applying to all persons, whether belonging to the ship or not, and to all offences of the kind mentioned, upon whomsoever committed? Murder, if there committed, would be no offence unless by or upon one of the ship's company or a passenger. Is a wounding without malice, where the person wounded happens to live long enough to die upon land, an offence of greater enormity? I infer that, if Congress had intended this act to operate in a foreign jurisdiction, they would have confined its operation to offences committed by and upon the same persons mentioned in the fifth section of the act of 1825, or that they would have amended that section so as to make its provisions general.

But it is urged by the counsel for the defendant that the place in question, being beyond our national boundary line, and being free to the navigation of our vessels, is to be put upon the same ground with respect to jurisdiction as the high seas; that, as the act of the defendant was committed on board an American vessel, such vessel is to be considered a part of our national territory, like a vessel upon the high seas. There is strictly no averment of the American character of the vessel contained in the indictment, but merely an averment of American ownership, which, it would seem, is insufficient to give the Fedral court jurisdiction of the offence, since, for aught that appears by any law of which that court or this can take notice, the character of the vessel might be foreign, though her owner was an American citizen.

But I do not view this question as material to the present case, nor do I intend to express a definite opinion in regard to it.

But, admitting the case as presented by the pleadings to be in all respects such as to bring it within the act of Congress if committed upon the high seas, can the views of defendant's counsel as to the character of the waters of St. Clair River be maintained?

Vessels upon the high seas are recognized as parts or elongations of the territory of the nation under whose flag they sail, because the sea is incapable of permanent appropriation as property or domain by any one nation, and no one nation can acquire a greater right or jurisdiction over it than another. All have a common right and a common jurisdiction, none an exclusive right or jurisdiction—each over its own vessels, none over the vessels of the other. The exercise of jurisdiction over its own vessels upon the high seas cannot therefore come in conflict with the rights or jurisdiction of any other nation. Hence, whenever a vessel reaches a place clearly within the territorial dominions and rightful and complete jurisdiction of another sovereignty, the nation to which the vessel belongs terminates and that of the foreign sovereignty begins. (*Wheat. Int. Law*, 6 *ed.*, *p.* 158, &c.) And though the jurisdiction of the nation to which the ship belongs continues for some purposes over the ship and its company, as already intimated, such jurisdiction can only be exercised by permission of the foreign sovereignty.

Such being the principles applicable to the high seas, can the same principles apply to the St. Clair River, and to the lakes and and connecting waters, through which the national boundary line runs.

If these lakes and rivers are incapable of appropriation as territory or national domain—if not in fact within the territory or rightful, ordinary and complete jurisdiction of any nation—if all nations have a common right and a common jurisdiction over them —if no nation has a right to punish crimes there committed simply on the ground of territorial sovereignty over the place, but only by reason of its rights over its own vessels or citizens—if, as in the case of the ocean, a vessel upon the lakes or the St. Clair River would be without and beyond the protection of the municipal law of any government, and amenable to none, without extending to such vessel the laws and jurisdiction of the government under whose flag she sails—then the same principles as respects jurisdiction should be applied to these waters as to the ocean.

But the territory of a State or nation includes the lakes and rivers entirely with its limits—they are part of its domain. (*Vattel*, *b.* 1, *ch.* 22; *Wheat. Int. Law*, 252.)

Within this rule Lake Michigan is as completely a part of the territory of the United States as if it were land not covered by water, and on the other hand Lakes Winipeg, Simcoe, Manitoulin (or Georgian Bay) are equally within the exclusive jurisdiction of the British government. Being thus susceptible of appropriation, they must be capable of division, and, when divided between two contiguous nations, the portion allotted to each would be as completely a part of its territory as if the whole lake or river lay within its territory. "The empire or jurisdiction over lakes and rivers is subject to the same rules as the property of them." "Each State naturally possesses it over the whole, *or that part* of which it possesses the dominion." (*Vattel, b.* 1, *ch.* 22; *id.*, *ch.* 20, *s.* 245; *Bishop Cr. Law*, *s.* 575; *Wheat. Int. Law*, 113, 115.)

Again: the sovereignty united to the domain establishes the jurisdiction of the nation in her territory. It is her right and province to administer justice in all places under her jurisdiction, and all nations ought to respect this right. (*Vattel*, *b.* 2, *ch.* 8 s. 84.) "Every Independent nation has the exclusive jurisdiction over the navigable waters lying within its territorial limits." (*Per Taney, Ch. J., in Wheeling Bridge case*, 13 *How*, 582.)

The above principles of international law, as applicable to the great lakes and rivers, have been in no way changed by treaty. All these lakes and rivers were part of the territory of France, and were ceded with the surrounding territory to Great Britain, and thereby became her exclusive property, within her jurisdiction. After the recognition of American independence it became necessary to fix a boundary line between our territory and that of Great Britain. Had these lakes and connecting waters been considered in the light of the high seas, either the boundaries would have been simply extended to the lakes, or the lands on either side would have been assigned to each respectively, leaving the lakes, like the ocean, unappropriated. But the treaty of 1781, fixes the boundary line through the middle of the lakes. (8 *Stat. at Large*, 81, 82.) For actual establishment of the line by commissioners, see 8 *Stat. at Large*, 274 to 277. Thus Great Britain and the United States divided these lakes and rivers between them as part of their respective domains. It would have been a startling project for them to have thus divided the ocean.

Now, as Great Britain once held exclusive jurisdiction over the whole of these waters, and as by the treaty of 1783 she gave up nothing on her own side of the boundary line, her jurisdiction over the waters on her side must have remained in her as before, and the United States acquired an equally exclusive property and jurisdiction on their side of the boundary line.

By the 7th article of the treaty of 1842, (8 *Stat. at Large*, 575) it was agreed that the various channels in the St. Lawrence, Detroit and St. Clair Rivers "Shall be equally free and open to the ships, vessels and boats of both parties." But this is no more than that "innocent use" of the waters which is permitted without any surrender of jurisdiction, and without treaty might be refused by either, (*Wheat. Int. Law*, 253,) as is evident from the second article of the same treaty, which makes the same provision for the free use of the portage between Lake Superior and the Lake of the Woods, one of which, eight miles in length, lies wholly within the State of Minnesota. The same remarks apply to similar provisions in the reciprocity treaty of 1854. Under all these treaties it is clear that, while the subjects of either nation should be within the territorial limits of the other, they would be bound to conform to, and would be protected by, the laws of the nation to which the territory belonged. (*Vattel*, *b.* 2, *ch* 8, *ss.* 101, 102) It is difficult to perceive upon what principle the courts of either nation could, while these treaties remain, consider these waters for jurisdictional purposes, and especially for criminal jurisdiction, as differing in any respect from the lands within their respective limits, where the jurisdiction of each is exclusive and absolute. (*Per Marshall, C J., in Schooner Exchange* v. *McFadden*, 7 *Cranch*, 136.)

