DIARY FOR JULY.

1. Wed..Dominion Day. Long Vacation begins. Last day for Co. Clerks finally to examine Asst. Rolls, and equalize Rolls Local Municip.
2. Thurs. Error and Appeal Sittings.
5. SUN..*4th Sunday after Trinity.*
6. Mon..County Court and Surrogate Court Term begins. Heir and Devisee sittings commence.
11. Sat...County Court and Surrogate Court Term ends.
12. SUN..*5th Sunday after Trinity.*
14. Tues..Last day for County Judges to make return of appeals from assessments.
19. SUN..*6th Sunday after Trinity.*
21. Tues..Heir and Devisee Sittings end.
22. Wed..*St. Mary Magdalene.*
26. SUN..*7th Sunday after Trinity.*

The Local Courts' AND MUNICIPAL GAZETTE.

JULY, 1868.

EVIDENCE OF PARTIES TO SUIT.

A correspondent asks a question as to how far a judge of a Division Court can go in calling the parties to a suit as witnesses in their own behalf, and whether suitors can claim any right to give evidence on their own behalf. As the subject is of general interest, and there seems to be some misapprehension about it, it will be as well shortly to discuss it.

The general rule as to the examination of parties to a suit is laid down by the 101st section, which provides that: "No party to the suit shall be summoned or examined, except at the instance of the opposite party, or of the Judge."

The latter part of this section, it will be seen, extends the law of evidence, as applicable to the Superior Court, by giving the Judges in Division Courts a discretionary power to call parties to the suit; which power is more fully set out in the two following sections:

The first part of section 102 is very general in its terms, and gives the Judge power to require either party "in any cause or proceeding to be examined under oath or affirmation." This would seem to refer both to actions on contract or for torts; whilst the latter part of the section refers to debts or contracts when the claim is under eight dollars, and section 103 to debts and demands not exceeding twenty dollars.

We do not see how these sections can be interpreted to give a *suitor* the right to give evidence on his own behalf, at his own instance, even when he has laid the foundation for such evidence under the provisions of the latter part of section 102; for, in either case, it is discretionary with the Court to examine the plaintiff or defendant, as the case may be. The very particularity of the the latter part of the section would seem to imply that the more general provisions of the former part are to be sparingly applied.

It may, in addition to this, be remarked that the policy of the law is (in this country) to exclude the testimony of parties to a suit; and the exceptional legislation in favor of Division Courts which we find in these sections should not—so long as the law remains as at present—be too liberally taken advantage of, even by the Judges, in whom (as we have said), the sole discretion lies.

OUR LAWS AND LAWYERS.

We give below some extracts from an interesting lecture on the above subject, lately delivered by Mr. J. C. Hamilton, barrister-at-law. Though intended for the edification of a mixed audience, the essay contained many things which will, we think, be interesting to some of our readers. With this in view, we give such extracts as our space permits, thinking that anything light in the way of legal literature is in keeping with the season and the weather. The lecturer thus pleasantly sketches the Court of Chancery; and his remarks are somewhat significant that the writer practices principally in the west wing of Osgoode Hall:

"It is a heavy and encroaching court—a court to be avoided by all sinful men; a court of equity and good conscience, where natural feelings are sacrificed to justice, and 'attachments' are formed and used only as a means of torture. It is a court of numerous officers, many of whom tax costs, some of whom tax our patience. Often attacked, it has still survived, and even grown in bulk and power, and is now an 'indefeasible title' court. Its decrees are not, like judgments at law, unilateral or confined in scope and object, but may—and in practice often do—fearlessly examine all claims to the subject in dispute, and finally settle them.

It protects infants, guards the imbecile and lunatic from rapacity, comes between husband and wife, and has even tender regard to the fairer and frailer portion of the race.

Its judges are our modern knight-errants. They lay bare many a hidden fraud. Airy castles

are tumbled down by their injunctions. They unravel many a tangled skein, or cut the Gordian knot of complicated accounts and encumbered estates, and have many an Augean stable to cleanse. Common law judgments are often, in effect, made void, or their operation stayed, by Equity decrees. Some of the general orders materially intrench upon Acts of Parliament.

With this insight into the scope of many suits in Chancery, you may see good reason for their longevity. The solicitor, unlike the attorney, has this happiness—the little bill which he files to-day may become his life-long friend, though it, like Pallas, spring but from his labouring brain, yet, behold the germ of a long and virtuous existence. It will seek discovery with patient diligence, only equalled by Newton. Then with its charges, which, if not at first full enough, are aided by others in red ink and in blue, and, supported by final replication, it will scold and scrowl like an epistle of Diogenes, with postscript by Zantippe, and, finally, after seeking all manner of aid, it will end by craving such further and other relief as may, by the genius and ability of judges and other officers, be discovered and given—not forgetting costs.

Such, then, is the little mental offspring in its simple dress of black and white, trimmed with blue and fastened with red, which the practitioner with fond hopes may to-day entrust to the Registrar. Nurse it with care past defendants' attacks, nor let it be sacrificed to rude Masters' reports. Though at the first hearing the Chancellor may say cruel things, yet, if on 'further consideration' he speak kindly of your offspring, thereafter all will be happiness—dismissal will be impossible. The only cheques to be received will be from the Registrar for costs; and thus the child of many cares and tender nurture may become the support and companion in declining years, and may, peradventure, provide an heirloom after your own last cause is heard."

We have often thought it a great pity that history should lose any facts or incidents which are interesting, as well in themselves as in relation to the early settlers in this country, or the knowledge of which would tend to throw any light upon scenes now rapidly fading from the memory of even "the oldest inhabitant," and especially so when we remember that, with few exceptions, the men who were of note in the early history of the colony were members of our profession. We are glad, therefore, to see the following notice of two of the gentlemen already referred to:—

Attorney-General John White.—This gentleman's law office was in a log house at the corner of Caroline and Queen streets. He resided afterwards in the house since occupied by the late Samuel Ridout. A dispute which arose between him and another legal gentleman brought them to the so-called field of honor. Pistols were used, and Mr. Attorney's life was the forfeit. This was in January, 1800. Mr. White was appointed Attorney-General, of course, by the Imperial Government. He had a lodge, built of logs and branches, covered with vines, in the woods to the north of his residence, where he used to retire for study and meditation in summer. Here, by his direction, he was buried. His grave was, till lately, visible, though not marked with a tombstone, in the Commons between Seaton and Parliament streets; but an old resident, Mr. John Ross, to whom I am indebted for some of these facts, now living on Adelaide street, informs me that he was unable to find it when passing the locality some few years since.

Solicitor-General Gray.—Several matters of public interest are connected with this gentleman's history which, for lack of records and the failure of memory in the few survivors, are fast falling into oblivion. I have learned the following, after some inquiry: He lived where Dr. Beaumont now resides, on Wellington-street, near York-street. Mr. Gray came from Cornwall, U. C., where his father and mother, as appears from passages in his will, were buried, and he there stated his desire to be buried beside them. Another fate awaited him. A man called Cosens had killed an Indian, whose brother, failing to find Cosens, killed another white man, John Sharpe, a tailor, in true savage revenge. The Indian being apprehended, a court was directed to be held at Presque Isle, near Brighton, for his trial. Judge Cochrane, Sol.-Gen. Gray, Mr. Angus McDonell, Sheriff of York, Mr. Fiske, the high bailiff, the prisoners and others, embarked at this city, then the town of York, in the schooner 'Speedy,' captain Paxton, for the place of trial.

The captain remonstrated with Governor Hunter, as the weather was threatening and the 'Speedy' was unseaworthy, but was over-ruled. A gale came on off Presque Isle, all went down and were lost. Nor were the bodies of any on board ever afterwards found. The Solicitor-General had premonitions of his end, and stated his fears before embarking. Mr. Gray was a very extensive landholder in the Province. He had also valuable interests in a species of chattel property, for some time, fortunately, unknown among us. By the will already referred to, dated August 27, 1803, and made shortly before his death, he 'manumits and discharges from the state of slavery in which she now is, his faithful black woman servant Dorinda and gave her and her children their freedom; and, that they might not want, directed that £1,200 should be invested and the in

terest applied to their maintenance. To his black servants Simon and John Baker he gave, beside their freedom, 200 acres of land each and pecuniary legacies. Descendants of the faithful Dorinda are still living in or near Cornwall, at very advanced ages, as well as the above-mentioned John, now said to be over ninety years old. It will be remembered that, though the slave trade was prohibited by the Provincial Act 33 Geo. 3, cap. 7, yet the state of involuntary servitude in Upper Canada was not abolished till afterwards.

It is remarkable that the Government had two schooners built at Kingston in Gen. Hunter's time, called, usually, 'the King's vessels.' The other sailed with a number of soldiers on board, and had the same fate as the 'Speedy,' neither ship nor passengers being afterwards seen."

SELECTIONS.

SUNDAY LAWS.*

Among theologians, in their ever recurring discussions upon the so called Sunday questions, two leading points of controversy have arisen,—the one as to the origin of the appointment of the first day of the week for peculiar observance; the other, as to what the nature of such observance should be. In regard to the first, the law has taken no heed: it found the first day of the week already selected for observance, which observance was enforced by legislation; but, as to the second, we find an almost infinite variety of provisions, shaped, it would seem, to meet the popular feeling and mode of life of the people by whom they were made, and changed from time to time according as that feeling and mode of life changed. Indeed, a study of the Sunday laws of the different portions of the United States, it is thought, would furnish, in a measure, some indication of the peculiar characteristics of its people. Thus we are not surprised that the strong religious feeling of Massachusetts compelled, by its early legislation (1791), the attendance at some church of every able bodied person, under the penalty of a fine; while its regard for freedom of religious thought is shown by the proviso, that such attendance was not required where there was no place of worship at which such person could conscientiously attend.

A similar compulsory attendance was required by an earlier statute of Connecticut (1751), which contains the following stringent provision: "No persons shall convene or meet together in company in the streets, nor go from his or her place of abode, on the Lord's day, unless to attend upon the public worship of God or some work of necessity or charity." This is followed by the provision, that "no person convicted of any offence under this act shall be allowed any appeal." So in Georgia and South Carolina, an early statute compelled attendance at church. The effect of slavery shows itself in the Sunday laws of some of the States. Thus, in Virginia, *any free person* found laboring at any trade or calling on Sunday was liable to a fine; while in Texas the only provision which forbids laboring on Sunday is one which fines any person who shall compel *his or her slaves, children, or apprentices to labor*, except in the sugar-making season and to save a crop, on that day.

In Florida, it is provided that "no person shall employ his apprentice, servant, or slave in labor, and that no merchant shall keep open his shop," on Sunday; and this seems to be the only restriction upon labor in this State on that day. The same statute exists in Alabama, with a provision that contracts made on Sunday are void.

