DIARY FOR MARCH.

1. Friday *St. David's.* School reports to be made. Supt. of Sep. Sch. to give notice to Clerk of Municip.
3. SUN... *Quinquagesima.*
4. Mon... Last day notice of trial for Co. Court. Recorder's Court sits.
5. Tues... *Shrove Tuesday.*
6. Wed... *Ash Wednesday.* Notice for Chancery rehearing term to be served.
10. SUN... *1st Sunday in Lent.*
12. Tues... Quarter Sess. and Co. Court sittings in each Co.
14. Thurs. Error and Appeal sittings. Chancery rehearing term begins.
17. SUN... *2nd Sunday in Lent. St. Patrick's Day.*
24. SUN... *3rd Sunday in Lent.*
25. Mon... *Lady Day.*
27. Wed... Appeals from Chancery Chambers.
31. SUN... *4th Sunday in Lent.*

NOTICE.

Subscribers in arrears are requested to make immediate payment of the sums due by them. The time for payment so as to secure the advantages of the lower rates is extended to the 1st April next, up to which time all payments for the current year will be received as cash payments.

The Local Courts'
AND
MUNICIPAL GAZETTE.

MARCH, 1867.

TRADES UNIONS AND CO-OPERATIVE ASSOCIATIONS.

The struggles between labour and capital have been of long duration. But inasmuch as capital is generally represented by the few who are powerful, and labour by the many who are without the power of wealth, co-operation, or combination on the part of the latter has has been found necessary. Fair play is the object to be attained; but man, in affairs of business, is essentially selfish. The employer wishes to have his work done for as little as possible, while the employed wants as much as possible for his labour. The opposite interests produce conflict, and when the conflict is long continued, distress and loss to the one party or the other, if not to the public, is the sure result.

The law has ever watched combinations of masters or workmen with a jealous eye. The interest of the public is the steady progress of commerce and manufactures. Whatever tends to interrupt this progress, attracts attention, and at times is visited with punishment. How far it is lawful to combine, and when unlawful, shall be the subject of our present enquiry.

It was at one time supposed, both in England and the United States, that a combination of workmen to raise their wages was illegal, (per Grose, J., in *Rex* v. *Mawbey*, 6 T. R. 619, 636,) and if followed by overt acts, was indictable (see *People* v. *Fisher*, 14 Wendell, 9; contra, *The Commonwealth* v. *Hurst*, 4 Metcalfe, 111). The Legislature of England, by various statutes, from the reign of Edward the First to that of George the Fourth, prohibited agreements either of masters or workmen, for the purpose either of raising or lowering wages, or of altering hours for labour, or otherwise affecting their mutual relations. These agreements were by some of the statutes enacted to be, and by others declared to be illegal, and the parties entering into them made subject to punishment. But by the English statute, 6 Geo. IV., cap. 129, an entire change of the law was made. By section two, all the statutes prohibiting such agreements are enumerated and absolutely repealed. By section three, prohibition is restricted to endeavours by force, threats, or intimidation, molestation, or obstruction to affect wages or hours, and these are declared illegal and punishable. By sections four and five, it is declared that neither masters nor workmen shall be punishable for agreements in respect of wages or hours, unless they infringe the provisions of section three.

Judges in expounding this statute have used language denoting that, in their opinion, the agreements either of all masters or all workmen, either as to wages or hours, unless within section three of the Act, are legal (see *Regina* v. *Harris*, Car. & M. 661; *Regina* v. *Selsby*, note *a* to Rowlands' case, 2 Den. C. C. 384; *Regina* v. *Rowlands*, 17 Q. B. 671, 686; *Hilton* v. *Eckersley*, 6 El. & B. 47).

It therefore becomes of importance to know precisely the language of section three, and it is as follows:—"If any person shall, by violence to the person or property, or by threats or intimidation, or by molesting, or in any way obstructing another, force, or endeavour to force, any journeymen, manufacturer, workmen, or other person hired or employed in any manufacture, trade, or business, to depart from his hiring, employment, or work, or to return his work before the same shall be finished, or prevent, or endeavour to prevent, any journeyman, manufacturer, workman, or other person not being hired or employed, from hiring himself to or from accepting work or employment from any person or persons; or if any person shall use or employ violence to the person or property of another, or threat or intimidation,

or shall molest or in any way obstruct another, for the purpose of forcing or inducing such person to belong to any club or association, or to contribute to any common fund, or to pay any fine or penalty, or on account of his not belonging to any particular club or association, or not having contributed or refused to contribute to any common fund, or to pay any fine or penalty, or on account of his not having complied or of his refusing to comply with any rules, orders, resolutions or regulations made to obtain an advance, or to reduce the rate of wages, or to lessen or alter the hours of working, or to decrease or alter the quantity of work, or to regulate the mode of carrying on any manufacture, trade or business, or the management thereof; or if any person shall, by violence to the person or property of another, or by threats or intimidation, or by molesting or in any way obstructing another, force or endeavour to force any manufacturer or person carrying on any trade or business, to make any alteration in his mode of regulating, managing, conducting or carrying on such manufacture, trade or business, or to limit the number of his apprentices, or the number or description of his journeymen, workmen or servants, every person so offending, or aiding, or abetting, or assisting therein, being convicted thereof, shall be imprisoned only, or shall and may be imprisoned and kept at hard labour for any time not exceeding three calendar months."