But there are other reasons why I do not consider the act of 1857 applicable to these waters:

First. The offence described in the act is not one of those which would be equally calculated to injure the Federal government or its citizens wherever committed. The statute makes the locality of the act a necessary ingredient in the offence. It is not alone the act committed, but the place also where committed, and the result, which constitute the offence, and give jurisdiction to the Federal court. It is evident, I think, from the language of the act, as well as from the nature of the offence provided for, that the place where the offence is committed must be one maritime in its character, over which as a locality the Federal gov-

ernment have a right to exercise admiralty and maritime jurisdiction. (*See United States* v. *Coombs*, 12 *Pet.* 74) Criminal statutes must be strictly construed. The Federal courts obtain jurisdiction by reason of the place where the fatal wound is given, not from the place where the death occurred, and I think the terms used in the act as descriptive of place, "within the admiralty jurisdiction of the United States." must be understood to refer to those places where that jurisdiction is complete—where the United States have the right to send their officers, and enforce that jurisdiction upon their citizens and their vessels. Can a place as a locality be said to be within the admiralty jurisdiction of the United States where no executive officer has the right to enforce the admiralty law, or to arrest an offender?

Second. This is not the first act of Congress for the punishment of offences upon navigable waters, in which terms of similar import have been used to describe the locality of the offence

Thus the 8th section of April 30, 1790, (8 *Stat. at Large*, 113, 114) uses the terms, "upon the high seas, or in any river, haven, basin, or bay out of the jurisdiction f any particular State."

The act of March 3, 1825, in the fourth section uses the words, "upon the high seas, or in any arm of the sea, or in any river, haven, creek, basin or bay within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular State." (4 *Stat. at Large*, 115.) Nearly the same words are repeated in the 6th, 11th and 22nd sections.

The act of 1857 (11 *Stat. at Large*, 250) is by its title an addition to the last named act, and describes the place in the very words of the 11th and 22nd sections of that act.

Of these various acts that of 1790 is the least restricted in its language, but the 8th section of this act, as shown by my brother Campbell, has never been held to extend into a foreign jurisdiction.

Third. The 8th section of the act of 1790 cannot for another reason be understood to apply to any waters not essentially maritime in their character and virtually constituting a part of the high seas. This section "defines and punishes piracies on the high seas," and could only have been passed in pursuance of the power given by art. 1, sec. 8, of the constitution. Now, as the power is given in express terms, which recognize the offence as being confined to the high seas, Congress can have no power to punish it elsewhere. Unless where a power is expressly given in the constitution subject to limitation, we are at liberty to ignore the express power, and to infer the same power without the limitation from some other provision of the constitution in which it is not expressed.

Fourth. It cannot be supposed that Congress intended to extend the operation of any of these acts to the waters connecting the great lakes and to exclude the lakes themselves. But if Congress thought it necessary specially to designate havens, creeks, basins and bays in order to bring them within the operation of the acts why, if they were intended to be embraced, did they omit to mention the lakes, which lie wholly in the interior and are in no sense a part of the ocean.—Havens, creeks, basins and bays, and rivers when they open into the sea, may with some reason be held to be part of the high seas, (*Montgomery* v. *Henry*, 1 *Dall.* 50,) but not such lakes as ours.

From these considerations, as well as those mentioned by my brother Campbell and many others, I am entirely satisfied that Congress, whatever may be its power, has not so exercised that power as to make the transactions set out in the former indictment, at the place and under the circumstances there stated, a crime punishable by the Federal courts; that Congress never understood or intended the act of 1857 to extend to any waters not essentially maritime, much less to a river a thousand miles in the interior of a continent, not navigable from the ocean, and least of all to a part of that river within the territory and exclusive jurisdiction of a foreign sovereign. I must therefore consider the question of jurisdiction over the case set forth in the indictment in the Federal court in the same light, and as resting upon the same principles, as if the offence had been charged to have been committed on land in the interior of any county in England.

On the argument it was assumed by the counsel for the defendant that the majority of this court in the case of the *American Transportation Company* v. *Moore*. (5 *Mich.* 368,) had admitted the existence of the admiralty jurisdiction upon the lakes, and expressed an approval of the case of the *Genesee Chief*, (12 *How.* 443.) No such question was involved in that case, and no such opinion was intended, as I then understood and now understand to be expressed. The question in that case was whether "an act to limit the liability of shipowners and for other purposes," approved March 3rd, 1851, applied to the lakes. The majority of the court held that it did so apply. That act was a regulation of commerce and the facts in that case brought the transaction within the definition of commerce between States. The decision in the case of the *Genesee Chief* was cited only for the purpose of showing what had been the course of legislation and judicial decision in reference to the lakes, and the citation cannot be considered an approval of the principle there decided. It was not so understood, I think, by the majority of the court, and certainly not by myself. And I will say that, with a high respect for the ability of the eminent jurist who pronounced that decision, and after a careful consideration of the case and of the authorities cited in support of the decision, I am unable to bring my mind to the same conclusion. Nor can I resist the conviction that so much of that opinion as declares that the lakes and all the navigable rivers of the United States are within the scope of admiralty and maritime jurisdiction, as known and understood in the United States, when the constitution was adopted, is not only unsupported by any satisfactory proof, but is in direct opposition to the most overwhelming evidence, historical and judicial, both in this country and in England. (See dissenting opinions of Justices Daniel and Campbell, in *Jackson* v. *Steamboat Magnolia*, 20 *How.* 296, and the dissenting opinion of Mr. Justice Woodbury in *Waring* v. *Clark*, 5 *How.* 467. See, also, the opinions of Justices Daniel and Woodbury in *New Jersey Steam Navigation Company* v. *Merchants' Bank*, 6 *How.* 396.) The act of Feb. 26, 1845, entitled "an act to extend the jurisdiction of the District Courts to certain cases upon the lakes and navigable waters connecting the same," which is referred to in the case of the *Genesee Chief*, and there held to have been enacted under the grant of admiralty power in the constitution, must, I think, so far as it has any constitutional validity, rest upon the power to regulate commerce between the States, and upon the power to establish courts and to define their jurisdiction. It is not my purpose here to review the decision in the *Genesee Chief* case, nor to discuss the question whether there can be *any civil* admiralty jurisdiction over the lakes and their connecting waters, since, if it extend to these waters at all, it can only extend as a complete admiralty jurisdiction to those parts of them within the national boundary line, and these are excluded from the operation of every act of Congress in relation to crimes upon the water by the express terms of the acts. And whatever jurisdiction the Federal courts may exercise over matters of contract and tort arising beyond this line does not spring from any right or jurisdiction over the place as a locality, but from the nature of the cause of action; while the act of 1857 clearly contemplates an admiralty jurisdiction over the place as a locality where that jurisdiction may be enforced—in other words, a complete, unqualified admiralty jurisdiction.