In Ohio and Illinois, the Sunday laws, which are as stringent as in most States, have been made to yield to the throng of emigration which sweeps over them, by a provision that nothing shall prevent emigrants moving forward on Sunday, and that ferrymen, tollgatekeepers, and the like, shall be allowed to labor on that day in their behalf.

A tolerance toward those who believe that the seventh day of the week, instead of the first, should be set aside for observance, is shown in some of the States by making such persons exempt from the provisions of the Sunday law. This is so in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Ohio, Indiana, Illinois, Arkansas, Michigan, Kentucky, and Wisconsin. In all the above mentioned States the exception is general, save in Rhode Island, New York, and New Jersey. In Rhode Island, after providing that "all professors of sabbatarian faith or of the Jewish religion" shall be permitted to work on Sunday, the statute denies them the liberty of opening shops for the purpose of trade, or of lading or unlading vessels, or of working at the smith's business or at any other mechanical trade, in any compact village, except the compact villages of Westerly and Hopkinton. In New York and New Jersey there seems to be a qualified exemption for Jews and other sabbatarians, by a provision which excuses them from jury and other public duties on Saturday, and from answering process on that day.

* This article will be read with interest in view of a recent high-handed proceeding of a Toronto policeman, who entered the room of a stranger in the city, on a Sunday, without any warrant, and took him into custody and confined him all night in a filthy cell, because he heard him playing some simple airs on a violin at the back window of his lodgings on Sunday. The unconscious victim was heavily fined and admonished by the Police Magistrate the next day. The extraordinary conduct of this ardent protector of the public morals was fully discussed by the public press, and probably will not occur again for some time. It was suggested at the time that the musical talent of Toronto policemen must be of a high order when an otherwise uneducated "Bobby" could at once discern the exact line where sacred music ends and secular music begins.—[Eds. L. J.]

Either from inadvertance or a want of the liberality shown in the other States, the Sunday laws of Pennsylvania, New Hampshire, Delaware, Maryland, North Carolina, South Carolina, Georgia, Tennessee, Mississippi, Alabama, Florida, and California are silent in regard to this by no means inconsiderable class; and it has been held in the first mentioned State that the provisions of the Sunday laws apply to Jews as well as others. *Commonwealth* v. *Wolf*, 3 S. & R. 48; *Society &c.*, v. *Commonwealth*, 52 Penn.St. 125; *City Council* v. *Benjamin*, 5 Strobh. 508; but see *Ex parte Newman*, 9 Cal. 502.

Thus far reference has been had chiefly to the provisions of the statutes of the different States in regard to the observance of Sunday, which serve to illustrate the spirit or characteristics of the State where they are found,—an investigation perhaps more curious than valuable. The most important differences, in a legal point of view, are those which are found in comparing the clauses in the statutes of the different States which restrict business, labor, and pleasure on the first day of the week.

In *Swann* v. *Broome*, 1 W. Bl. 526, Lord Mansfield gives the history of the common law doctrine, "Dies Dominicus non est juridicus," and declares that no judicial act could be done on Sunday. Other than this, the common law makes no distinction between it and any other day. The case of *Hiller* v. *English*, 4 Strobh. 486, contains an exhaustive discussion upon the limitation placed on judicial acts upon Sunday.

Laws upon the observance of Sunday came naturally from the Church at an early day; but it was not until after six hundred years that labor and secular business were prohibited by it, and then only so far as they are an impediment to religious duties, and because of their being so.

The earliest important civil legislation (5 & 6 Ed. V. c. 3) looks only to the religious celebration of the day, "that it be kept holy," and in no manner forbids labor. The statute 1 Eliz. c. 2, and 3 Jac. I. c. 4, § 27, in the same spirit, punishes by fine "all persons having no lawful or reasonable excuse for absence from church," but puts no further restriction on the observance of Sunday.

We are obliged to wait until the statute of 29 Car. II. c. 7, § 1, before we find any restriction, in terms, upon labor on the first day of the week. Up to this time, the laws had been but a re-enactment of the first clause of the Mosaic law known as the Fourth Commandment, "Remember the sabbath day to keep it holy." This statute seems to be the interpretation in that age of the remainder of that Commandment; viz., "Six days shalt thou labor, and do all thy work," &c. From this statute (29 Car. II. c 7, § 1) spring, with many modifications, the Sunday laws, as they are now found in this country.

In some of the States, as we have seen, the statute of Elizabeth compelling attendance at church has been followed (though all such laws are now, it is believed, repealed); but, for the most part, sufficient, and many of these follow closely upon the English statute of Charles II. in their terms. By this statute, no tradesman, artificer, workman, laborer, or other person or persons whatever, *shall do or exercise any worldly labor or business, or work of their ordinary calling, on Sunday*; and it prohibits the sale or hawking of goods and wares.

This statute is followed, in terms, in Georgia and South Carolina, and nearly so in Tennessee; so that, in these States, the rule laid down by Lord Tenterden, in *Sandiman* v. *Breach*, 7 B & C. 96, would apply: that under the words "person or persons" no other class is included than those described by the words which precede them. This would seem to be the case in North Carolina, where the terms of the statute are "no tradesman or other person."

The clause in the statute of Charles II. which forbids "any labor, business, or work of ordinary calling" on Sunday, is to be found in many of the statutes in this country, and has received an interpretation in the different courts of many of the States. In the case of *Allen* v. *Gardiner*, 7 R. I. 22, it was held that the execution of a release by a creditor to an assignee on Sunday is not a work of ordinary calling.

In a recent case in Massachusetts, not yet reported (*Hazard* v. *Day*), the Court refused to disturb the finding of the Court below,—that a real estate broker in Rhode Island, who delivered on Sunday a contract of his principal and received from the defendant a duplicate contract and check signed by him, was acting in his ordinary calling, and was within the Sunday law of that State. In Georgia, the execution and delivery of a note is held not to be within a person's ordinary calling. *Sanders* v. *Johnson*, 29 Ga. 526. And in North Carolina, where the sale of a horse was made privately on Sunday by a horse dealer to a person who was aware of the vendor's ordinary business, it was held that an action on the warranty would lie: *Melvin* v. *Easley*, 7 Jones Law, 356. The leading English cases bearing on the question as to what constitutes ordinary calling, are *Drury* v. *Defontaine*, 1 Taunt. 131; *Scarfe* v. *Morgan*, 4 M. & W. 270; *Wolton* v. *Gavin*, 16 Q. B. 48; *Fennell* v. *Ridler*, 5 B. & C. 406; *Norton* v. *Powell*, 4 M. & G. 42; *Smith* v. *Sparrow*, 4 Bing. 84; *Blocksome* v. *Williams*, 3 B. & C. 232; *Rex* v. *Whitnash*, 7 B. & C. 596; *Begbie* v. *Levi*, 1 Cromp. & J. 180.

In most of the States,—viz., Maine, Massachusetts, Vermont, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Kentucky, Mississippi, Arkansas, Michigan, and Wisconsin,—it is evident, from the terms of the Statute, that it was the intention of the legislature to compel a general suspension of business and labor on Sunday.

Thus the execution of any contract on Sunday renders it void, as in the case of a promis-

sory note made and delivered on that day. *Hilton* v. *Houghton*, 35 Me. 143; *Towle* v. *Larrabee*, 26 Me. 391; *State* v. *Suhur*, 33 Me. 539; *Nason* v. *Dinsmore*, 34 Me. 391; *State Bank* v. *Thompson*, 42 N.H. 369; *Allen* v. *Deming*, 14 N.H. 133; *Lyon* v. *Strong*, 6 Vt. 219; *Lovejoy* v. *Whipple*, 18 Vt. 379; *Adams* v. *Gay*, 19 Vt. 358; *Wight* v. *Geer*, 1 Root, 474; *Kepner* v. *Keefer*, 6 Watts, 231; *Hill* v. *Sherwood*, 3 Wis. 343. In *Kaufman* v. *Hamm*, 30 Mo. 387, a note given on Sunday for an antecedent debt was held valid. A bond given on Sunday has been held void. *Pattee* v. *Greely*, 13 Met. 284; *Fox* v. *Mensch*, 3 Watts & Serg. 444; see also *Commonwealth* v. *Kendig*, 2 Penn. St. 448.

So "swopping horses" on Sunday is illegal and void, as is any warranty given at the time. *Lyon* v. *Strong*, 6 Vt. 219; *Robeson* v. *French*, 12 Met. 24; *Murphy* v. *Simpson*, 14 B. Mon. 419; but see *Adams* v. *Gay*, 19 Vt. 358. A sale made on Sunday of a horse is void. *O'Donnell* v. *Sweeney*, 5 Ala. 467; *Adams* v. *Hamill*, 2 Douglass, 73; *Hulet* v. *Stratton*, 5 Cush. 539; *Northrup* v. *Foot*, 14 Wend. 248; but *Miller* v. *Roessler*, 4 E. D. Smith, 234. An action of contract will not lie for a horse sold on Sunday, although the purchaser keep him afterwards. Trover is the form of action. *Ladd* v. *Rogers*, 11 Allen, 209.

But a subsequent ratification of a contract made on Sunday makes it valid. *Sargeant* v. *Butts*, 21 Vt. 99; *Sumner* v. *Jones*, 24 Vt. 317; *Johnson* v. *Willis*, 7 Gray, 164; see also *Smith* v. *Bean*, 15 N.H. 577; *Clough* v. *Davis*, 9 N.H. 500.

A sale and delivery of property on Sunday, though contrary to law, cannot be rescinded by either party. *Moore* v. *Kendall*, 1 Chand. 33.

A guaranty for the fulfilment of a lease executed on Sunday is void, although the lease is not executed until a week day following. *Merriam* v. *Stearns*, 10 Cush. 257.

Where a letter is written and delivered on Sunday promising pay for the performance of services, and there is no proof of agreement to perform the same, action may lie thereon for week day services. *Tuckerman* v. *Hinckley*, 9 Allen, 452. It is not sufficient to avoid a Sunday contract, that it was entered into then: it must be consummated on that day. *Adams* v. *Gay*, 19 Vt. 358; *Sumner* v *Jones*, 24 Vt. 317. So where A. on Sunday proposed to B. to work for him, and B. on Monday, with others, took the subject into consideration, and went to work on Tuesday, it was held that B. could recover for services. *Stackpole* v. *Symonds*, 3 Foster, 229. As has been stated, a contract made in Alabama on Sunday is, by the terms of the statute, void.

A number of acts performed on Sunday have been held to be lawful. Thus a contract made and executed on that day is valid to pass title. *Greene* v. *Godfrey*, 44 Me. 25. See *Merritt* v. *Earle*, 31 Barb. 38. So where a steamboat company on Sunday landed and stored in a railroad company's warehouse goods which were afterwards consumed by fire, they having been sued and obliged to pay for the goods, it was held that they were not prevented by the Sunday laws of Virginia from recovering in a suit against the railroad company. *Powhatan Steamboat Co.* v. *Appotamox R. R. Co.*, 24 How. 247. See *Slade* v. *Arnold*, 14 B. Mon. 287.