This section does not subject to punishment persons who meet together for the sole purpose of consulting upon and determining the rate of wages or prices which they shall require or demand for their work, or for the hours or time for which they shall work in any manufacture, trade or business, or who shall enter into any agreement, verbal or written, among themselves, for the purpose of fixing the rate of wages or prices which they shall require or demand for their work, or the hours of time for which they will work (s. 4).

Nor does the section subject to punishment any persons who may meet together for the sole purpose of consulting upon or determining the rate of wages or prices which they shall pay to their journeymen, workmen or servants, for their work, or the hours or time of working in any manufacture, trade or business, or who shall enter into any agreement, verbal or written, among themselves, for the purpose of fixing the rate of wages or prices which they shall pay to their journeymen, workmen or servants, for their work, or the hours or time of working (s. 5).

A threat, within the meaning of section three, must be an intimation made with the intention of forcing or unduly influencing the conduct of the person to whom it is addressed. It is now, however, too late to say that the word threat is limited to the declaration of an intention to do acts which have an intimate connection with personal violence. The cases that have been decided show that the word must have a wider sense, viz.: a threat, by act or words, for the purpose of doing some injury to another person. But it is essential that it should be made for the purpose of intimidating the person to whom it is addressed (see *Walsby* v. *Anley*, 30 L. J., M. C. 121; *O'Neill* v. *Longman*, 4 B. & S. 376; *Hilton* v. *Eckersley*, 24 L. J., Q. B. 353; *Wood et al.* v. *Bowron*, 2 L. R., Q. B. 21, S. C., 10 Cox, C. C. 344; *Hornby* v. *Close*, 2 L. R., Q. B. 153).

No doubt it was supposed by the Legislature, when passing this Act, that if workmen on the one hand refused to work, or masters on the other refused to employ, such a state of things would not long continue, and that the party whose pretensions were not founded on reason and justice would ultimately give way—the masters, if they offered too little, or the workmen, if they demanded too much. But the frequent disagreements in England between employers and workmen have been found to cause so much private suffering and public loss, that the Queen in her recent speech, when opening the present session of the Imperial Legislature, drew attention thereto, and announced her intention of issuing a commission to enquire into and report upon the organization of Trades Unions and other Societies, whether of workmen or employers, with power to suggest any improvements of the laws that may be found necessary.

The result will be looked for with great interest. The attempt to prevent collisions between capital and labour, and yet preserve to each its peculiar rights, is, though simple in theory, most difficult in practice. It is the right of the capitalist to have labour at a fair compensation, and it is the right of the labourer to have a fair compensation for his personal strength, energy and skill. But as each views the amount of "fair compensation" from his own stand point, it is no wonder that they often disagree. Complete legislation on such

a subject is impossible, and yet some legislation is necessary, and so far as England is concerned, further legislation is imperatively demanded.

STATUTORY DEFENCES.

A correspondent brings up a point of some interest in Division Court practice which it may be as well to refer to more at length than simply giving an answer to the question put, which is to following effect: Can a defendant, who, having failed to give notice of a statutory defence at the proper time before the trial or hearing of a case, after an adjournment of it to a subsequent sittings of the Court give such notice, as for the latter sittings, and at such time be entitled to the benefit of it?

The question turns on the 93rd section of the Division Courts' Act, which requires that a defendant desiring to avail himself of the Statute of Limitations, "shall, at least six days before the trial or hearing give notice thereof in writing."

We think that the language in the 87th section: "Six days before the day appointed for the trial of the same"—the language in 9th section, "Six days before the day appointed for the trial;" and that in the 93rd section all refer to the same day—that is, the day on which the defendant is summoned to appear and answer, and the day on which, "in the event of his not appearing," the plaintiff may proceed to obtain judgment against him by default. When the case to which our correspondent refers was called on, "on the day named in the summons," the defendant doubtless applied in person, or by some one on his behalf, and answered the claim against him—denied it, we assume, from the statement. This denial was in fact a joinder of issue, no "formal joinder" being necessary; and shewed the issue that was before the judge for "trial," and this is in our opinion the trial or hearing before which six days notice must be given in writing to enable a defendant to raise the defence of the Statute of Limitations. The denial of the claim set up at the trial was the issue adjourned till the following court. The hearing of the case to the next sittings of the court is only a continuation as it were of the "trial or hearing," unless leave be given by the judge to add another defence; the defendant is not in our judgment entitled to claim the benefit of such defence at the second court. The writer recollects a similar question being raised before Judge Gowan some years, and he decided it in the manner that has just been stated.

As to the particular defence desired to be added in the case presented by our correspondent, it is not to be considered as a meritorious defence; and unless under special circumstances it is not probable that a judge would grant an application for leave to set it up.

SELECTION.

TOO MUCH INSURANCE.