The two questions reserved for our opinion should, I think, be answered in the negative.

JUSTICE MANNING, concurred.

SUPREME COURT OF PENNSYLVANIA.

NESBIT VS. THE COMMONWEALTH.

(*From the Pittsburgh Legal Journal.*)

It is essential to a summary conviction for a breach of the Sunday laws that it describe the act of the defendant in such a way as to individuate it, and to make it appear to belong to a class of acts forbidden by law.

A conviction, finding that the defendant drove a carriage on a Sunday with persons in it who were not travelers, does not describe an act that is forbidden by law: he might have been driving his family, or, as a domestic servant, his employer's family to church, and such an act is not unlawful

The best argument in support of a given interpretation of an old law is the long usage of the country in its favor.

The purposes for which the Lord's day is protected by law is, that it may be devoted to rest and to the worship of God; and no means reasonably necessary for these purposes can be regarded as forbidden.

The law regards all those means as reasonably necessary for a purpose, which society by its customs recognizes as the ordinary means therefor, according to circumstances.

Where work on the Lord's day is demanded by necessity or charity, it may be done by the usual means appropriate to the work.

The law regards that as necessary which the common sense of the country, in its ordinary modes of business, regards as necessary.

The term "worldly employment" in the act, does not include the means of conducting and attending the public worship of God, nor those domestic employments of the family that pertain directly to the proper duties, comforts and necessities of the day.

Certiorari to Hon. Henry A. Weaver, Mayor of Pittsburgh.

The facts of this case sufficiently appear in the opinion of the Court.

Argued, Nov 18, 1859, by McKnight and Carnahan for Plaintiff in error, and by Williams and Howard, contra.

Opinion by Lowrie, C. J.,

The technical formalities of an old summary conviction are much beyond the ordinary skill of justices of the peace in this country; and for this and other reasons, some parts of them have been much condemned in modern legislation. But it is still essential that a summary conviction shall contain a finding that a special act has been performed by the defendant; and that it shall describe or define it in such a way as to individuate it and show that it falls within an unlawful class of acts. Without this, a judgment that the law has been violated goes for nothing.

Now, this is not a formal or technical rule of summary convictions, but a most essential and substantial one. No citizen could have any sort of protection against the wickedness or ignorance of inferior magistrates, if these were authorized to convict citizens of offences, and yet allowed so to record their proceedings that the very act done cannot be ascertained, and thus their judgment cannot be tested by their judicial superiors.

The most common purpose for which inferior tribunals are reviewed by their superiors, is in order to correct their erroneous application of law to ascertained facts. But when the record contains no definite facts, but only a legal conclusion from unrecorded facts, the superior court cannot, without compelling a return of the evidence, or taking testimony of what it was, decide whether the legal conclusion, that is, the conviction of the offence, is right or wrong. In such a case, for the safety of the citizen, they usually reverse the conviction, simply because no act appears upon it that justifies the judgment. And this rule applies not only to summary convictions, but to indictments and trials by jury in the higher courts, and generally even to judgments in civil actions there. A sentence is reversed if the records do not show the commission of a well defined act that is forbidden by law.

Now let us see what act the defendant here is found to have committed. He is convicted, leaving out redundant words, of having "performed worldly employment, by driving, on Sunday, a carriage in which were certain persons, not travellers, the same employment not being a work of necessity or charity."

Nobody supposes that driving a carriage is ever, by itself, a work of necessity or charity, though it may be a means by which all sorts of works, including those of necessity and charity, are performed. We, therefore, for the sake of simplicity, throw out these words. The words "worldly employment," are the magistrate's judgment concerning the fact, and we leave them out, and then we have the definition of the naked Act, thus: Driving a carriage on Sunday with persons in it who were not travellers. Does this description contain all the elements of an offence against the law?

It will be seen at once that if the defendant had been driving his own family to church on the Lord's day, he would have been doing the very act that is here charged. If, then, this conviction stands affirmed by us, it will be equivalent to a decision by this Court that a man cannot drive his own family to church on the Lord's day without transgressing the law; because he will be driving on Sunday a carriage with persons in it, who are not travellers. For anything appearing on this record, the defendant has done no other or worse act than this, and of course this conviction must be reversed; for no sensible man supposes that the law forbids such an act.

But we must not dismiss this case thus summarily. The magistrate did not truly record the act done, and declined to send up any correction of his record. But we do not need to discuss his duty in this regard, for the counsel on both sides admit the only elements of the act that were wanting. According to the truth the conviction ought to have found that the defendant, as a hired domestic servant, drove his employer's family to church on the Lord's day. Is this an unlawful act?

No member of this court has any doubt or hesitation in saying that it is not. No man having a reasonable respect for the ordinary customs and usages of the country could ever originate a doubt about it. Since the settlement of the country we have had substantially the same law upon this subject; and under it this sort of act has always been deemed lawful, as is shown by the fact that it has always been practised, and that its lawfulness has never been questioned. And surely the uniform practical interpretation of a law for near two centuries, is an argument that is worth more than hours of refined criticism and analysis of its phraseology. It is the expression of the common sense of the country, and therefore the argument which common sense most readily appreciates.

We repeat, therefore, that men who respect the common sense of the country could not originate a doubt about the lawfulness of the defendant's act. They might confuse themselves by substituting their interpretaion of a divine law on the same subject, in place of the civil law, which alone can be judicially applied, or they might be embarrassed or perhaps misled by objections and arguments invented or retailed by others: but this is only because they have not so studied the subject as to be ready with an answer. Usually, the best argument in favour of a given interpretation of an old law is to point to the usages of the country in its favor. Minds, respectful of society, admit such arguments cheerfully. Minds that have no such respect, need to be educated over again, rather than argued with. Applying the argument from common usage to this case, this conviction is very plainly erroneous; whether it means to say that a man cannot drive his family, or a hired man, his employer's family to church on the Sabbath.