In Massachusetts, a will executed on Sunday is valid. *Bennett* v. *Brooks*, 9 Allen, 118. So in New Hampshire. *Perkins* v. *George*, 1 Am. Law Rev. 755.

A question has often arisen, whether a contract was made in point of time, so as to bring it within the Sunday laws. Thus it has been held that where a proposition was made on Saturday and completed by a delivery on Sunday, the contract was made on Sunday. *Smith* v. *Foster*, 41 N.H. 215. So where an agreement for use and occupation of land was made on Sunday, it was held void; but, if entered on and occupied, an action will lie for use and occupation. *Stebbins* v. *Peck*, 8 Gray, 553. A note executed on Sunday but delivered on some other day, has been held valid. *Lovejoy* v. *Whipple*, 18 Vt. 379; *Goss* v. *Whitney*, 24 Vt. 187; s. c. 27 Vt. 272; *Hilton* v. *Houghton*, 35 Me. 143; *Bank of Cumberland* v. *Mayberry*, 48 Me. 198. See *Ray* v. *Catlett*, 12 B. Mon. 532; *Clough* v. *Davis*, 9 N. H. 500; *Sherman* v. *Roberts*, 1 Grant's Cases, 261.

In Massachusetts, if the charges on a party's day book, on which he relies as evidence of his claim, are dated on the Lord's day, he must show that the sale was not in fact made on that day, or he cannot recover. *Bustin* v. *Rogers*, 11 Cush. 346. But the Court will draw no inference from the date of the contract, on a motion in arrest of judgment. *Hill* v. *Dunham*, 7 Gray, 543.

The case of *Adams* v. *Gay*, 19 Vt. 358, is very instructive in showing the effect of Sunday laws generally upon contracts.

The legislation of New York differs from that of any other State. It provides that there shall be no servile labor or work on that day, but allows the sale of meats, milk, and fish before nine o'clock in the morning. Under this statute, it has been decided that any business but judicial may be done on Sunday. *Boynton* v. *Page*, 13 Wend. 425; *Miller* v. *Roessler*, 4 E. D. Smith, 234; *Sayles* v. *Smith*, 12 Wend. 57; *Greenbury* v. *Wilkins*, 9 Abbott's Practice R. 206; *Batford* v. *Every*, 44 Barb. 618.

In the case of *Smith* v. *Wilcox*, 25 Barb. 341, s. c 24 N.Y. 353, the distinction between business and servile labor is pointed out. There it was held, that no action would lie for advertising in a Sunday paper; but an agreement made on Sunday to publish an advertisement on a week day is valid. Work by an attorney's clerk on Sunday has been held to be servile labor, for which no compensation could be had as extra services, *Watts* v. *Van Ness*, 1 Hill 76; but a contract to transport property is not void because the transportation

commences an that day. *Merritt* v. *Earle*, 31 Barb. 38.

In Ohio and Indiana, by the terms of the statute, "common labor" is forbidden on Sunday. This phrase has received a different construction in the two States. Thus in Ohio a contract made on Sunday is held valid. *Bloom* v. *Richards*, 2 Ohio St. 387; *McGatrick* v. *Wason*, 4 Ohio St. 566; *Brown* v. *Timmany*, 20 Ohio, 81; *Swisher* v. *Williams*, Wright, 754. But a merchant may not sell wares on that day. *Cincinnati* v. *Rice*, 15 Ohio, 225. In *Bloom* v. *Richards*, the Court remarked: "The statute prohibiting common labor on the Sabbath could not stand for a moment as the law of this State, if its sole foundation was the Christian duty of keeping the day holy, and its sole motive was to enforce the observance of that day. It is to be regarded as a mere municipal regulation, whose validity is neither strengthened nor weakened by the fact that the day of rest it enjoins is the Sabbath day.

In Indiana, on the other hand, a contract made on Sunday is void, as a note or bond. *Reynolds* v. *Stevenson*, 4 Ind. 619; *Link* v. *Clemmens*, 7 Black. 479; *Bosley* v. *McAllister*, 13 Ind. 565. Subsequent ratification, however, makes it good. *Banks* v. *Werts*, 13 Ind. 203. In the same State it has been solemnly held that "gambling is not an act of common labor or usual avocation" *State* v. *Conger*, 14 Ind. 396; the accuracy of which, some who have travelled upon the rivers of the West might doubt.

The statute of Tennessee much resembles those of Ohio and Indiana. By its terms, "the practice" of the common avocations of life on Sunday is forbidden.

The statutes of Illinois and New Hampshire seem to be, upon their face, most liberal. By the terms of the first, no use of the Sabbath is forbidden, except that which "disturbs the peace and good order of society;" and in New Hampshire such ordinary business or labor is forbidden only as is carried on "to the disturbance of others." The interpretation in the last State, by the Court, of what constitutes a legal "disturbance of other," narrows to a great extent this seeming liberality. In *Varney* v. *French*, 19 N.H. 233. a contract for the sale of a horse was made on Sunday, and a note given. This was done at the house of the plaintiff, whose wife was present in the room reading a paper. The Court held that the note was void, the giving of it being, under the circumstances, a disturbance of others under the Statute; and that an act is none the less within the statute although other persons present may not object to its performance. *Allen* v. *Deming*, 14 N.H. 133; *Clough* v. *Shepherd*, 11 Foster, 490; *Smith* v. *Foster*, 41 N. H. 215. But such a contract may be subsequently ratified. *Smith* v. *Bean*, 15 N. H. 577; *Clough* v. *Davis*, 9 N. H. 500. As to what constitutes a Sunday contract, see *Smith* v. *Foster*, 41 N.H. 215.

In Pennsylvania, wordly "employment or business" is forbidden on Sunday. Under this act, contracts have been held to fall, as a bond or note. *Kepner* v. *Keefer*, 6 Watts, 831; *Fox* v. *Mensch*, 3 W. & S. 444; *Heydock* v. *Tracy*, 3 W. & S. 507; *Morgan* v. *Richards*, 1 Browne, 171. In this State, the question has been raised, whether a marriage entered into on Sunday was valid, and it was so held; but, upon the question of the validity of the marriage settlement made on that day, the Court were divided. *Gangwere's Estate*, 14 Penn. St. 417.

Where a party has set up a claim for damages, the question has arisen whether the fact that he was, by the Sunday law unlawfully engaged, was a good defence. This has been held to so in Massachusetts. *Bosworth* v. *Swansey*, 10 Met. 363; *Jones* v. *Andover*, 10 Allen, 18; *Stanton* v. *Metropolitan, R. R. Co.* (not yet reported). But in *Etchberry* v. *Levielle*, 2 Hilton, 40, it was held no defence to a suit for damages arising from a tort inflicted during a game, that such game was unlawful. See also *Mohney* v. *Cook*, 26 Penn. St. 342, and *Philadelphia R.R. Co.* v. *Tow Boat Co.* 23 Howard, 209, where damage was done to a vessel sailing on Sunday.

With the large number of foreigners found in some of our States, it is not remarkable that the Courts have been called upon to settle whether the legislature can, by such enactments as Sunday laws, restrict them in the use of their property, limiting its value, and calling upon them for an observance of Sunday in a manner so different from that to which they have been accustomed in their own country. Thus in New York, in *Lindenmuller* v. *People*, 33 Barb. 548, it was claimed that the law forbidding the opening of theatres on Sunday is a "deprivation of the citizen of his property," under the Constitution; but the Court, in an opinion of great length, refuse to sustain this position.

In *Ex parte Andrews*, 18 Cal. 678, the provision prohibiting all persons from opening their places of business on Sunday, was held to be not unconstitutional. This was affirmed in *Ex parte Bird*, 19 Cal. 130.

For acts of charity and necessity there is a universal exception from the effect of the Sunday laws; but what shall be so held has given rise to a diversity of decisions. The legal definition of a work of necessity is well stated in *Flagg* v. *Millbury*, 4 Cush. 243, where the Court say that a physical and absolute necessity is not wanted; "but any labor, business, or work which is morally fit and proper to be done on that day, under the circumstances of the particular case, is a work of necessity within the statute." So that the repairs of a road, which should be made immediately, is a work of necessity; and the fact that it would have to be done on Sunday is no defence in an action for damages arising from a defect in an action for damages arising from a defect in the highway. So if property is exposed to an imminent danger, it is not unlawful to pre-

serve it and remove it to a place of safety on Sunday; as where a plaintiff agreed to collect logs scattered by a storm, and defendant agreed to take them away on the next day, which should be a Sunday, Tuesday, or Friday, the contract was held to be binding. *Parmalee* v. *Wilks*, 22 Barb, 539. So labor on merchandise which A. has agreed to ship, and where longer delay is dangerous on account of the closing of navigation, is within the exception. *McGatrick* v. *Wason*, 4 Ohio St. 566.

In Alabama, a contract made on Sunday, to save a debt or avoid a threatened loss, has been held valid. *Hooper* v. *Edwards*, 18 Ala. 290; s. c. 25 Ala. 528. The hire of a horse and carriage on Sunday by a son to visit his father in the country, was held to be a valid contract. *Logan* v. *Mathews*, 6 Penn. St. 417. In Massachusetts, where travelling on Sunday is prohibited, in *Buffinton* v. *Swansey* (an unreported case, tried in Bristol County, November Term, 1845), the facts showed that a young man, who worked at a distance during the week, received injuries arising from a defect in the highway, while proceeding to visit his betrothed on Sunday, and the point was raised, and discussed by the court, whether such visit might not be an act of necessity or charity. The question, however, never reached the full Court.

The letting of a carriage for hire on Sunday from a belief that it was to be used in a case of necessity or charity, when it was not in fact so used, has been held not to be an offence under the statute. *Meyers* v. *The State*, 1 Conn. 502. The supplying of fresh meat on Sunday is not a necessity in Massachusetts. *Jones* v. *Andover*, 10 Allen, 18. The case of *State* v. *Goff*, 20 Ark. 289, if the facts are correctly reported, would seem to be one of too great strictness of interpretation. Defendant was poor; had no implements to cut his wheat, which was wasting from over-ripeness; and he could borrow none until Saturday evening. He exchanged work with his neighbors during the week, hired a negro, and cut his own wheat on Sunday. Held no justification for breaking the Sabbath.

In 1618, James the First of England issued his famous "Book of Sports," in which are set out the sports which "may be lawfully used on Sunday." This was in consequence of the complaints of the arbitrary interference of Puritan magistrates and ministers; and it is therein provided that "the people should not, after the end of divine service, be disturbed, letted or discouraged from any lawful recreation." The Statute of Car. I., c. 1, which prohibits sports on Sunday, did away with the effect of the "Book of Sports;" and and a similar law is to be found in most of the States.