The reports of losses by fire in various parts of the country, reveal the fact that persons suffering from these accidents do not, as of yore, come out with a loss to themselves, but frequently with a profit.

The facilities for insuring are now so easy, and persons are begged, we might say, so often to insure, that insurance companies may lay the major part of the heavy losses to their own mismanagement. How often do we read of cases where parties have been burned out, having policies of insurance upon their stocks for two or three times the amount of their stocks. What an inducement to fraud is here held out! Parties, who have been always noted for honesty, might be tempted under these circumstances, to fire their premises; and, having destroyed all traces of what stock was on hand, claim the full amount of their policies of insurance.

We say again, that our various insurance companies have it within their power to stop this source of loss to them. They alone are frequently responsible for the fires and losses. In the first place, let it be understood that insurance companies are not machines for money making purposes, or for putting an insured in a better position than that in which he was before a fire happened. No really honest man insures his property up to the full value. He has confidence in his own carefulness, and, consequently, wishes to be his own insurer to a certain extent. Three-fourths of the full cash value of property is sufficient insurance for any one; and no insurance company is doing justice to its stockholders, in insuring for more than that proportional value.

We know that parties frequently argue, and rightly, that insurance companies take their premiums, and should consequently pay losses without grumbling. Yet, we oppose the plan of insuring everybody *ad libitum*, without examination and scrutiny. Let it be an adopted plan by insurance companies, for persons to be required to show more particularly and specifically what the value of their property is at the time of insuring. Let the public ask for insurance, and not be begged by the agents and runners to insure. By the adoption of plans like this, much good may be accomplished and fewer losses will be reported.—*Ins. Rep.*

UPPER CANADA REPORTS.

COMMON LAW CHAMBERS.

(*Reported by* HENRY O'BRIEN, *Esq., Barrister-at-Law and Reporter in Chambers.*)

IN THE MATTER OF A SUIT IN THE SIXTH DIVISION COURT OF THE COUNTY OF WENTWORTH, BETWEEN WALTER BRADSHAW, PLAINTIFF, AND EDWARD DUFFY, DEFENDANT.

Prohibition—Jurisdiction of Division Courts—Title to land. —Fences.

A., intending to make a line fence between his land and that of B., by mistake made the fence on B.'s land. Afterwards, a correct line having been run, it was agreed that A. & B. should each make a portion of the fence on the correct line. B., in making his share, used the rails of the old fence made by A. A. sued B. in the Division Court for the price of the rails so used, and the judge having decided in his favour, B. applied for a prohibition, but *held*, that the judge had jurisdiction.

[Chambers, February 7, 1867.]

An action was brought in the Sixth Division Court for the county of Wentworth, for $28, being amount awarded by Peter McLagan, Edmund Smith, and Eliza Mann, fence viewers of the township of Ancaster, as payable by said defendant to said plaintiff for share of line fence and rails between lots 33 and 34 of the 4th concession of said township.

The case was tried before his Honor Judge Logie, at Ancaster, and evidence given before him in substance as follows:

That the plaintiff had put up a line fence many years ago on what was supposed to be the line between his lot and an adjoining lot, which was subsequently purchased by Duffy, the defendant. Some time after the defendant had purchased the adjoining lot, he got a surveyor to run the line between him and the plaintiff, and the surveyor, in running this line, took in a triangular piece of land from the plaintiff, of which he had been in possession. In order to save litigation, the parties entered into an agreement to run the division line through the middle of the triangular piece of land, dividing it equally between them. Fence viewers were got to determine the portion of the fence which each party should erect and maintain, and each party erected his part of the fence on the line agreed upon. In doing so, Duffy, the defendant, used the rails of the fence which had been originally erected and maintained by Bradshaw, the plaintiff, but which fence by the agreement was upon the land taken in by the defendant. The plaintiff brought the suit for the value of the rails so taken by the defendant.

The learned judge reserved his judgment, which he subsequently gave in writing, in favor of the plaintiff, as follows:

"It is no doubt the case that, in general, erections put upon lands by a person not the owner cannot be removed, but become the property of the owner, as forming part of the freehold, and probably a fence would be considered part of the freehold. The law is however modified in favor of those who, in consequence of an unskilful survey, have made improvements upon lands as their own which, on a correct survey being made, turn out to belong to a neighbour. Section 53 of chapter 93 of the Consolidated Statutes for Upper Canada provides that, in such cases, the owner of the land, in an action of ejectment, shall not recover possession until he pays for the improvements, the value of which are to be assessed by the jury.

It has been held, in *Campbell* v. *Fergusson*, 4 U. C. C. P. 414, recognized in *Hutton* v. *Trotter*, 16 U. C. C. P. 367, and *Morton* v. *Lewis*, 16 U. C. C. P. 485, that the act applies to private surveys made on the defendant's own account, as well as to public surveys; and in the last named case, *Morton* v. *Lewis*, it was held that fences were improvements within the meaning of the act.