And although an analytic argument is always weak and wearisome, and a long one can never have the force of a short one that is comprehended, we think that it can be perfectly and clearly shown from the purposes and terms of the law, that it does not include the act here charged. We cannot do this without using more words than we like to trouble people with; but we shall be as saving of their time, as our own time will allow. We shall, for the sake of clearness, drop all redundant words, even in quoting acts of Assembly. The discussion will add clearness to the convictions derived from the argument founded on general usage.

Let us inquire *why* people are forbidden to carry on their worldly business on the Sabbath Our brother Woodward has already shown that it is in order that the people may devote the day to rest and to the worship of God, (9 Harris, p 432; 10th id. 111.) Our first law on this subject, was the 36th of the laws agreed upon in England, May 6th, 1852, which declares the purpose to be "for the ease of creation, and that people may better dispose themselves to worship God according to their understandings." The very first law of the first General Assembly of Pensylvania was on this subject, and was passed at Chester, December 7, 1682. It declares that "for the ease of creation, people shall abstain from their usual and common toil and labour, that they may the better dispose themselves to read the scriptures of truth at home, and frequent meetings of religious worship." This law was re-enacted in 1700, and again in 1705, in nearly the same words. These reenactments were, doubtless rendered necessary by repeals in Council. The English Statute which served, in some measure, as a model for all these, was passed in 1676 (29, C. 2 c. 7,) and goes much further, for it *requires* people to observe the day "by exercising themselves in the duties of piety and true religion, publicly and privately."

We should, no doubt, differ very widely in our modes of expressing what ought to be the purposes and reason of the Sabbath as a civil institution. Such differences are inevitable; for people always know their moral and physical wants much better than the remedy for them. They must have institutions according to their wants, whether they can give philosophical reasons for them or not. And so long as they are unable to distinguish clearly between religion, morality, and law, it is of their very nature that their political institutions must be more or less theoretical or religious. No number of rational principles, set in array of bills of rights, can prevent this. The natural order of events cannot be arrested by such barriers.

We are not forgetting that the public acts of our Pensylvania ancestors abound with declarations in favor of liberty of con-

science, and that some regard these declarations as inconsistent with the Sunday laws. But a little reflection shows that they indicate the moral ideal to which all governments ought to approach as nearly as possible rather than a positive principle of legislation. And in applying such declarations, we must bear in mind, that they proceeded from an earnestly Christian people, and must receive a practical interpretation.

They never thought of tolerating paganism, or the principle of ecclesiastical supremacy in civil affairs, on the ground of liberty of conscience. They could not admit this as a civil justification of human sacrifices or parrilide, or infanticide, or thuggism, or of such modes of worship as the disgusting and corrupting rites of the Dyonisia, and Aphrodisia, and Eleusinis, and other festivals of Greece and Rome.

They did not mean that the pure, moral customs which Christianity has introduced should be without legal protection, because some pagan or other religionist, or anti-religionist should advocate as a matter of conscience, concubinage, polygamy, incest, free love and free divorce, or any of them

They did not mean that public processions and satyric dances, and obscene songs, and indecent statutes, and paintings of ancient or of modern paganism, might be introduced, under the profession of religion, or pleasure, or conscience, to seduce the young and the ignorant into a Corinthian degradation; to offend the moral sentiment of a refined Christian people; and to compel Christian modesty to associate with the nudity and impurity of Polynesian or of Spartan woman. No Christian people could possibly allow such things. No written law, founded on such bald and impotent rationalism, could present the slightest obstacle to the sentiment and action of a people in opposition to such things.

Every Christian man is sure that it is his religion that has suppressed the Pagan customs just alluded to, and that to it is due the large advance in justice, benevolence, truth and purity that belongs to modern civilization; that it has purified and elevated the family relations; that it has so elevated the moral standards of society that the indecencies and cruelties and cheats of Paganism are now condemned by customs and by law as crimes. And he is very sure that the Sabbath and its institutions were the prominent means of this progress, and are essential to its maintenance and continuance.

How, then, is it possible for a Christian people to avoid protecting such a day and its institutions? If there are men who oppose them as superstitions, let them at least respect them as essential constitutents of the people's life which cannot possibly be laid aside at will. If strangers to our institutions dislike these particular ones, let them accord a reasonable respect to us, and indulgence to our customs, and they will soon be reconciled to both, and find other matters more needing their reforming efforts. If they have better principles than we have, we cannot reject them unless they are presented to our minds with disrespectful rudeness, and then we must reject them. Disrespectful argumentation is a violation of mental rights, and is therefore resented. The cause that succeeds in the use of it, succeeds rather in spite of its arguments than by them.

By our Sunday laws, and our other laws against vice and immorality, we do not mean to enforce religion; we admit that to be impossible. But we do mean to protect our customs, no matter that they may have originated in our religion; for they are essential parts of our social life. Instinctively we defend and protect them. It is mere social self-defence, and not a matter of choice. In doing so we must be as generous toward those who differ from us as we know how to be, or as circumstances will allow us to be. No more than this can reasonably be expected of us.

But we have ascertained the purpose for which the day is protected: let us notice another principle heretofore pointed out by our brother Woodward—"that no means reasonably necessary for these ends (the general purposes of the day) can be regarded as prohibited" 10 Harris, 111.

Let us endeavour to seize this thought fully and clearly. Law regards all those means as reasonably necessary for a purpose, which society recognises as the ordinary and usual means under existing circumstances. We may therefore, modify the expression thus: in fulfilling the purposes of the day the law recognizes as proper, all the ordinary and useful means employed for such purposes, making all due allowance for the different circumstances in which people are placed.

Let it be noticed that this rule applies only to those occupations that fall within the purposes of the day, and not to those which are merely unforbidden. Some acts are not forbidden, and yet the usual means of executing them are. Fuel and clothing are not forbidden, yet the usual means of obtaining them, by merchants, manufacturers, carriers, farmers, gardeners and laborers, are forbidden.