Travelling upon the Sunday is especially forbidden in some of the States; viz., Massachusetts, Vermont, Connecticut and New York. Under these statutes, it has been held that where a horse has been let to go a certain distance on Sunday, and is driven further, and so injured, no action will lie for such injury. *Gregg* v. *Wyman*, 4 Cush. 322. So where a horse was injured by fast driving on Sunday. *Way* v. *Foster*, 1 Allen, 408. In Maine, it is held that no action lies for the death of a horse by fast driving on Sunday, but that trover for conversion will. *Morton* v. *Gloster*, 46 Me. 520. See *Woodman* v. *Hubbard*, 5 Foster, 67

In *Bryant* v. *Brideford*, 39 Me. 193, a horse was let on Sunday, and an injury occurred after the legal expiration of the day. The town was held liable for an injury arising for want of repair of the road.

In Massachusetts, the Courts have been recently called upon to give an interpretation to the word "travelling," in two recent cases which are not yet reported. In *Hamilton* v. *The City of Boston*, the plaintiff received an injury on Sunday from a defect in the highway. The Court held that walking half a mile in the streets of Boston on Sunday evening, with no intention of going to or stopping at any place but the plaintiff's own house, was not travelling within the meaning of the Lord's Day Act; but in *Stanton* v *Metropolitan R. R. Co.*, where plaintiff received an injury by being thrown from one of the defendants' horse cars, while on the way to visit a friend, it was held that the plaintiff was travelling in violation of the Lord's Day Act. In England, where the Sunday law forbids the selling of ale or spirit to any but travellers on Sunday, it is held that "a man who goes a short distance from home, for the purpose of taking refreshment, is not a traveller." *Taylor* v. *Humphreys*, 10 C. B. (N.S.) 429.

The carrying of the United States mail on Sunday awakened a discussion, which became important in a political point of view, about the year 1830, and was made the subject of party issues. (See the Report of Hon. R. M. Johnson, of the Committee of the United States House of Representatives, which shows how serious a consideration was given to the question.) Before this, in Massachusetts, it had been held that one carrying the mails on Sunday could not be arrested, but not so his passengers, "nor may he blow his horn to the disturbance of serious people." *Commonwealth* v. *Knox*, 6 Mass. 76. Although the mails were allowed to travel on Sunday in Massachusetts, it was not so with the Chief Justice of the State and his associates. An indictment was filed against them in 1793 for travelling on Sunday, and they found it necessary to humbly petition the Legislature to authorize a *nolle prosequi*.

In Rhode Island, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, Kentucky, Indiana, Mississippi, Illinois, Alabama, Missouri, Arkansas, Wisconsin, Texas, Michigan, and Florida, travelling is not forbidden on Sunday.

In Pennsylvania, it has been held that the statute does not forbid travelling. *Jones* v. *Hughes*, 5 S. & R. 299. But it does not allow an omnibus or horse car to be driven on that day, it being held a worldly employment and

breach of the peace. *Johnston* v. *Commonwealth*, 22 Penn. St. 102. This has been recently overruled in *Sparhawk* v. *Union Passenger R. R. Co.*, not yet reported. So the hire of a horse for a pleasure excursion on Sunday cannot be recovered. *Berrill* v. *Smith*, 2 Miles, 402.

By the Delaware statute, carriers, pedlers, and stage drivers are forbidden from driving or travelling on Sunday. The Ohio statute provides that emigrants are not affected by its terms; and that of Tennessee, that nothing in the statute shall prevent travellers or persons moving with their families.

What effect a contract made on Sunday, and so void, has upon the rights of third parties, has been considered by the courts. Thus a note made and delivered on Sunday, though illegal, if indorsed before maturity, without notice of any defect, to a *bona fide* holder, cannot be impeached in his hands. *State Bank* v. *Thompson*, 42 N. H. 369; *Bank of Cumberland* v. *Mayberry*, 48 Me. 198; *Allen* v. *Dening*, 14 N. H. 133. A deed on Sunday cannot be avoided by a stranger to the transaction claiming by a subsequent levy. *Greene* v. *Godfrey*, 44 Me. 25; *Richardson* v. *Kimball*, 28 Me. 463. See *Saltmarsh* v. *Tuthill*, 13 Ala. 390.

An extended examination of the Sunday laws, with their differing terms, and of the various and conflicting decisions under them, suggests the inquiry as to what legislation is best fitted to accomplish that which every good citizen desires — a proper observance of Sunday. A thorough discussion of this question opens the door to the arguments which have been offered on both sides in such numbers upon the propriety of setting apart any day of the week, especially as a day of worship; it being contended by some that all days should, in their religious observance, be alike. Persons holding these views agree, however, that there is a necessity, in the physical nature of man, for occasional rest, and that therefore a cessation from work at fixed intervals is proper. In support of this position, they cite the meaning of the Hebrew word rendered "Sabbath," which is *rest*; and claim that the only thing commanded by the Scripture is *rest;* that the space of six days seems to be the natural limit of successive labor without physical injury; and that therefore, as a mere regulation for the preservation of the public health, there should be a law forbidding labor on each seventh day. See 2 Ohio St. 387. The result of the decree of the National Convention of France, 3 Brumaire, An 2 (Oct. 24, 1793), whereby the *decade* or period of ten days, of which the tenth was appointed as a day of suspension of labor, was substituted for the week, is also cited. After a period of twelve years, the old division of time was restored by Napoleon—one day in ten having been found to give insufficient rest. The translation of the Hebrew word *kadesh* by the word "holy," in the phrase "Remember the Sabbath day, to keep it *holy*," is claimed by some to be erroneous, and that the true import of the word is "set apart." For this there seems to be the strongest authority in Calvin (Comm. on Gen. ii. 3), and Bishop Horsley (Sermons 22 and 23 on Christian Sabbath). See also the meaning of the word, as illustrated by Dr. Campbell (Dissertation VI., Part IV., prefixed to his Translation of the Gospels.) From this it is claimed by some, that there is no divine command for the *religious* keeping of any day of the week.

On the other hand, there are a large number of Christians who believe that the observance of Sunday is a divine appointment (see Hessey's "Bampton Lectures," which contain an exhaustive discussion of the whole Sunday question), among whom there are some who would have enforced it in the strictest manner; so that the early Connecticut statute before mentioned, would not be held by them too severe, nor the interpretation of the word "necessity" in Arkansas too narrow, *State* v. *Goff*, 20 Ark. 289; while others would have the legislation so shaped as not to make it obnoxious to the community.

It is difficult for any one who has read Dr. Whately's "Thoughts on the Sabbath" to escape his result— that the Lord's day has no connection with the Jewish Sabbath, and has no divine origin; neither was it established by the apostles, but by the Church. Those who are embraced in this class, for the most part hold that the religious observance of Sunday is most valuable for the moral nature of man, and that every assistance for its maintenance should be given it by the law. The Jews, Seventh-day Baptists, and other so called sabbatarians, think that the *seventh day* should be the one selected, and would call legislation to assist them in enforcing it. There are many qualifications, not alluded to, in the opinions which have been held, as to what shall constitute a proper observance of one day in seven; but those above stated are thought to give the main features of this many sided question. What manner of legislation will combine and reconcile them all, it is not easy to conceive. Perhaps the statutes of New Hampshire and Illinois would best, theoretically, meet the case. It will be remembered, that no labor in those States is allowed to the disturbance of others; but the case of *Varney* v. *French*, 19 N. H. 233, alluded to above, shows how narrow its terms may become by interpretation. Perhaps if it were left to the jury to say what constitutes a "disturbance," the difficulty might, in a measure, be removed —*American Law Review.*

The shortest will extant is possibly that of Lord Wensleydale, which was proved on the 8th ultimo. It runs thus:—"This is the last will of me, James, Lord Wensleydale. I give all my property, real and personal, and all I have in the world, and that I have the power to dispose of, to my beloved wife Cecilia, her heirs and executors, absolutely. This 25th day of November, A. D. 1863 WENSLEYDALE" The estate was sworn under £120,000.—*South London Press*

SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIPE.

NOTES OF NEW DECISIONS AND LEADING CASES.

ADMINISTRATION — GOOD-WILL OF BUSINESS — STATUTE OF FRAUDS. — *Held*, affirming *Christie* v. *Clark*, 16 C. P. 544, and the judgment of the County Court in this case—

1. That the grant of letters of administration had relation back to the death of intestate, so as to enable the administratrix to sue upon a contract made by her before such grant, for the sale of the good-will of intestate's business as a surgeon and physician.

2. That although the administratrix was not bound to sell such good-will, yet, having done so, the proceeds were assets, for which she must account.

3. That as the vendor's part of the bargain was to be performed within a year, the Statute of Frauds did not apply.—*Margaret Christie, administratrix of Robert Christie*, v. *Clark*, 27 U. C. Q. B. 21.

LICENSES TO CUT TIMBER — C. S. C. CH. 23, — A license to cut timber, under Con. Stat. C. ch. 23, has by the Statute the effect of a grant of the timber cut, and though not under seal it is not revoked by the issuing of a patent for the land. —*McMullen* v. *Macdonell*, 27 U. C. Q. B. 36.

REPLEVIN — DISTRESS FOR TAXES — GOODS DISTRAINED OFF PREMISES ASSESSED—C. S. U. C. CH. 55 — PREVIOUS OCCUPANT ASSESSED — LIABILITY OF FUTURE OCCUPANT, THOUGH NO DEMAND — PLEADING. —*Held*, on demurrer to the plea and avowry set out below, and reversing the judgment of the County Court, that the goods of a future occupant, who took possession of premises after assessment, and was in possession before the return of the collector's roll, were liable to distress for taxes assessed in respect of the premises against the previous occupier; and that a demand upon him before distress was not necessary, as the collector had already made one on the previous occupier, which was all that the Assessment Act required.

Held, also, that the goods were liable to be distrained, though they were not at the time on the property actually assessed.—*Anglin* v. *Minis*, 17 U. C. C. P. 170.

RAILWAY— CONTRIBUTORY NEGLIGENCE — NEGLIGENCE OF FELLOW SERVANT— COMMON EMPLOYMENT. —Plaintiff as administratrix sued the defendants for the death of her husband, caused by a railway accident. It appeared that deceased, with three others and a foreman, was employed with a hand car in clearing snow from the track near Limehouse station. The foreman saw a freight train approaching at speed a quarter of a mile off, upon which he left the men, telling them "to clear," and walked towards it waving a flag. Two of the men stepped aside when it came up, but deceased and the other man ran in front of it along the track, until it drove the hand-car against and killed them both.

Held, clearly a case of contributory negligence on the part of deceased; and a nonsuit was ordered.

One of the brakesmen on the train swore that the brakes were defective, and that the train therefore could not be stopped in obedience to the proper signal, which was up. It appeared however that the defects mentioned by him could have been removed by tightening a bolt or shortening a rod, which any one employed by the defendants could have done in a few minutes; and other witnesses swore that with the brakes as they were after the accident the train could have been stopped, that it came up at a speed shewing no intention to stop at all, and with the engine reversed ran a quarter of a mile past the station, and that at the next station, on the same grade, and with the same brakes, it was stopped without difficulty.