In this case, supposing that no agreement had been made between these parties about the land, and that Duffy had brought an action of ejectment for the land, Bradshaw would have had a right under the statute to assess against Duffy the value of his improvements, including the value of the fences; and Duffy would have had to pay for the improvements before he could recover possession, and Bradshaw ought not to be placed in a worse position in consequence of the agreement settling the line, than he would have been in if an action of ejectment had been brought against him. I think, both legally and equitably, the plaintiff in this suit is entitled to recover for the value of the rails, which originally belonged to him, and which defendant used in the erection of his part of the fence. But I cannot allow him for old rails what new ones (which it may reasonably be expected would last much longer) would cost."

On the 28th January last, *O'Reilly*, Q. C., obtained a summons calling on the plaintiff, Bradshaw, and the Judge of the County Court of the County of Wentworth, to shew cause why a writ of prohibition should not issue to prohibit all proceedings in this matter, and upon an order for payment made by the said Judge of the County Court of the County of Wentworth, presiding in the Division Court, on the ground that the said judge had no jurisdiction to try or adjudicate upon the matters tried and adjudicated upon by him in the said suit in the said Division Court.

Spencer showed cause, and objected that the summons did not state the grounds upon which the application was made with sufficient particularity. That the title to lands did not come in question, the contention simply being whether a Judge of a Division Court could adjudicate upon the question, fixture or no fixture. If he can, and there is no doubt that he can, he had jurisdiction in this case, and there can be no prohibition. The question is as to the ownership of the rails, not of the land. Rails cannot, under the circumstances of this case, be considered as part of the realty.

O'Reilly, Q. C.—The summons is sufficient, and want of jurisdiction may be shown by affidavit. (This point was not pressed by the other side, the learned judge being against the objection.)

Fences are a part of the realty and go with the land, and the judge had no jurisdiction to try a case where the title to land came in question.—*Elwes* v. *Maw*, 3 East. 38; *Thresher* v. *E. London Waterworks Co.* 2 B. & C. 609; *Steward* v. *Lombe*, 1 B. & B. 506; *Colgrave* v. *Diosantos*, 2 B. & C. 76; *Bunnell* v. *Tupper*, 10 U. C. Q. B. 414; Amos & Ferrard on Fixtures, 9, 13.

Even if the judge had power to decide as to whether the fence was or was not a fixture, he

could not by deciding that question wrongfully thereby give himself jurisdiction, when in truth he had no jurisdiction The equities of the case are with Duffy, who for the sake of a settlement gave up a strip of his land.

HAGARTY, J.—I am of opinion that I should not order a prohibition in this case, or interfere with the decision of the learned judge. I am not dissatisfied with his view of the facts; and with the powers vested in him by the statute, I cannot say he has decided erroneously. When the fence-viewers awarded that Duffy should maintain a specified portion of the boundary fence, and to do that he took away the rails formerly furnished by Bradshaw, to maintain what used to be a division fence on land now discovered to be Duffy's, I cannot say it was beyond the learned judge's power to decide that such rails so removed from the freehold to which they were perhaps in a manner annexed, should not be paid for by Duffy when used by him to erect the new fence, which he was bound by the award to maintain. They were originally Bradshaw's property, and put there for a special purpose, not to become part of Duffy's freehold in any view of the parties. By the new survey and agreement, that fence ceased to answer the intended purpose, and a new fence is to be erected instead. Duffy is bound to maintain part of the new fence, and he takes up these rails and uses them to fulfil his obligation.

I think Duffy must pay the costs of the parties whom he has unnecessarily brought here.

THE QUEEN v. MOSIER.

Habeas Corpus—29, 30, *Vic. cap.* 45—*Revisory powers of judges of Superior Courts over decisions of magistrates—Jurisdiction of Police Magistrates.*

The 29 & 30 Vic., cap. 45, had in view and recognized the right of every man committed on a criminal charge to have the opinion of a judge of Superior Court upon the cause of his commitment by an interior jurisdiction.

The judges of the Superior Courts are bound, when a prisoner is brought before them under that statute, to examine the proceedings and evidence anterior to the warrant of commitment, and to discharge him if there does not appear sufficient cause for his detention.

The evidence in this case warranted the magistrate in requiring bail.

Police Magistrates have jurisdiction both in cities and counties.

[Chambers, March 4, 1867.]

D. B. Read, Q. C., obtained a writ of *habeas corpus* to bring up the body of one John Mosier, who was a prisoner in the common jail of the county of York, charged with an assault on Dr. Hunter, of Newmarket, with intent to do him grievous bodily harm; and on the same day he obtained a writ of *certiorari*, directed to Alexander McNabb, police magistrate for the city of Toronto, to send up the proceedings had before him, upon which the warrant to commit the prisoner had been founded.