On the other hand a special purpose of the day is, that people may enjoy religious worship and instruction, and hence the functions of the preacher, the religious teacher, the sexton, the organist and the singers, are not forbidden even though these persons engage in these employments as a means of livelihood. Hence also the ordinary means of attending public worship are not forbidden when used purely for this purpose. In this view of the case, it is the rightness and the exigencies of the purpose that justify the ordinary means of effecting it. Conducting and attending religious worship are among the very purposes for which the law protects the day, and therefore all the means which common usage shows to be reasonably necessary for these purposes, are not forbidden.

Some wordly employments are expressly allowed, such as removing with one's family, delivery of milk and necessaries of life, and the business of ferrymen and inkeepers, and of course these may be performed by a principal or by his servants, and by all the ordinary means adopted for these purposes and which are not themselves forbidden.

And all wordly employments are allowed which in their nature consists of acts of necessity or charity; or if they become so for the time being by reason of the famine, flood, fire, pestilence or other disaster. In such cases necessity and charity demand the work, and with it all the ordinary means of doing it. The whole purpose of some employments is to do works of necessity or charity.

The business of a physician cannot be stopped on Sunday, because it is a work of necessity. He must travel in performing it, and he is therefore entitled to use all the ordinary means of such travel, and this includes, of course the labor of his servants in attending to his horse and carriage, and in driving, if he thinks it needful. The law does not enquire whether he might have done such work himself. It is not the driving, but the principal work that is needful; the driving follows merely as ordinary means.

The business of the apothecary is necessary, so far as it is connected with human sickness, and a man may attend to it by his servants, though that means may not be necessary. Hospitals in great variety are necessary, and no one doubts that all the domestic attendants of these institutions may lawfully pursue their usual avocations therein, because they are the ordinary means of a legitimate purpose.

But no one ought to expect sharp definitions of legal duty on such a subject. Modes of living, of business, of travel, and other human customs are so continually changing that definitions involving them can never be universally, but only generally, adequate. All that we can expect is truth and accuracy to a general extent. Even law, as a definition of human duty, is subject to this defect. Yet, with very few exceptions, it is true that no one who sincerely respects the customs of society, and strives to maintain them in his social life, can fail to understand the law in all its main features, and to live in conformity with it. It is only in peculiar and exceptional cases that any difficulties can arise, and even these are made easy to solution, by a sincere disposition to conform to the order of society.

Necessity itself is totaly incapable of any sharp definition. What is a mere luxury, or perhaps entirely useless or burdensome to a savage, may be a matter of necessity to a civilized man. What may be a mere luxury or pleasure to a poor man, may be a necessary when he has grown rich. Necessity, therefore, can itself be only approximately defined. The law regards that as necessary which the common sense of of the country, in its ordinary modes of doing its business, regards as necessary.

By this test, the business of keeping a livery stable for the care of people's horses, is a necessary employment in large towns, and of course this requires some work and attention on Sundays, and this may be performed to the extent of the necessity, by the ordinary means belonging to the business.

By this test, also, iron and glass are necessaries of life, and they cannot be obtained without some work being done on Sun-

days, if the business is to be performed according to the ordinary skill and science of the country. The law never inquires whether iron and glass generally, or in such large quantities are really necessary, in the strictest sense of the word, or whether it is not possible to improve the art so that Sunday may not need to be violated. This is not the province of law, but of individual enterprise and science.

Law, therefore, does not condemn those employments which society regards as necessary, even when they encroach on the Sabbath; if according to the ordinary skill of the business, it is necessary to do so. And then the business being recognized as necessary, it may be performed by the means of the services of others, and by all the ordinary means of the business so far as it is necessary.

But let us consider the statutary definition of what is forbidden. It is "any *worldly* employment or business whatever." What does this word "worldly" mean? Its correlatives help us to its meaning. Very evidently, worldly is contrasted with religious, *and the worldly employments are prohibited for the sake of the religious* ones. Of course, therefore, no religious employments are forbidden. Hence funerals, as religious rites, are allowed on Sundays, and all the functions of the undertakers, grave-diggers, hearse and carriage drivers and others; though such persons use such employments as a means of a livelihood. Hence, also, while purely civil contracts are forbidden on Sundays, marriage is not so, because it is not purely a civil, but also a religious contract.

But the words domestic, household and family are correlatives of the word worldly. If they are so in this law, then worldly employments being alone forbidden, of course these contraries are not. An obstacle to this view is, that cooking victuals in *families is excepted, as though the general prohibition of worldly* employments included it. Yet this exception is possibly expressed by way of precaution to prevent a supposed, but perhaps misinterpreted Jewish law from being misapplied to us, as though applied repeated in our law. Exodus xvi., 23; and xxxv., 3.

Or possibly the purpose of the proviso was, to save from the prohibition certain worldly employments, such as cooking victuals in bake houses, boarding houses and inns, and delivery of milk; and cooking in families was also named merely to prevent a prohibition of it from being implied by the proviso, though not included in the general prohibition. If this is a redundancy it is not the only one. Cooking victuals in bake houses and inns is specially allowed, and yet it is undestood to be included under the term "works of necessity," 2 Burr, 728, 5 Term. R. 449. And if "worldly employment" is to be taken in its largest sense, it includes hunting, shooting and sporting, and yet these are specially forbidden.

These considerations seem to demand a limitation of the term "worldly business," and we are aided in making it by the act of 1705, where it is treated as "work of their ordinary callings." So also it is explained in the statute 29 C. 2 c. 7. We think that these terms were not intended to include such household or family wrok as pertains directly to the proper duties, necessities and comforts of the day; and this work may be done by any member *of the family including domestics.*

The most convincing proof that this is the true interpretation of the law, is that it has always been so understood. It has never been regarded as applying to the proper internal economy of the family It does not except the ordinary employments of making fires and beds, cleaning up chambers and fire-places, washing dishes, feeding cattle and harnessing horses for going to church, because these were never regarded as the worldly business of the family, and therefore not forbidden to the head of the family, or to any of the domestics. It is probable, however, that the most of these occupations may have been regarded as works of necessity, or as means of performing such works.

The uniform practice of the country in all times, proves at least, that such employments are not forbidden by the law. It certainly never was intended that the law should enter as a spy into every man's family, in order to inspect his domestic arrangements, and ascertain whether he is improperly employing his domestic servants there, or is himself doing work which strict religious principle would forbid. Law does not and cannot direct the division and apportionment of labour among the members of the family. Our law has always considered a man's house too sacred to be subjected to such espionage. Law cannot descend to such functions, and surely religion can neither require nor perform them.

These domestic employments being necessary for every day, and not worldly employments in the sense of the law, may be exercised in the ordinary modes, and with the ordinary freedom of the family, *without any violation of the law. Such is the act of which* this defendant was convicted, and in so acting he was guiltless.