Held, that these facts conclusively shewed the negligence not to have been that of the defendants, but of their servants engaged in a common employment with deceased, and for which therefore the defendants were not responsible.—*Sarah Plant, administratrix of William Plant*, v. *The Grand Trunk Railway Company of Canada*, 27 U. C. Q. B. 78.

ONTARIO REPORTS.

QUEEN'S BENCH.

IN RE GRAND AND THE CORPORATION OF THE TOWN OF GUELPH.

Tavern and Saloon Licenses—13 & 14 Vic. ch. 65.

Held, that under 13 & 14 Vic. ch. 65, the Municipal Corporations had power to discriminate between the different kinds of public houses, and that they were authorised, therefore, to charge differently for a saloon and a tavern license, and to require different accommodations. [Q. B., Mich. Term, 31 Vic., 1867.]

Palmer, in last Easter Term, obtained a rule calling upon the Corporation to show cause on the first day of this term, why the sixth clause of by-law No. 65 of the Town of Guelph, passed 3rd December, 1856, should not be quashed, with costs, on the following grounds: 1. That the by-law, by the sixth clause, attempts to impose a discriminating rate for tavern licenses, which is not authorized by any power conferred on said Corporation by Statute. 2. That the said clause imposes a duty on a saloon license differing from the duty on a tavern license, no such distinction being recognized by the Municipal Acts.

The rule was drawn up on reading the affidavit of the applicant Grand, and a certified copy of the by-law. The applicant stated that, from 1860 to the time of the swearing of the affidavit (3rd June, 1867), he had been the proprietor and keeper of a tavern or house of entertainment in Guelph, for the retail of spirituous, fermented and other manufactured liquors, to be drunk therein: that during each of the prior years and the present year the Council, on his petition, granted him a license to keep a tavern: that the Council exempted him and other persons, not exceeding in all four in any one year, from the necessity of having all the necessary accommodation required by the Statutes of this Province: that in each of the said years the Treasurer of the said town compelled him to pay $101 for his certificate, to enable him to obtain from the Collector of Inland Revenue (on payment to such officer of the Provincial duty, amounting to $10) a license to keep a tavern as aforesaid: that the Treasurer informed him that $100 of such charge was made under clause six of such by-law, and $1 under clause 14 of the same.

The by-law itself was entitled "Taverns and Inspectors," and it recited that it was expedient to make provisions relating to the inspectors and houses of entertainment. The second and third clauses declared what accommodations every inn and tavern keeper should at all times provide for guests, and for stabling for horses, hay, oats, &c. By the fifth clause, every person to whom an inn or tavern license shall be granted shall pay to the Treasurer £10, in addition to the Imperial tax, and to keep a temperance hotel shall pay £6; and then, by the sixth clause, the one referred to in this rule, it was provided that every person who should obtain a license to keep a saloon should pay to the Treasurer £25, and should be subject to all the conditions and regulations contained in the same by-law relating to inn and tavern keepers, except so far as stabling, oats, hay, bedding and bedrooms were concerned, and that all saloons should be closed at or before eleven o'clock each night, and during the whole of the Sabbath.

During this term *J. H. Cameron*, Q.C., shewed cause.

He filed in answer the affidavit of Jas. Hough, the Town Clerk and Treasurer of the Corporation, which stated that the by-law in question, before the final passing thereof on the 3rd of December, 1856, was duly approved by a large majority of the electors of the Town of Guelph, in manner provided by the Municipal law: that before and since the passing of it there were and have been, and there are now, houses of public entertainment in Guelph for the sale of spirituous liquors, known as saloons, which houses are the saloons referred to in the sixth clause, and exempt from providing stabling, &c., as therein stated, being special privileges granted to them over ordinary taverns; that for several years past, up to some time in this year, the applicant kept a saloon in Guelph by the name of "The Shades Saloon," and in his yearly application for license to keep such saloon named his house as "The Shades Saloon;" that the Council, in granting licenses to the applicant and other saloon keepers, referred to such licenses as saloon licenses, as distinguished from ordinary taverns: that the applicant always sought and obtained his license under the sixth clause, and availed himself of the privileges which that clause gives to saloons: that in June last the applicant sold his property in the said saloon to one Kenet, and the application to transfer the license issued for such saloon was supported by a certificate as to the character of Kenet, which was drawn up by the applicant and signed by him and others, and it referred to the premises in question as "Grand's Saloon."

Palmer supported his rule.

The Statutes referred to are cited in the judgment.

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

The by-law in question was passed under the provisions of the 13 & 14 Vic. ch. 65, sec. 4, and after the passage of the Act 16 Vic. ch. 184, which enacted, by the fourth clause thereof, that any by-law requiring more than £10 for a license should be approved and adopted by a majority of the municipal electors.

By the fourth section of the 13 & 14 Vic. the Council of each town had power to make by-laws for limiting the number of inns or houses of public entertainment in towns, for which licenses to retail spirituous liquors to be drunk therein shall be issued, and for fixing the terms and conditions which shall be previously complied with by any person desiring such license, the description of house and accommodation he shall have, &c., and the sum which he shall pay for such license over and above the duty imposed by the Imperial Act 14 Geo. III.; and to make by-laws for similar purposes, with respect to ale or beer houses, and other houses for the reception and entertainment of the public, where fermented or other manufactured liquors are sold to be drunk therein.

It is obvious that the Legislature intended by these general provisions that the Town Council should have the power of discriminating with respect to houses of entertainment, determining the description of the house and accommodation, the terms and conditions upon which the keepers thereof were to obtain certificates for license, and the sums they should pay the treasurer for every such described class of houses of public entertainment. The Statute itself is entited "An Act relative to Tavern Licenses," and its preamble refers to taverns, beer shops and houses of public entertainment, and in the enacting clause refers to inns and houses of, &c. Since the passage of that Act the laws relating to licensing such houses in some respects have been changed and were embodied in the Consolidated Statutes, and lately re-enacted by the Municipal Act of 1866, but all by-laws passed under the various Statutes so consolidated have been saved, and such by-laws remain in force, except in so far as they may be inconsistent with the later legislation.

All these Statutes, by the use of the general term houses of public entertainment, intended to include, besides those specially named, every kind of house in which spirituous liquors were drunk, and in the various Statutes in Upper Canada they are referred to under different classes, *i. e.*, taverns, inns, hotels, ordinaries, and victualling houses, and public houses; and no doubt these various houses are, in many respects, differently kept and sustained. We find nothing in any of the Statutes shewing an intention on the part of the Legislature that there should be a

uniform duty imposed by the Municipality on all such houses, while, on the other hand, the language used implies the placing a discretionary power in the Council, to say what amount shall be paid respectively by the keepers of the different kind of houses, in order to obtain a license; and there are obvious reasons why it should be so.

The license granted to the applicant for the present year would be granted under the 251st sec. of the Municipal Act of 1866, he paying to the treasurer the amount specified in clause six of the by-law. That 251st section enacts that, "Every tavern license shall be issued by the Collector of Inland Revenue for the Revenue Division in which the hotel, tavern, house, vessel or place to which the license is to apply shall be situate," and that "the words 'tavern license' shall mean and include any such license as aforesaid, and no other;" and by the preceding 249th section, sub-sec. 1, tavern license certificates are defined to be "certificates to obtain licenses for the retail of spirituous, fermented or other manufactured liquors, to be drunk in the inn, alehouse, beer-house or any other house or place of public entertainment in which the same is sold;" se that, no matter what the house or place may be called, the Collector of Inland Revenue is to issue to the party who produces the proper certificate from the municipality, a tavern license.

On the whole, we see nothing to sustain the first objection.

Then as to the second objection, it is somewhat similar to the first. It was pressed on the argument by Mr. Palmer that the term "saloon" was not known to the law, or in the English language, and for that reason the by-law was bad. It is not used in the Statute, and the word saloon, in the sense used in the by-law, may not be found in a dictionary; yet, in common parlance, it is used every day, and is well understood to be a house or place in which spirituous liquors are sold and drunk; and we find a case in this Court, *In re Baxter* and *Hesson et al.* (12 U. C. R. 139), where a mandamus was asked for commanding the Inspectors to inspect a house of the applicant fitted up as a saloon, and if found entitled to a certificate of his having complied with a by-law relating to the licensing of saloons passed under the same Statute, 13 & 14 Vic., to grant him such certificate; and although the Court, in giving judgment, said that the statute law says nothing of saloons, yet the case shows that the term was used and understood; and the rule was refused, because the Court did not judicially know the qualifications that would fit a person to conduct a saloon well, and would not overrule inspectors, who were by the Legislature made judges of these matters.

It is quite immaterial by what appellation the house or place is known or called, if spirituous liquors, &c., are drunk or consumed in it. The licenses required, although called tavern licenses, are not restricted to houses of any particular denomination, but the language used is intended to cover the sale in any and every house or place, under certain conditions and in a particular manner, of spirituous and other liquors,—the intention of the Legislature being three-fold: for revenue purposes, the accommodation of the public, and to prevent houses in which such liquors are sold being under the management of improper persons.

We have not overlooked the 220th section of the Municipal Act of 1866, which precludes the Council from giving to any person an exclusive right of exercising any trade or calling; but this by-law refers to a class of houses of entertainment restricted in number, which the Councils are authorized to license.

We are, therefore, of opinion that, on both grounds, the application should be refused, and the rule discharged with costs.

Rule discharged.

THE CORPORATION OF THE UNITED TOWNSHIPS OF BURLEIGH, ANSTRUTHER, CHANDOS, CARDIFF, HARCOURT, BRUTON, AND MONMOUTH, v. HALES, ET. AL.

Original road allowance—Trees taken from—Right of Municipalities to recover for—C. S. U. Ch. 54, secs. 314, 331, sub-sec. 5—Competency of witness.

Held, that a township corporation, without having passed any by-law on the subject, could maintain trespass for cutting and carrying away trees growing upon Government allowances for roads; for the power to pass by-laws for preserving or selling such trees, gave them also the right to recover from a wrong-doer, their value, which right might be exercised without any by-law.

Held, also, that a person who when the suit was brought was entitled by agreement with the plaintiff to 25 per cent of the amount recovered for trees taken from such allowances, but who before the trial had released his right as regarded the land in question, was a competent witness.

[31 Vic. Queen's Bench, p. 72, 1867.

TRESPASS.—The declaration stated that before, &c., there were surveyed and established divers allowances for public roads within the said united townships, upon which road allowances timber trees of great value were growing: that the plaintiffs, as a corporate municipality, were entitled to the said timber trees; yet the defendants, on divers days, &c., entered upon such road allowances, and cut down and carried away timber trees, and converted the same to their own use.