On the return of these writs, the evidence taken before the police magistrate at Newmarket was produced and read, from which it appeared—

That the municipal election for the village of Newmarket was to be held on Monday, the 7th January, 1867, and that Dr. Hunter was one of the candidates; that he had made arrangements to go with a Mr. Atkinson to Queensville to see a man by the name of Stiles, but on Sunday night, the 6th of January, it was arranged in the presence of Mr. Campbell, Mr. Hodge and Mr. McMaster, at Dr. Hunter's own suggestion, that he should take Mr. McMaster's horse and cutter and drive himself to Queensville, instead of going with Mr. Atkinson, as had been arranged the evening before. Although Dr. Hunter does not remember Mosier's name being then mentioned, he said it was tacitly understood that Mosier, who was Mr. McMaster's agent, was to call him early, and although no hour was named, he seems to think it was to have been at 5 o'clock. At 5 o'clock there was a noise heard at Dr. Hunter's door, which awakened him. He got up and found it was Mosier, who came in and said he came to awaken him—that he was afraid he would oversleep himself. Dr. Hunter asked him to stop and get some breakfast, but he said that he would go and get the horse and cutter ready. He remained some time—five or ten minutes. The arrangement was that he was not to return, and Dr. Hunter was to go down to Mr. McMaster's; it was five or six hundred yards from his house. Dr. Hunter got breakfast and asked the girl what time it was, and he was told it was half-past five. He then got up and put on his overcoat and overshoes and muffler. About 25 minutes to six o'clock Dr. Hunter left his house on Timothy street to go to Mr. McMaster's house on Main street, and took the direct road to it. Timothy street goes into Main street at right angles. As Dr. Hunter left his house he saw some one to his right on Timothy street, two or three rods from him, but who was behind him. When he went towards Main street he heard his steps on the snow behind him, and partially turned round and saw the man, and he heard him following him. When about half-way down to Main street he heard as if some one was walking behind him, and he got a violent blow as if a sudden concussion, and this is all he remembers. He was deprived of consciousness. He had been walking slowly, expecting the person to come up. It flashed through his mind it was perhaps Mosier waiting for him, but he did not form this opinion from his form or appearance. When the person following him did not overtake him, he thought that it was Mosier, but he did not turn far enough round to see who struck him, but before he was struck, and just as he was turning round to see who was following him, the thought occurred to him that it was Mosier. As far as he can tell he was struck one blow. The blow was on the upper part of the spine. He could not say how long it was till he became conscious. His first recollection was hearing the 6 o'clock bell ring. He was lying on his face and side; no one near. He could not rise, and his tongue was partially paralyzed from the effect of the blow. He called as loud as he could, and one Dennis came up, and then went and brought Mr. Landy, who took him home, where he was confined to bed for five or six days, but his neck and spine were painful for fourteen days. No one, he says, knew that he was to be out at that particular time but his servant girl and Mosier. On his cross-examination he said he did not say it was Mosier who struck him, or that he had any motive for assaulting him. All his knowledge of him would lead him to believe that he was his friend, but he says he accused Mosier of apathy at the election in January last. He thought he ought to have influenced his brothers-in-law, one of whom was strong against him, and he says dis-

tinctly there was no arrangement that Mosier was to come back for him.

William McMaster said he was the person referred to by last witness (Dr. Hunter). Mosier did not know from him of any arrangement with Hunter to lend him his horse and cutter to go to Queensville. Mosier does not live at his place, as he is married. McMaster undertook to wake Hunter on Monday morning. On Monday morning Mosier woke witness by throwing snow on his window, and when he found it was Mosier he told him to come up to his room. He had directed Mosier to waken him on Monday morning at five o'clock, but gave him no reason, but thinks he had told Mosier to waken him; that he had arranged with Hunter to go to Queensville with his horse and cutter. He looked at his watch when Mosier wakened him, and it was about five o'clock. He heard Mosier go out to the street after he got his instructions, and in about fifteen or twenty minutes he saw Mosier return into his yard. He looked through the window and recognized him, and did not see him after this till six o'clock, but heard him moving the sleigh in the yard. He heard him after this go out of the yard and go up the street, and he had only been gone a few minutes when he heard him running like as for his life. He ran into the yard and up into witness' bedroom without slacking his speed. It was about twenty or thirty minutes after he came in before he went out again. This was the time that he went out after he had returned from waking Hunter. Witness asked Mosier what was the matter? He replied to hurry and come down and he would tell; he said tell him then; and he then said Dr. Hunter had been nearly killed dead; some one had attacked him. He told Mosier to go and waken Dr. Hunter, and then to go and get the horse and cutter to go to Queensville. McMaster, when he went down stairs after hearing of Dr. Hunter's being beaten, found Landy, Atkinson and Mosier down stairs. He does not remember looking at his watch, but it was almost daylight. When he got to Dr. Hunter's the lamp was lighted. On his cross-examination he said that if Mosier had gone out in the ordinary way he would have heard him. He did hear some noise in the yard, and thought it was Mosier attending to his work. When he saw Dr. Hunter at his own house he was lying on the sofa and seemed unconscious. On his re-examination he said it was between seven and half-past seven when he saw Mosier ready with the horse to go out.