Guiltless before the civil law. By the Divine Law, as such merely, we have no authority to judge him. This, in many, and not to say all of its elements, consists of moral and religious idea that are much above our present acquisitions, and therefore we cannot enforce it. Whereas law, civil law, in its truest characters, expresses the common sense, and common morality of the country, and therefore is easily understood, obeyed and enforced. We recognize in thought, that law and faith, or law and religion consist of distinct classes of principles, and are enforced by essentially different means; yet it is as impossible to make a complete separation *of them, as to separate reason from sentiment in actual* humanity. Law can never become entirely infidel; for it is essentially founded on the moral customs of man, and the very generating principle of these is most frequently religion. Our civil law does not condemn the defendant.

The conviction is reversed.

GENERAL CORRESPONDENCE.

Derry West, Nov. 24, 1859.

To the Editors of the Law Journal.

Gentlemen, — The recent Bank failures in the city of Toronto—particularly the International Bank—have caused, and will cause, I have no doubt, a large amount of litigation in this part of the country; and as your views on legal questions in the *Law Journal* previously have been the means of putting a stop to litigation, you would confer a favor on the writer, and also on the public generally, by giving your opinion on the following case, tried in one of our Division Courts a few days ago:

A sold B, on the 14th October last, one load of wheat (forty-two bushels and forty-seven pounds); price 5s. 1d. currency per bushel. B had no money to pay, but gave his receipt. On the 17th A delivered another load (forty-two bushels and seven pounds), at 5s. 1d. B was still without funds, but gave a receipt. On the 27th October, A came to B for his money, returned his receipts, and got paid for his wheat in International Bank bills.

The case was argued on both sides. The *judgment of the* court was a nonsuit, on the ground that A, with all due diligence, ought to have gone and tendered said notes at the bank. The reply was, that A was on his way to one of the back townships, but returned the notes on the 29th to B, at his office, where he received them. A. further argued that there was no such bank on the 27th in Toronto, as said bank was not opened on that day, but closed the day previous. *Query:* Were the International Bank notes good on the 27th October, 1859, or were they not—or must the parties who hold said notes wait the expiration of sixty days before they can collect them, if collectable at all? Your view on the banking law will much oblige.

I remain, Gentlemen, very respectfully,

Your obedient servant,

J. T.

[It does not follow from the fact that the International Bank had on the 27th October suspended payment, that on and after that date there was no such bank.

To work a forfeiture of its charter, there must be a suspension extending to sixty days, consecutively or at intervals, within any twelve consecutive months. (20 Vic. c. 162, s. 27.) The International Bank, like other banks, was not allowed to issue notes without apparently some security. There is in the first place the property and assets of the bank, and in the next place the liability of stockholders. (*Ib.* s. 36.) Then bills and notes issued were required by law to bear a certain proportion to paid-up capital, deposits in bank, specie and government securities. (*Ib.* s. 29.) If the proportion were exceeded, then there is the personal liability of the directors. (*Ib.*)

From these premises it appears to us that the notes of the International Bank were not, on the 27th October, though much depreciated in value, *perfect nullities*.

This being the case, if both the giver and receiver were equally ignorant of the suspension, the receiver must, we think, be the loser.—EDS. L. J.]

TO THE EDITORS OF THE LAW JOURNAL.

GENTLEMEN,—I wish to lay before you some facts showing how a Lawyer of this place makes money, and request your opinion as to the propriety of the course pursued.

A. B. as attorney for R.W. issued a writ in the County Court against S. L. and G. L. specially endorsed for £25 on a note. After service he filed the following document in his own hand writing, (except the signature.)

"R. W. plaintiff, *v.* S. L. and G. L. defendants. S. L. one of the defendants above named appears in person."

S. L.

"I hereby agree and undertake with the plaintiff, that all further and other papers and proceedings may be served and put up in the office of the Clerk of this Honorable Court, instead of personal service, and that the same shall have the same legal effect as if the same should be served on me personally; and that I will not put any further papers to be served on me." S. L.

Then a judgment by default against G. L. is filed; next a declaration is filed and posted up in the Clerk's office, with a notice to plead in eight days, directed to S. L., a plea of *non fecit* is then filed, posted up, and written by a clerk of Mr. A.B., the filing of which is paid for by him (Mr. A.B.), next a joinder of issue is filed and posted up, then issue book, notice of trial and assessment, notice to examine the defendant, S. L. particulars, notice to admit, notice of taxation, copy of bill amounting to £12 18*s.* are also posted up in the Clerk's office in regular order. The record was made up and entered and the case came on for trial, (no counsel appearing for defendant,) a witness was called and the signature of S. L. to the note duly proved, a verdict taken and speedy execution ordered. It would take too much space to give a copy of the Bill, but here are a few of the items, search for plea and paid 1*s.* 9*d.*, instructions for joinder of issue 2*s.* 6*d.*, subpœna and paid 4*s.* 9*d.*, copy of, 1*s.* 3*d.*, attending to serve 1*s.* 3*d.*, paid witness 3*s.* 9*d.*, instructions for brief, 2*s.* 6*d.*, brief 5*s.*, counsel fee 30*s.*, attending to move speedy execution 1*s.* 3*d.*, fee 5*s.*, copy of bill and attending to serve 2*s.* 6*d.*, notice of taxation and attending 2*s.* 6*d.*

I will not pretend to say what was the object of the pleadings and trial, leaving that to be inferred from the facts. It could however scarcely have been with a view to giving defendants time as the judgment might have been signed on the specially endorsed writ and *fi. fa.* delayed. Had this been the only case I would not perhaps have troubled you, but it is only one among many, nor is the practice confined to the County Court but it has been carried on successfully in the superior Courts, search the Crown Office and judge for yourselves.

I am not aware the practice is sanctioned in England nor that it is practised in Canada except by the gentleman alluded to. It is a sure way to make a show of business at Court, and that too not without profit, though it keeps other attorneys fingers out of the pie and savours rather of a monopoly.

Yours truly,

LEX.

Belleville, November 25th, 1859.

[If S. L. *knew* the effect of the undertaking which he signed at the time he signed it, there can be no hardship upon him and none others under the circumstances have a right to complain. If the object were time and the amount to be collected not large, the time we fancy was dearly bought.

We do not see that A. B. was bound to send S. L. to another attorney for his imaginary defence, if said S. L. preferred to appear in person. By doing so he saved the costs of his attorney as between attorney and client.