The second count specified certain road allowances in the northern division and one road allowance in the southern division of the township of Burleigh, on which defendants entered, and cut trees, &c.

Third count: trover, for trees and timber.

Fourth: money counts.

Pleas.—Not guilty: a denial that any of the lands mentioned were the lands of the plaintiffs or that any of the timber trees were the timber trees of the plaintiffs; that the goods in the third count were not the plaintiffs; and never indebted to the fourth count. Issue.

The case was tried at Peterborough, in April, 1867, before John Wilson, J.

There were two questions raised. First, whether the plaintiffs could maintain trespass for cutting and carrying away timber and trees growing upon Government allowances for roads, marked on the ground in the survey of the townships, assuming that these allowances had not been opened out and become travelled highways. Second, whether a person, who when this suit was brought was entitled by agreement with the plaintiffs to twenty-five per cent. of the amount which should be recovered by the plaintiffs for trespass on and cutting and taking logs and timber off such allowances for road, but who before the trial, by an instrument under seal, in consideration of five shillings, had released his right

to such per centage as to the lands stated in the declaration, was a competent witness for the plaintiffs, the learned Judge having received his testimony.

It seemed (though this part of the case was not very clearly made out in evidence), that the township of Burleigh was intended to contain twelve concessions, and thirty-two lots of 200 acres each in each concession, the lots numbering from south to north. From lot No. 1 to the line between lots Nos. 15 and 16, the survey seemed to have been sufficiently well marked to enable a surveyor in 1864, to trace and re-mark the lines, &c. But from the south boundary of No. 16, although there were some traces of the surveyor having been there, the marks of survey, if ever there, were almost wholly lost; and on the application of the Council of the County of Peterborough, D. P. S. Fitzgerald was instructed in January, 1864, to commence at the southern end of the township and trace up the old lines as far as the side road between the fifteenth and sixteenth lots, and post them according to the original plan of survey, while from the northerly limit of No. 16, to the north boundary of the township he was to survey the lots twenty chains wide by fifty chains deep, with a road allowance of one chain at every fifth lot and at every alternate concession. These instructions created sixteen concessions with twenty-six lots in each, all lying north of No. 15, with allowances for roads, differing from such as would have been reserved on the original plan of survey; and in addition Mr. Fitzgerald reserved allowances for roads round the waters and streams in the new survey, for which he stated he had the authority of the Commissioner of Crown Lands, such reservations being more for the convenience of landing than for use as roads. Owing, probably, to the different plans of survey, the part surveyed on the original plan was thenceforth called the southern division, and the other part the northern division of the township.

It was proved that prior to Mr Fitzgerald's survey, the Crown had issued letters patent granting several lots or parts of lots in what is now called the southern division, and one grant dated since 1864 was put in for a lot in the northern division. Upon a question being raised, the learned Judge ruled that the Crown was bound by the adoption evinced in granting lots according to the old survey in the southern division, but that there was no proof of any survey before that made by Fitzgerald in the northern division.

It was objected for the defendants that the property in trees growing in spaces reserved in the original survey as allowances for roads, which had never been cleared, opened and travelled, was not in the municipality of the township, and that they could not maintain trespass for cutting such trees. The learned Judge overruled this objection, and reserved leave to the defendants to move to enter a nonsuit upon it.

The plaintiffs then gave evidence to establish that the defendants had cut trees of considerable value on some of the reservations for road, and chiefly in the northern division, and the jury found a verdict for the plaintiffs.

In Easter Term, *Hector Cameron* obtained a rule calling upon the plaintiffs to shew cause why a nonsuit should not be entered (leave having been reserved to move), on the ground that the plaintiffs had no such right or interest in the property in question as to enable them to sue in trespass or trover, and that no by-law was proved to have been made by the plaintiffs in relation thereto; or for a new trial, there being no evidence of trespass to, or conversion of, any property of the plaintiffs; and for improper admission of the evidence of a party in whose direct and immediate behalf the action was brought.

In this term *C. S. Patterson* shewed cause, citing *Cochran* v. *Hislop*, 3 C. P. 440; *Corporation of Wellington* v. *Wilson*, 14 C. P. 299, 16 C. P. 124; *Corporation of Thurlow* v. *Bogart*, 15 C. P. 8; *Municipality of Sarnia* v. *Great Western Railway Co.*, 17 U. C. R. 65; Consol. Stat. U. C. ch. 54, secs. 314, 315, 323, 324, 325, 331, 336, 337, 339.

Hector Cameron, contra, cited *Corporation of Sarnia* v. *Great Western Railway Co.*, 21 U. C. R. 64; *Cochran* v. *Hislop*, 3 C. P. 440.

DRAPER, C. J., delivered the judgment of the Court.

The first question is as to the general right of the plaintiffs.

We think that, upon the evidence given in this case, we are warranted in assuming that the survey made by Mr. Fitzgerald was the original survey of the northern division of the township; as to the southern division, he simply retraced and restored the work done in the original survey.

We do not consider the question as to the right to the soil and freehold of original allowances for road to be open for argument in this Court. In the *Corporation of Sarnia* v. *Great Western Railway Co.*(21 U. C. R 64), Burns, J., said "Wherever the Crown has laid out a road or street without any reservation, I take it the soil and freehold remains in the Crown, subject to the easement which the public enjoys over it." And in the judgment of this Court in *Mytton* v. *Duck* (26 U. C. R. 61) in order to construe sections 314 and 336 of Consol. Stat. U. C., ch. 54, so as not to conflict, we adopted the suggestion of Burns, J., in the above cited case, by limiting the operation of the latter to cases where individuals have laid out streets or roads for the public, and they have by user or otherwise become public highways. The present case relates to the construction of section 314, the language of which leaves no room for doubt, if it be not limited by section 336. We conclude, therefore, that the soil and freehold of the roads in question was in the Crown.

But section 331 gave to Township Councils the power to pass by-laws both for opening roads, and (sub-section 5), for preserving or selling timber trees, &c., on any allowance or appropriation for a public road, and the effect of this enactment and the absence of any by-law on the subject are to be considered.

If there was no such provision, the property in trees growing on the road allowances would, undoubtedly, be in the Crown.

The leading object of the reservation of road allowances however, was not to grow timber trees upon them, but that that they should be subservient to the advantage of settlers upon land adjoining or near thereto, as well as of the general public. We are not prepared to hold that a settler who cut down timber trees on an allowance for road *bona fide*, for the purpose of access

to the lot on which he was settling, was liable to the Crown or to any one else as a wrong doer. Nor are we ready to affirm that a by-law of the township which prohibited under a penalty, the cutting down of trees by a settler, and for such a purpose would be within the spirit, though within the letter, of the Act a by-law "for the preserving of timber trees." But it does not, on the other hand, follow that, subordinate to the leading object of road allowances, the right to sell, if not the right to preserve, will not give to the municipality a qualified property in the timber trees growing upon such allowances.

The power to sell does, in our opinion, give the right to take the price for municipal purposes, and it must carry with it the power to confer upon the purchaser a right to enter, cut, and take away what is sold to him; but if the Township Council has such a property in the trees that they may sell them, and may pass by-laws to preserve them from depredation, which must be by inflicting a penalty, it appears to us that to enable them to enjoy the full advantage which the Legislature meant to confer, they must also have the right to recover from a wrong doer the value of such timber trees, when he cuts and takes them away. We think they have this right, and unlike the power to preserve or to sell, that they need not pass a by-law in order to exercise it. We think, also, that they may recover for such a cause of action on a count framed as the first count is, in which it appears to us the charge is the cutting and carrying away the growing timber. It is not a count *quare clausum fregit*.

There remains only the question as to the admission of the witness Tallen. Before the Evidence Act it was well settled that whatever interest a witness may have had, if he was divested of it by release or payment, or by any other means, when he was ready to be sworn, there was no objection to his competency. Numerous cases establish this proposition; many of them, *ex. gr*, that of co-partners, one of whom was made competent by release, being stronger than the present. The Evidence Act cannot be read so as to increase the objections on the score of competency. In the present case a release under seal of all the witness's interest was produced and proved.

We think the rule should be discharged.

ENGLISH REPORTS.

CHANCERY.

VISCOUNTESS GORT v. CLARK.

Light and air—Noise and vibration—Mandatory injunction—Damages.

Where the injury sought to be restrained has been completed before the filing of the bill, and the plaintiff has in the first instance, demanded damages, the Court will not grant a mandatory injunction, even where the injury is substantial, but will direct an inquiry as to damages.

The noise and vibration occassioned by a steam engine and circular saw considered an annoyance amounting to a nuisance, in respect of which an inquiry as to damages was granted.

Durell v. *Pritchard*, 14 W. R. 212, L. R. 1 Ch. 244, considered.

Decree of Stuart, V. C., affirmed.

This was an appeal from a decision of the Vice-Chancellor Stuart. The plaintiff was owner of a row of small tenements in Grosse-street Rathbone-place, which were let on lease to tenants, who sublet them in lodgings to persons of the working classes. Up to the month of August, 1864, at the back of the houses, fourteen feet from them only, was the back wall of a range of ancient stables in Black-Horse Yard, twenty-six feet in height. The defendant in that month, acquired the site of the stables, and began to erect thereon a factory, with an external wall fifty-six feet high, which was built up to its full height in the month of December, 1864, and the factory was completed and used soon after. On the 10th of January the agent of the plaintiff, who had hitherto not complained, wrote to the defendant, and complained that the factory wall interfered seriously with the access of light and air to the plaintiff's houses, and on the 26th of January wrote again, demanding £800 as compensation, and requiring in the alternative that the damage should be assessed by a surveyor. The defendant in reply, offered to purchase the freehold at a fair price, or to take a long lease of the premises; but his offer was declined, and a mandatory injunction threatened. The bill was filed in April, 1865, praying that the defendant might be restrained from erecting a wall higher than any wall which had existed on the site during the last twenty years, or raising any wall, by which the access of light and air to the back of the house might be impeded, and that the defendant might be ordered to reduce any wall already built by him to a height not greater than the original height of the stable wall, with an alternative prayer for an inquiry as to damages sustaind by the plaintiff. The plaintiff did not move for an injunction, but after answer amended her bill, and charged the existance of a nuisance, occassioned by the noise and vibration caused by a steam-engine and circular saw, which were at work in the factory from morning to night, and the smell of paint, used in painting the "self-coiling revolving shutters," of which the defendant was maker and patentee; in respect of which she prayed for an injunction or an inquiry as to damages.

The VICE-CHANCELLOR declined to grant the injunction, but directed an inquiry as to damages, in respect both of the loss of light and air. and of the annoyance caused by the noise and vibration. From this decision the defendant appealed.