John Dennis said he remembered the 7th January. He saw Dr. Hunter about fifteen or twenty minutes past six that morning. He was lying about five or six rods from his own door. He had gone to Dr. Hunter's to enquire for him, and was told he had gone to McMaster's half an hour before. He then went towards McMaster's, but while yet on the steps of Dr. Hunter's house heard dismal groans, and when he came down the steps he saw a black object lying on the snow. He turned him over and saw it was Dr. Hunter lying on his face. He was bleeding from the mouth and nose. He attempted to raise him but could not, and then ran to his house for Mr. Landy and went to call Mr. Allen, and came back when Landy came out, and they went and carried the Dr. to his own house, with difficulty. The Dr. appeared to drag his feet as if trying to walk. He was unable to walk and they carried him to his house. He complained of being badly hurt somewhere about the back of the neck. He soon after returned to his own house, which is the same side of the street as Dr. Hunter's, but west of it and further from Main street. Landry went in for a minute, as he was not quite dressed. They then went to McMaster's, and they met Atkinson and then Mosier. It was not more than twenty minutes from the time they first saw Dr. Hunter on the sidewalk till they got to McMaster's house, where they stayed not more than five or ten minutes.

On his cross-examination he says when they met Mosier they told him what had happened to Dr. Hunter, and he seemed to be very much surprised, as much as any one could be who had not heard it.

McMaster, on his being recalled, says he judged it to be from twenty to thirty minutes after Mosier returned from waking Dr. Hunter that he went out the second time, and it was about fifteen or twenty minutes from the time he wakened Dr. Hunter until he returned. He says he thinks it was after the ringing of the town bells that Mosier went out the second time. He says he is tolerably sure it was after the ringing of the bells that Mosier went out the second time.

Landy corroborated the statement of Dennis. He thinks it was twenty minutes past six when they got to McMaster's after taking the Dr. in, and he thought from what he saw that Hunter's life was in danger, and he says they met Mosier and told him about their finding Dr. Hunter and carrying him to his house.

James Allen says that John Dennis came to his house, knocking at the door, and he asked me to come out quick; that Dr. Hunter was killed. Dennis then left, and he went into his room to put on his clothes, but before he had finished Dennis came again and called me to come quickly, and he went to Dr. Hunter, and saw the Dr. there.

D. B. Read, Q. C., (*Harrison* with him) on behalf of the prisoner, after reading the evidence, contended that the proceedings and examinations had taken place in the county of York, but that the warrant had been issued in the city of Toronto. That, under the provisions of the statute 29 & 30 Vict. cap. 45, the judges of the superior courts had a revisory power given to them, and were bound to examine the proceedings, "and to the end that the sufficiency thereof to warrant such confinement or constraint may be determined by such judge or court." That upon such examination it would appear that there was no evidence against the prisoner to warrant his commitment, and that he ought to be discharged.

D. McMichael, for the crown, argued that the return showed that the magistrate had ordered that the prisoner should enter into his own recognizance for $500 to appear at the next Assizes to be held in and for the county of York, on the 8th day of April next, to answer to any indictment which might be then and there preferred against him, which he had refused, but asked to be committed to the next court of competent jurisdiction, on bail, and was therefore committed. That the prisoner had now all that he was entitled to have, for the statute only au-

thorized the judge to bail the prisoner, not to discharge him. That the 5th section of this act was only in furtherance of the 3rd section, and gave no revisory or other power greater than it conferred. That it was not the intention of the legislature to make a judge in chambers a court of review from the proceedings of magistrates. That this intention, and the construction he put upon the 3rd and 5th sections was to be inferred from the fact that the statute gave an appeal from the court into which the proceedings were to be returned by the judge to the Court of Appeal, but did not give it from the decision of a single judge. That the duty of justices of the peace was pointed out in the Con. Stat. C. cap. 102, sec. 57; and he is authorized to determine, upon the evidence, whether the accused shall be committed for trial, bailed or discharged. That the judge ought not to interfere with his decision. That the power of this police magistrate to deal with this question was clear from ss. 357-360 of the 29 & 30 Vic. cap. 51. He was *ex officio* a justice of the peace for the whole county, and could issue any warrant or try and investigate any offence in a city when the offence has been committed in the county in which such city lies, or which it adjoins.

J. WILSON, J.—On the question of jurisdiction it is clear, from s. 357 of the 29 & 30 Vic. c. 51, that the police magistrate is *ex-officio* a justice of the peace in and for the county of York; and, by s. 360, a justice of the peace for a county in which a city is may try and investigate any case in a city, when the offence has been committed in the county or union of counties in which such city lies, or which such city adjoins. The police magistrate had therefore jurisdiction, &c, both in the county and city, and the proceedings are legal in this respect.

Our late statute 29 & 30 Vic. cap. 45, is chiefly taken from the imperial statute 56 Geo. III. cap. 100, but the 5th section is new. Writs of *certiorari* had in practice been issued in vacation by order of judges in chambers in this province previous to the passing of this act, but the learned Chief Justice, in the case of *The Queen* v *Burley*, 1 U. C. L. J. N.S. 34, for extradition, doubted the power of judges to order these writs in vacation, and it was proper that all doubts should be removed respecting this practice. In that same case it was intimated that, in the opinion of some of the judges, every man committed on a criminal charge had the right to have the opinion of one of the Superior Court judges pass upon the cause of his commitment by an inferior jurisdiction.

In my view of this clause it had reference to both these opinions. Before this act was passed, when by the return of the *habeas corpus* and the proceedings upon which a prisoner stood committed, it appeared that the commitment was illegal, it had been the practice for judges in chambers to discharge him.