Without any special reference to the case submitted, we would say that attorneys cannot be too careful in avoiding all proceedings which savour of rapacity and extortion. A man who is guilty of such practices fails in his object, if it be the making of money. His best mode of making money is to acquire public confidence.—EDS. L. J.]

PERTH, 1st December, 1859.

To the Editors of the Law Journal.

GENTLEMEN,—I submit a question for your consideration, trusting that you may be pleased to give your opinion.

Does an execution from a Division Court, bind the goods in defendant's hands, from the time of its delivery to the Bailiff, or only from the time of an actual seizure under it—as some suppose.

Chief Justice Robinson, delivering the judgment of the Court in *Culloden* v. *McDowell*, No 7, vol. 17 of U. C. Q. B. R. 359, says, "it could not bind the property before it came to the Bailiff's hands, if indeed it could before an actual seizure was made under it, for it is not to be assumed that an execution from an Inferior Court, binds from the time of its delivery to the Bailiff."

This has been construed by some, as amounting to a decision that an execution from a Division Court, does not bind the goods until an actual seizure. The 14th clause of 20 Vic., cap.

57, enacts, "Where a writ against the goods of a party, has been issued from either of the said Courts, (Superior Courts) or from any County Court, and a warrant of execution against the goods of the same party, has issued from a Division Court, the right to the goods seized, shall be determined by the priority of the time of the delivery of the writ to the Sheriff to be executed, or of the warrant to the Bailiff of the Division Court to be executed."

Now assuming for the sake of argument, that the delivery to the Bailiff, does not bind the goods without an actual seizure, and that an execution issues from a Division Court, and is delivered to the Bailiff; in a week or so after, a *fi. fa.* issues at the suit of another plaintiff, and is delivered to the Sheriff. The defendant then sells his goods, the Sheriff seizes the goods in the hands of defendant's vendee; now the Bailiff of the Division Court steps forward, and by the statute, takes the goods from Sheriff, as his execution has priority over the Sheriff's *fi. fa.* The execution from the Division Court, therefore, borrows strength from the *fi. fa.* in the Sheriff's hands, which does appear to me, very unreasonable. To hold that the execution from the Division Court, binds the goods from the time of its delivery to the Bailiff to be executed, seems more in harmony with the 14th clause of 20 Vic., cap. 57, than to hold otherwise.

As this question is one important to Bailiffs and suitors in Division Courts, and as you have hitherto shewn a willingness to assist them with your opinions, I have stated my question at more length than I otherwise should.

I am, yours truly,

D.

[We refer our correspondent to our editorial columns, where he will find the question discussed, and will see that we coincide with the opinion he expresses on the subject. We feel obliged for his communication, which comes opportunely to support our view of the matter, and is evidently intended to bring an *important question under discussion, for the benefit* of a large portion of our readers, rather than for the writer's own satisfaction—a motive which we should wish to find actuating a greater number of our readers.—Eds. L. J.]

MONTHLY REPERTORY.

CHANCERY.

V. C. K. RHODES V. KIPPS. *May 26.*

Settlement—Construction—Personal representatives.

J. settles certain policies of insurance on his own life, on his wife and children, and provides that in default of children, and the death of the wife, the fund shall be in trust for such persons as shall be his next of kin at his wife's death, and who would be his personal representatives in case he died intestate and unmarried, and be distributable accordingly under the statutes for the distribution of intestate effects; but in case his said wife should die in his lifetime whether leaving children or not, the whole fund to be in trust for J. his executors, administrators and assigns absolutely. J. becomes bankrupt and dies leaving his wife but no children, surviving. On the question whether the words "personal representatives" referred to the executors and administrators of J. in their representative character.

Held, that the next of kin of J. at the death of the wife were entitled.

REVIEW.

A TREATISE ON MARITIME LAW, including the *Law of Shipping*; the *Law of Marine Insurance*, and the *Law and Practice of Admiralty*; by Theophilus Parsons, LL.D., Dane Professor of Law in Harvard University. Boston: Little, Brown & Co.

The above work, in two volumes, just issued from the press by the eminent American Law Publishers, Little, Brown & Co., will be found a most valuable addition to the library of every practising Lawyer both in the United States and Canada.

It is the result of eight years' labor on the part of its author, and judging alone from the immense number of cases and authorities cited, examined and commented on, throughout the work, it would appear as if all the learning on the subjects treated of must have been exhausted.

The writer who brings together and interweaves a number of subjects arising properly from a single stem, and thereby greatly facilitates investigation, confers no slight favor on the professional man, whose time is money. This Mr. Parsons has done in treating of the *Science* of Maritime Law.

In a country abounding as this does in navigable waters—mighty rivers and inland seas—a knowledge of the Law of Shipping is necessary to the practitioner; and the publishers of the above work (whose name alone is a guarantee, not only for its being mechanically well got up, but indeed for its merits) are not over-estimating its value when they "offer it to the profession in the belief that it will supply an actual and an important want." The following heads or divisions of the subjects treated of, although not including the whole, will show the comprehensiveness of the work:

Book I.—1. On the History and Origin of the Law of Shipping. 2. Of the Registry and Navigation Laws. 3. Of the transfer of a Ship by sale. 4. Of part owners. 5. Of the liability of owners generally. 6. Of hypothecation by Bottomry. 7. Of the use of the ship by the owner. 8. Of Charter party. 9. On general average. 10. Of stoppage in transitu. 11. Of the duties and powers of the Master. 12. Of the Seamen. 13. Of Pilots. 14. Of nautical men and their liens.

Book II.—1. What Insurance is, and how it is effected. 2. Of the interest of the insured. 3. Of Warranties. 4. Of representation and of concealment. 5. Of the premium. 6. Of the description of the property insured. 7. Of the risks which are covered by the policy. 8. Of deviation. 9. Of the termination of the voyage and of the risk. 10. Of total loss and abandonment. 11. Of general average. 12. Of partial loss. 13. Of the adjustment. 14. Of Agents. 15. Of the rights of action and of evidence, &c. &c. &c.

THE LAW OF TORTS OR PRIVATE WRONGS, by Francis Hilliard, author of *The Law of Mortgages, The Law of Vendors and Purchasers, &c.* Little, Brown & Co., Boston.

This is a new and original work in 2 vols., just issued by the same eminent publishers. We have not yet been able to read it. It will be noticed in our next.