Bacon, Q. C., and *Bevir*, for the appellant—We admit that the erection, to some extent, does interfere with the plaintiff's light and air, but her claim is an exaggerated one, and is not put forward in such a shape as to entitle her to relief in this court. She has herself made it a question of damages only, and this is a mere bill for £800, which ought to be dismissed, without prejudice to her right to bring an action. Delay is also fatal to her claim. She has stood by and allowed us to lay out £4,000, and it was too late in April, 1865, to ask for a mandatory injunction when the building was practically finished in December, 1864. As the plaintiff is a reversioner, the damage done to her is inappreciable, and the Court will not interfere on her behalf, when the result would be the ruin of our trade. They referred to *Clarke* v. *Clark*, 14 W. R. 115, L. R. 1 Ch. 16; *Durell* v. *Pritchard*, 14 W. R. 212, L. R. 1 Ch 244; *Currier's Company* v. *Corbett*, 13 W. R. 1056; *Robson* v. *Wittingham*, 14 W. R. 291, L. R. 1 Ch 442.

Greene, Q. C., and *Walford*, for the respondent, were not called upon.

WOOD, L. J.—The strongest point in this case is, that the demand of the plaintiff was in the first instance shaped in the way of damages. As regards the actual state of things in the present case, the question whether injury is or is not done to the plaintiff in cases of this description has been fully considered in *Clarke* v. *Clark Durell* v. *Pritchard* (*ubi sup.*) There is a wall of fifty-six feet in height, erected by the defendant in substitution for a wall of twenty-six feet, and at a distance of fourteen feet only, upon the average, from the plaintiff's back windows. There is no doubt that the light and air have been considerably diminished: at the same time, as is generally the case, some compensation is given. There is a recess in one part of the wall, and an open space left in another part, but what guarantee has the plaintiff for the continuance of such accomodation? This accomodation, therefore, on which the defendant has laid some stress in his evidence, cannot be taken into account in estimating the injury sustained. I certainly am inclined to think that Lord Cranworth, L. C., carried a little too far the principle laid down by him in *Yates* v. *Jack*, 14 W. R. 618, L. R. 1 Ch. 295, that the owner of ancient lights is entitled not only to sufficient light for the purpose of his then business, but to all the light which he had enjoyed previously to the interruption sought to be restrained; but that is needless to be considered here, as in the present case there was an absolute interference with the plaintiff's light. That being so, there is no question but that the plaintiff might have filed her bill, and moved for an injunction while the factory was in course of erection. Now the factory was completed for all practical purposes in December, but the plaintiff's agent first complained on the 10th of January. The remarks of Sir G. Turner, L. J., in *Durell* v. *Pritchard*, as to the practice of the Court with respect to mandatory injunctions mean simply this—that the Court will not interfere to the extent of pulling down a building already finished, unless where very serious damage would otherwise ensue. Delay on the part of the plaintiff has been spoken of, but I think that a month was not a very long time for a reversioner like the plaintiff to become acquainted with what was going on and make up her mind to interfere. The case originally assumed the complexion of a mere question of damages; but £800 is a large sum, and the defendant did not choose to come in to such terms. It cannot, however, be said that the light and air enjoyed by another may be taken by any one with impunity on the condition of paying him damages for the deprivation, to be assessed possibly somewhat as claims of compensation are assessed under the Lands Clauses Act; although the plaintiff may all along have been willing enough to take damages, provided she could get the sum she demanded. The question as to noise and vibration rests on a different footing. The Court, in my opinion, has jurisdiction to direct an inquiry as to damages in this case. It is in evidence that a steam-engine and circular saw are in constant work from morning to night fourteen feet from the windows of one of the houses, and that must be an annoyance amounting to a nuisance, if *Soltau* v. *DeHeld*, 2 Sim. N. S. 150, be law. The decree of the Vice-Chancellor must be sustained, and the appeal dismissed.

SELWYN, L. J.—I am of the same opinion. The defendant has wholly failed to prove that the delay of the plaintiff in commencing proceedings to establish her right was such as to disentitle her to relief. With respect to the substantial injury which the evidence shows the plaintiff to have sustasned, the case of *Durell* v. *Pritchard*, at first sight, would seem to justify the Court in granting a mandatory injunction. *Robson* v. *Wittingham*, however, shows that that class of cases has been carried too far. I think, therefore, that the Vice-Chancellor was right in limiting the relief to an inquiry as to damages sustained by the plaintiff, and not granting a mandatory injunction. The case goes far beyond the principle laid down in *Clarke* v. *Clark*, inasmuch as it is clearly proved that the plaintiff has in the present case sustained substantial injury; and so I agree with the Lord Justice that the appeal must be dismissed.

CORRESPONDENCE.

Division Courts—Evidence of parties to suit.

TO THE EDITORS OF THE LAW JOURNAL.

GENTLEMEN,—A point has arisen in our Division Court here, upon which I should be most happy to have your opinion.

It has been customary for our Judge, under the 102nd section of the Division Court Act, to allow plaintiffs to go into the witness box as of right, and prove their claims, when the amount is $8 00 or under. At the last Division Court held here, objection was taken that the plaintiff in a certain suit had no right to swear to his claim until he first gave sufficient evidence to lay the foundation of his claim, or to satisfy the Judge that a debt had been contracted; and that then it was discretionary with the Judge to allow him to swear as to the amount. The Judge absolutely refused to listen to the objection, and said there was no such law in the Division Court Act.

If the Judge is right, I see no sense whatever in the section.

I cannot see why a party should be allowed to prove his own claim under $8 00, any more than over that amount, unless the statute expressly gives him the right to do so, which I think it does not.

By giving your opinion at length on the section referred to, you will much oblige

Yours very truly,

INQUIRER.

Perth, July 17, 1868.

[See Editorial remarks.]—EDS. L. J.

AUTUMN CIRCUITS, 1868.

Eastern Circuit.

The Hon. the Chief Justice of the Common Pleas.

Ottawa	Wednesday	Sept.	2.
L'Orginal	Wednesday	Sept.	16.
Perth	Monday	Sept.	21.
Pembroke	Friday	Sept.	25.
Brockville	Wednesday	Sept.	30.
Cornwall	Wednesday	Oct.	14.
Kingston	Wednesday	Oct.	21.

Midland Circuit.

The Hon. Mr. Justice Hagarty.

Belleville	Wednesday	Sept.	30.
Picton	Monday	Oct.	12.
Napanee	Thursday	Oct.	15.
Cobourg	Tuesday	Oct.	20.
Whitby	Tuesday	Oct.	27.
Peterborough	Monday	Nov.	2.
Lindsay	Friday	Nov.	6.

Niagara Circuit.

The Hon. Mr. Justice J. Wilson.

Owen Sound	Tuesday	Sept.	22
Barrie	Tuesday	Sept.	29.
Milton	Tuesday	Oct.	6.
Hamilton	Monday	Oct.	19.
St. Catharines	Thursday	Nov.	5.
Welland	Wednesday	Nov.	11.

Oxford Circuit.

The Hon. Mr. Justice Morrison.

Cayuga	Thursday	Sept.	10.
Simcoe	Tuesday	Sept.	15.
Woodstock	Tuesday	Sept.	29.
Stratford	Tuesday	Oct.	6.
Brantford	Tuesday	Oct.	13.
Guelph	Thursday	Oct.	29.
Berlin	Wednesday	Nov.	4.

Western Circuit.

The Hon. Mr. Justice A. Wilson.

Walkerton	Wednesday	Sept.	16.
Goderich	Tuesday	Sept.	22.
Sarnia	Wednesday	Sept.	30.
London	Monday	Oct.	8.
St. Thomas	Tuesday	Oct.	27.
Chatham	Tuesday	Nov.	3.
Sandwich	Tuesday	Nov.	10.

Home Circuit.

The Ho i. the Chief Justice of Ontario.

County of Peel	Thursday	Sept.	24.
City of Toronto	Tuesday	Oct.	6.
County of York	Thursday	Oct.	15.

APPOINTMENTS TO OFFICE.

CANADA GAZETTE.

COUNTY COURT JUDGES.

WILLIAM MERCER WILSON, of Osgoode Hall, and of the Town of Simcoe, in the County of Norfolk, Esquire, Barrister-at-law, to be Judge of the County Court, of said County, in the place and stead of William Salmon, late of same place, Esquire, deceased. (Gazetted 9th May, 1868.)

WILLIAM HORTON, of Osgoode Hall, and of the City of London in the County of Middlesex in the Province of Ontario, Esquire, Barrister-at-Law, to be Deputy Judge of the County Court for the County of Middlesex in the said Province. (Gazetted 5th June, 1868.)

DEPUTY MINISTER OF JUSTICE.

HEWITT BERNARD, of the City of Ottawa, Esquire, and of Osgoode Hall, Barrister-at-Law. (Gazetted 29th May, 1868.)

ONTARIO GAZETTE.

ATTORNEY GENERAL FOR ONTARIO.

The Honorable JOHN SANDFIELD MACDONALD. (Gazetted 16th July, 1867.)

COMMISSIONER OF PUBLIC WORKS.

The Honorable JOHN CARLING, for the Province of Ontario. (Gazetted 16th July, 1867.)

COMMISSIONER OF CROWN LANDS.

The Honorable STEPHEN RICHARDS for the Province of Ontario. (Gazetted 16th July, 1867.)

PROVINCIAL SECRETARY.

The Honorable MATTHEW CROOKS CAMERON, for the Province of Ontario. (Gazetted 20th July, 1867.)

PROVINCIAL TREASURER.

The Honorable EDMUND BURKE WOOD, for the Province of Ontario. (Gazetted 20th July, 1867.)

ASSISTANT SECRETARY.

THOMAS CHARLES PATTESON, of the City of Toronto, Esquire, Barrister-at-Law, to be Assistant Secretary and Deputy Registrar for the Province of Ontario; such appointment to date from the 1st day of October, A.D., 1867. (Gazetted 7th March, 1868.)

CLERK OF THE CROWN.

ROBERT GLADSTONE DALTON, of Osgoode Hall, Esquire, Barrister-at-law, to be Clerk of the Crown and Pleas, in the Court of Queen's Bench, in the room and stead of Lawrence Heyden, Esquire, deceased. (Gazetted 27th June, 1868.)

DEPUTY CLERK OF THE CROWN.

SAMUEL REYNOLDS, Junior, Esquire, of the Town of Prescott, to be Deputy Clerk of the Crown and Clerk of the County Court for the United Counties of Leeds and Grenville in the room and place of W. H. Campbell, resigned. (Gazetted March 7th, 1868.)

WALTER RUBIDGE, of Brantford, Esquire, to be Deputy Clerk of the Crown, and Clerk of the County Court, for the County of Brant, in the room and stead of John Harvey Goodson, Esquire, superseded. (Gazetted 6th June, 1868.)

COUNTY ATTORNEYS AND CLERKS OF THE PEACE.

JULIUS POUSSETT BUCKE, of the City of Ottawa, Esquire, to be County Attorney for the County of Lambton, in the room of Timothy Blair Pardee, resigned.