It is true that the power to determine upon the sufficiency of the proceedings to warrant such confinement is not given in direct words, but it is certainly by the plainest implication. The *habeas corpus* and its return show the immediate cause of the detention, which may on its face be all right, but section 5 of the act goes further, and authorizes the issue of a writ of certiorari for the production before the judge of all and singular the evidence, depositions, convictions, and all proceedings had or taken touching or concerning such confinement or restraint of liberty. Why? "To the end that the same may be viewed and considered by such judge or court, and to the end that the sufficiency thereof to warrant such confinement or restraint may be determined by such judge or court."

The third section of the act has reference to the truth of the facts stated in the return to a writ of *habeas corpus*. Before the 59 Geo. III. there was no way of enquiring into the truth of the facts as stated in the return. They might be good as stated but untrue in fact. It was so here until last year, but with no practically bad result, for we have had no case in which a false return has been suggested. Now, the truth of the facts in the return law can be enquired into in the manner pointed out by the 3rd section. I do not, however, see, as has been contended for here, how the fifth section is to be construed as referring to this, or in aid of it only. It appears to me that it has a different object to the one which has been already mentioned.

Adopting the views expressed, I cannot help holding that a judge is bound to the examine proceedings anterior to the warrant, to see that they authorize it, and if they do not that he is bound to determine whether they warrant the detention, and if not to discharge him.

In this case the prisoner is so far in voluntary custody, for all he was required to do was to enter into his own recognizance. He refused and was committed. I find him in prison, and so entitled to the benefit of the act, in strict right.

By stat. 22 Vic. cap. 102, s. 57, when all the evidence upon the part of the prosecution against the accused has been heard, if the justice be of opinion that it is not sufficient to put the accused party upon his trial for any indictable offence, he shall forthwith order him to be discharged as to the information then under enquiry; but if in the opinion of the justice the evidence is sufficient to put the accused party upon his trial for an indictable offence, although it may not raise such a strong presumption of guilt as would induce such justice to commit the accused for trial without bail, &c., then such justice shall admit the party to bail, &c. In this respect the police magistrate has complied with the provisions of the statute. He did not think it was a case where the presumption of guilt was so strong as to induce him to commit the prisoner for trial without bail, but still a case for which he thought bail ought to be required.

I agree with the police magistrate that it was a case which justified him in requiring bail.

CHANCERY.

(*Reported by* MR. ALFRED J. WILKES, *Student-at-Law.*)

BROOKE v. CAMPBELL.

Sale of land for taxes—Assessment—Sheriff's advertisement.

Where a lot containing 100 acres was returned to the treasurer of the county, one year as "non-resident" land, and the next year, half the lot, 50 acres, was returned as "resident," *Held* that, although the whole lot was owned by one individual, the treasurer was warranted in dividing it into two parcels in his treasurer's books, and in charging statute labor upon each, as upon separate lots. *Held* also, that designating lands as "patented" in a

sheriff's advertisement for their sale for taxes, instead of "granted in fee" by the Crown, sufficiently conforms to the statute.

Action of treasurer and other officers in not using the language of the statute animadverted upon.

The bill in this case was filed by the plaintiffs, Daniel Brooke, mortgagee, and James Slaght, mortgagor of the lands in question, against the purchaser at sheriff's sale and the treasurer of the county, to set aside a sheriff's deed of land sold for taxes, and all proceedings taken before and after such sale.

The cause came on for hearing and examination of witnesses at the town of Simcoe, on the nineteenth day of October, 1866.

The grounds upon which the sale was sought to be impeached were as follows:

1st. That the premises in question, being the south half of lot 11 in the 5th concession of the township of Windham, county of Norfolk, were assessed for several years as non-resident lands, as one parcel, with the exception of one year, and that the defendant, Henry Groff, treasurer of the county of Norfolk, notwithstanding such assessment, entered the said lands in his treasurer's books as two parcels, composed of the south quarter and the south half of the north half of the said lot, and charged for statute labor as upon separate parcels, more than legal charges.

2nd. That the plaintiff, Daniel Brooke, forwarded to the said treasurer, in the month of May, 1863, a draft for $30 76, payable to "Henry Groff, treasurer of the county of Norfolk, or order," which sum the plaintiffs alleged was more than sufficient to satisfy all the taxes legally due on the premises, and that the defendant, Henry Groff, endorsed the said draft *as such treasurer*, and received the proceeds thereof in or towards the payment of the taxes.

3rd. That the warrant of the treasurer, sheriff's advertisement and sale, respectively, were void.

The sale took place in November, 1864.

The following evidence was taken at the hearing:—As to the execution of the deed, plaintiff Brooke to plaintiff Slaght, and mortgage back.

The township clerk for Windham proved the by-laws, fixing the commutation for statute labor at seventy-five cents a day, which were put in.

The agent for the Bank of Montreal, Simcoe, proved the payment of the draft sent by plaintiff Brooke to defendant Groff, treasurer of the county, in June, 1863, and also proved the endorsement, "Henry Groff, treasurer, county of Norfolk," to be in his handwriting.