THE LAW MAGAZINE AND LAW REVIEW.—London: Butterworths, 7 Fleet Street.

We have received the November number of this quarterly, so well known to lawyers, the subscription price to which is only five shillings sterling per number. The articles in it are always not only the most interesting, but generally the best written in any legal publication in England. We have never yet, that we remember, seen an article in the *Law Magazine* that was not only readable but highly instructive. At present we can do no more than refer to the articles in the number before us. They are:—1. Baron Bramwell, the Press and the Bar. 2. A late trial for murder in Germany. 3. Reform in Church Discipline. 4. Laws affecting Slavery. 5. Lord

Brougham's annual letter to the Earl of Radnor. 6. Constitutional relations between Great Britain and her Colonies. 7. The Reformation of Adults. 8. Modern Legislation. 9. Railway Accidents and their Prevention. 10. The Libraries of the Inns of Court. 11. Last Session. 12. Smethurst's Trial. 13. Judicial Statistics. 14. Conveyancing in South Australia. 15. The late W. J. Broderip.

GODEY'S LADY'S BOOK.—Philadelphia.

We have received from the publishers the December and January numbers of this well established and most inviting magazine.

The number for December, as usual, contains many embellishments, the most prominent of which are "The Departure," "The Return," "A Fashionable Party," and "An ornamental plate of fruits, for working."

The number for January also contains many beautiful embellishments; among these we may mention "The Light of Home," a highly illuminated title page containing five different pictures emblematical of the seasons and home, a superb colored Fashion Plate, "The first fall of Snow," &c.

Both these numbers abound with matter of very great importance to ladies, who will gladly avail themselves of the many useful hints for the present season of festivity.

We cannot too highly recommend the Lady's Book to the wives and daughters of our patrons. Now is the time to subscribe.

The following are the terms: One copy one year, $3 ; two copies, $5 ; three copies, $6.

THE ATLANTIC MONTHLY.—Boston: Ticknor & Fields.

This magazine has in a short time done wonders. No more than twenty-six numbers have been issued, and yet the Atlantic Monthly stands high in the world of literature. It is noted for the originality of its articles as well as much general ability. It is a monthly, and the following are the contents for December, just received: The Experience of Samuel Absalom, Filibuster—The Minister's Wooing—The Northern Lights and the Stars—Thomas Paine in England and in France—Elkanah Brewster's Temptation—Magdalena—Strange Countries for to see—Beauty at Billiards—Italy, 1859—The Aurora Borealis—The Professor at the Breakfast Table.

Terms: $3 per annum.

THE EDINBURGH—THE LONDON QUARTERLY—THE WESTMINSTER—THE NORTH BRITISH, for October.—Leonard, Scott & Co., New York.

We have often spoken as to the reprints of the Standard English Reviews by the enterprising firm of Leonard, Scott & Co. Their efforts to supply these Reviews, including Blackwood, at the smallest possible price, deserve every support. Their reprints are in all respects equal to the originals, and are to be had at much less cost. While the English copies cost $31 per annum, the American Reprints of Leonard, Scott & Co., are only $10. And the latter, with more liberality than most American publishers, pay no less than $3000 per annum to the proprietors of the English Reviews for the right to reprint—a right not legally but morally binding. Every encouragement therefore ought to be given to a firm which not only furnishes abundant value for money received, but is more honorable in dealing with our English firms than many of its compeers in the United States.

No man of intelligence who desires to maintain any status in the world of learning can be without the English Reviews and Blackwood. He has before him the doctrines of the Whigs in "the Edinburgh," the creature of such men as Jeffrey, Brougham and Sydney Smith. He has its great opponent in "the London Quarterly," the creature of Southey, Scott, Lockhart, &c. He has the representative of "Liberal" principles in "the Westminster," opposed to Church and State and in favor of free trade and freedom of thought. He has the Free Church organ in "the North British," the most original but most erratic of all four; and, last, he has "Old Maga," the old Tory magazine—ever consistent, ever the same.

It is refreshing to turn from the narrow-minded, spiteful bickerings of country newspapers, to read on the same topics in these great productions, real argument, conducted by men of enlarged views and liberal education, and all for little more than the annual subscription to two local newspapers:—

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THE ECLECTIC MAGAZINE. New York: W. H. Bidwell.

We have to thank the publisher for the December and January numbers of this Magazine, together with the two admirable premium plates, "Filial Affection" and "Returned from Market."

The *Eclectic* is a monthly. Each number contains 144 large octavo pages. The twelve numbers in the year comprise three volumes of 600 pages each. The selections are made from the best magazines in the world, and each number has one or more beautiful portraits by Sartain, whom we consider the first artist of the day.

The January number contains two admirable prints,—the one, the Empress Eugenie and the Ladies of the Court; the other, the Royal Family of England.

These embellishments are a most attractive feature. They are at all times real works of art, exhibiting in every line the workmanship of unusual skill.

Those who do not subscribe to one or more of the leading Magazines, can procure the best articles of each by subscribing to the *Eclectic*, the price of which is only $5 per annum.

Any person sending a new subscriber, either his own name or that of any other, with the subscription money for one year in advance, is entitled to receive by mail, prepaid, either of the above mentioned prints—either one of which, we think, is of itself well worth one year's subscription.

APPOINTMENTS TO OFFICE, &c.

CORONERS.

WILLIAM SCHOLEFIELD, Esquire, M.D., to be Associate Coroner for the United Counties of York and Peel.—(Gazetted 12th November, 1859.)

NOTARIES PUBLIC.

CHARLES FULLER GILDERSLEEVE, of Kingston, Esquire, Barrister-at-Law, to be a Notary Public in Upper Canada.—(Gazetted 12th November, 1859.

WILLIAM VALENTINE DETLOR, of Napanee, Esquire, to be a Notary Public in Upper Canada.—(Gazetted 12th November, 1859.

FREDERICK SCHOLEFIELD, Esquire, of the city of Ottawa, Attorney, to be a Notary Public.—(Gazetted 19th November, 1859.)

WILLIAM PYPER, of Toronto, Esquire, to be a Notary Public in Upper Canada. (Gazetted 26th November, 1859.)

TO CORRESPONDENTS.

MEETING OF CLERKS AT BARRIE,—Under "Division Courts."

J.T.; LEX; D.—Under "General Correspondence."

PAUL DUNN.—Too late for this number; but we may say, in reply, that an order-in-council has been passed for the supply of copies of the Division Court Act to the Judges, Clerks and Bailiffs of the Courts.