HENRY A. HARDY, of the City of Toronto, Esquire, Barrister-at-law, to be County Attorney and Clerk of the Peace in and for the County of Norfolk, in the room and stead of William Mercer Wilson, Esquire, appointed Judge of the County Court of the County of Norfolk;

WILLIAM DOUGLASS, of Chatham, Esquire, Barrister-at-law, to be County Attorney and Clerk of the Peace, in and for the County of Kent, in the room and stead of Alexander D. McLean, Esquire, deceased. (Gazetted, 6th June, 1868.)

WARD HAMILTON BOWLBY, Esquire, LL. B., of Osgoode Hall, Barrister-at-Law, for the County of Waterloo, in the room and stead of THOMAS MILLER, Esquire, resigned. (Appointed 24th December, 1867.)

CLERK OF THE DISTRICT COURT.

HENRY PILGRIM, Esquire, Clerk of the District Court for the District of Algoma, in the place and stead of SEPTIMUS RUDYERD PRINCE, deceased. (Appointed 22nd October, 1867.)

POLICE MAGISTRATE.

DONALD BETHUNE, Esquire, Q. C., Barrister-at-Law, for the Town of Port Hope. (Appointed 30th January, 1868.)

STIPENDIARY MAGISTRATE.

CHARLES WESTLEY LOUNT, of the City of Toronto, Esquire, Barrister-at-law, to be Stipendary Magistrate, for the Territorial District of Muskoka. (Gazetted 14th March. 1868.)

INSPECTOR OF REGISTRY OFFICES.

The Honorable SIDNEY SMITH, of the Town of Peterboro, to be Inspector of Registry Offices in and for the Province of Ontario. (Gazetted 14th March, 1868.)

REGISTRARS.

CHARLES LINDSEY, Esquire, to be Registrar for the City of Toronto, in the room and stead of Samuel Sherwood, Esquire, deceased. (Appointed December 24, 1867.)

CHARLES WESTLEY LOUNT, of the Territorial District of Muskoka, Esquire, to be Registrar of said Territorial District. (Gazetted 11th April, 1868.)

NOTARIES PUBLIC FOR ONTARIO.

DUNCAN DUGALL, of the Town of Windsor, Esquire, Barrister-at-Law;

SOLOMON WHITE, of the Town of Windsor, Esquire, Barrister-at-Law;

ISAAC H. PRICE, of the City of Kingston, Attorney-at-Law;

JAMES KIRKPATRICK KERR, of the City of Toronto, Esquire, Barrister-at-Law;

ROBERT WALKER SMITH, of the City of Toronto, Attorney-at-Law;

JOHN BUTTERFIELD, of the Town of L'Orignal, Attorney-at-Law;

JOHN KLEIN, of the Township of Carrick;

BENJAMIN FRANKLIN FITCH, of the Town of Brantford, Esquire, Barrister-at-Law;

JAMES F. MACKLEM, of the Village of Chippewa, Gentlemen;

FRANCIS ALEXANDER HALL, of the Town of Perth, Gentleman;

JAMES FLEMING, of the Town of Brampton, Esquire, Barrister-at-Law;

SAMUEL McCAMMON, of Gananoque;

JAMES HARSHAW FRASER, of the City of London;

RICHARD H. R. MUNRO, of the City of Hamilton;

JOHN EDWARD ROSE, of the City of Toronto;

ELIJAH WESTMAN SECORD, of the village of Madoc;

LOUIS BERNARD DOYLE, of the town of Goderich;

JOHN BURNHAM, of the Town of Peterborough, for the Province of Ontario.

HENRY PRESTON, of the Village of Clifton, Gentleman, and CHARLES TAIT SCOTT, of the Village of Wingham, Gentleman.

EDWARD STONEHOUSE, of the Village of Strathroy, Gentltman, Attorney-at-law.

HUBERT L. EBBELS, of Petrolia, Esquire, Barrister-at-law.

FREDERICK D. BARWICK, of the City of Toronto, Esquire, Barrister-at-law. (Gazetted 14th March, 1868.)

ALEX. S. CADENHEAD, of the Village of Fergus, Esquire. (Gazetted March 7, 1868.)

J. FLETCHER CROSS, of Fergus, Esquire, Barrister-at-law;

JOHN VANDAL HAM, of the Town of Whitby, Gentleman, and ROBERT COLIN SCATCHERD, of the Village of Strathroy, Esquire. (Gazetted 4th April, 1868.

ARTHUR S. HARDY, of the Town of Brantford, and DAVID HIRAM PRESTON, of the Town of Napanee, Esquires, Barristers-at-law. (Gazetted 18th April, 1868.

GEORGE TAILLOU, of the City of Ottawa, Esquire, Attorney-at-law; HENRY HAMILTON LOUKS, of the Town of Pembroke, Esquire, Barrister-at-law; and FRANCIS HOLMESTED, of the City of Toronto, Esquire, Attorney-at-law. (Gazetted 9th May, 1868.)

GEORGE KENNEDY, of the City of Ottawa, Esquire, Barrister-at-Law; THOMAS KENNEDY, of the City of Toronto, Gentleman, Attorney-at-law; DAVID CREASOR, of the Town of Owen Sound, Esquire, Barrister-at-law, and WILLIAM H. LOWE, of the Town of Bowmanville, Gentleman, Attorney-at-law. (Gazetted 6th June, 1868.)

WILLIAM ROBERTSON CHAMBERLAIN, of Napanee, Gentleman, Attorney-at-law. (Gazetted 13th June, 1868.)

JOHN WHITLEY, of the City of Toronto, Gentleman, Attorney-at-law. (Gazetted 20th June, 1868.)

ASSOCIATE CORONERS.

JOHN W. CORSON of the Town of Brampton, Esquire, M. D., for the County of Peel.

EDWARD PLAYTER, of the Township of King, Esquire, M. D., for the County of York.

J. D'EVELYN, of the Village of Woodbridge, Esquire, M. D., for the County of York.

WILLIAM JOHNSTON, of the Town of Brampton, Esquire, M. D.; JOHN GRANT, of the same place, Esquire, M. D.; and THOMAS GRAHAM PHILLIPS, of the Village of Grahamsville, Esquire, M. D., for the County of Peel.

CHARLES E. BONNELL, of the Village of Bobcaygeon, for the County of Victoria.

DONALD ROBERTSON, Esquire, of Queenstown, for the Town of Niagara. (Gazetted 7th March, 1868.)

GEORGE DICKINSON, of the Township of Russell Esquire, M.D.;

ROBERT A. ROE, of the Township of Clarence, Esquire, M.D., for the United Counties of Prescott and Russell;

JAMES FURGUSON, of the Township of Cumberland, Esquire, M.D., for the United Counties of Prescott.

T. F. CHAMBERLIN, of Morrisburgh, Esquire, M.D., for the United Counties of Stormont, Dundas and Glengarry;

JOHN MASSIE, of the Village of Colborne, Esquire, M.D. and AMOS E. FIFE, of the Village of Brighton, Esquire, M.D., for the United Counties of Northumberland and Durham;

SAMUEL RAE, of tbe Town of Whitby, Esquire, M.D., for the County of Ontario.

HIS EXCELLENCY has also been pleased to accept the resignation of GEORGE EDWARD BULL, of the Village of Stirling, for the County of Hastings.

DONALD McMILLAN, of Alexandria, Esquire, M.D., and SAMUEL CAMPBELL, of Notfield, Esquire, M.D., for the United Counties of Dundas, Stormont and Glengarry;

ROBERT TRACY, of the Village of Seaforth, Esquire, M.D., for the County of Huron;

J. S. W. WILLIAMS, of Oakville, Esquire, M.D., for the County of Holton. (Gazetted 7th March, 1868.)

NIVEN AGNEW, of the Township of Delaware, Esquire, M.D., for the County of Middlesex;

JOHN MANSON, of the Village of Iona, Esquire, M.D.; WILLIAM McGEACHY, of the Village of Fingal, Esquire, M.D.; and GEORGE W. LING, of the Village of Wallaceburg, Esquire, M.D., for the County of Elgin;

ROBERT HENRY PRESTON, of Newboro', Esquire, M.D., for the United Counties of Leeds and Grenville;

NEIL FLEMING, of the Township of Culross, Esquire, M.D., for the County of Bruce;

ROBERT RENFREW SHITH, of the Townsbip of Lobo, Esquire, M.D., for the County of Middlesex.

JOHN WILTON KERR, of the Village ef Ainleyville, Esquire. M.D., for the County of Huron. (Gazetted 14th March, 1868.)

JAMES TURNER MULLEN, M.D., of Tullamore, and SAMUEL ALLISON, M.D., of Caledon East, Esquire, for the County of Peel;

FREDERICK HENRY SMITH, of the Township of Kaladar, M.D., Esquire, for the United Counties of Simcoe and Addington;

JOHN CARNEY, of the District of Algoma, Esquire, M.D., for the said District. (Gazetted 28th March, 1868.)

JOSEPH JOHNSON, of the Township of Winchester, Esquire, M. D. for the United Counties of Stormont, Dundas and Glengarry.

ANDREW MOORE, of Kincardine Esquire, M.D., for the County of Bruce;

THOMAS WHITE, jur., of the City of Hamilton, for the City of Hamilton. (Gazetted 4th April, 1868.)

REGINALD HERWOOD, M.D., and JAMES W. DIGBY, M.D., Esquires, of the Town of Brantford, for the County of Brant. (Gazetted 11th April, 1868.

ROBINSON BRITTON PRICE, Esquire, for the United Counties of Lennox and Addington. (Gazetted 1st April, 1868.)

SAYERS S. HAGAR, of the Township of Wainfleet, Esq., for the County of Welland. (Gazetted 30th April, '68.)

GEORGE NEIMIER, of the Village of Neustadt, Esquire, M.D., for the County of Grey;

ROBERT WILLIAM HILLARY, of Aurora, Esquire M.D. for the County of York;

CHARLES WESTLEY LOUNT, of the Village of Bracebridge, Esquire, for the Territorial District of Muskoka. Gazetted 9th May, 1868.)

WILLIAM LAW, of the Village of Duke Hill, Esq. M.D., for the County of Middlesex. (Gazetted 16th May, 1868.)

HENRY WILLIAM DALTON, and ALEXANDER STEWART, of Albion, Esquires, M.D.; and J. KNIGHT RIDDELL, of Alton, Esq., M.D., for the County of Peel;

CHARLES McKENNA, of Loretto; THOMAS TURNBULL, of Mono Centre; and JAMES HENRY, of Orangeville, Esquires, M.D., for the County of Simcoe;

DANIEL BEATTY, of the Village of Richmond, Esquire, M.D.. for the County of Caledon. (Gazetted 6th June, '68.)

THOMAS ARMSTRONG, Esquire, M.D, for the County of Ontario. (Gazetted 20th June, 1868.)