Henry Groff, one of the defendants, sworn (subject to objections to his evidence, raised by the plaintiffs on the ground that he was a defendant in the case and liable for the costs):—"I am treasurer for the county of Norfolk, and have been since 1849. In 1858, the whole south half was returned on the non-resident roll. This was not so in 1859, when it was assessed, and would appear on the assessment and collector's roll. In 1860, the taxes were assessed on the south quarter, 50 acres, as non-resident land, it alone of the lot being returned as such, leaving the north half of the south half as resident land upon the assessor's roll, and I charged against it only the ten per cent. After charging ten per cent. on 1st May, 1859, and ten per cent on 1st May, 1860, I divided the taxes for 1858 and 1859 between the two parcels of the south half. No portion of the south half of the lot was returned on the non-resident roll, and I therefore only charged the ten per cent. In 1862 and 1863, the whole south half was returned on the non-resident roll, and I divided the tax equally between those two lots for those two years. From the non-resident roll in 1862, it appears that the whole south half was returned in that year assessed at $800 in value. The same return was made for 1863. In consequence of only the 50 acres, that is, the south half of the south half, having been returned to me as non-resident lands in 1860, I in that year sub-divided the previous taxes, charging 50 acres with its proportions, and making a separate charge against each for the taxes in that year; and this sub-division I thenceforward continued as each portion has become chargeable with a different amount of taxes. In 1858, the statute labor was assessed at one dollar per diem; and in 1860, the same. In 1862 and 1863, seventy-five cents per diem was charged for the statute labor. I forwarded Mr. Brooke a statement of taxes made up to 31st March, 1863, on the 30th May. Mr. Brooke remitted me the amount referred to in the pleadings when the taxes had been increased by the addition of the ten per cent. At the time of the statement, sent on the 31st of March, the two last items, viz., add 10 per cent. to 1st May, 1865, and search, were not written in. This was due after the statement was sent back to me with the remittance. I deposited the draft received from plaintiff Brooke in the Gore Bank *to my individual credit*, as I do with all moneys received by me. I never placed this sum in any way to the credit of the municipality. If the amount received had been sufficient to cover the taxes, I would have carried the amount to the credit of the municipality, and marked the lot paid. Mr. Brooke never remitted the balance. Mr. Brooke has never applied for the money so sent me. I had no further communication with Mr. Brooke till February, 1866. He never required me to apply the money forwarded me on any particular portion of the lot. In 1864, I transmitted to the township clerk a list of the lands liable to be sold in that year for arrears of taxes (lists put in). There were two lists sent; the first did not contain the amounts of taxes in arrear. This was supplied by second list."

Cross-examined by Mr. Blake, Q. C., without prejudice:—

"In 1862, the commutation for statute labor against the whole south half was returned to me as $3 75; and in 1863, the same. I did not make any enquiry as to or ascertain the relation or respective values of the two quarters of the south half when I sub-divided and charged them in 1860. When I received plaintiff's draft, I had no account as treasurer of the county with any bank. I keep the county moneys, with my own private moneys, in one account."

Edward Blake, Q. C., for the plaintiff, took objections to the proceedings concerning the sale before stated, and argued that the treasurer had not a right to divide the lot into two parcels, as by that means the taxes were increased, and to charge the statute labor upon each; and that if he had that right, he should have applied the moneys sent by the plaintiff Brooke, which were

more than sufficient to pay the taxes on one half the lot, upon one or other parcel; and that the defendant Groff, by endorsing the draft *as treasurer*, accepted the same on account of the taxes, and should not have sold both portions of the land for the full amount, not crediting the moneys paid by Mr. Brooke at all. (*Laughtenborough* v. *McLean*, 14 U C. C. P. 175) He also objected that the advertisement of sale had not conformed to the statute, in not distinguishing between lands granted in fee by the Crown, and those which were under a lease or license of occupation; and he objected to the admission of Groff's evidence, who was a defendant in the case and liable for the costs.

R. T. Livingstone, for the defendants, opposed the objections taken on behalf of the plaintiffs.

THE CHANCELLOR.—As to the first objection, I think the treasurer was warranted in acting as he did, by treating the 100 acre lot as divisible into two parts for taxation purposes. The south quarter of the lot, containing 50 acres, was returned to him in 1860 as the only portion of it "non-resident land." Previously to this, the whole lot had been returned as "non-resident" land. What then was the treasurer to do? Lands, resident and non-resident, are treated by the statute as of different characters. The treasurer accordingly treated the whole 100 acres, theretofore returned as non-resident land, as having changed character, and entered the two parcels separately in his books, apportioning the taxes accrued due between the two parcels, and keeping a separate account with each parcel from that time forward, the taxes thus varying in amount on each parcel. Whether the return to the treasurer of only the one 50 acres as non-resident was or was not correct or a mistake was not contested before me; the treasurer's right to make any sub-division of the lot, although only the one portion of it was non-resident, being alone questioned. But it seems to me that the plaintiff himself admitted the correctness of this sub-division, or waived all objection to it. He was advised of the sub-division by the treasurer, in answer to his own inquiry for the amount of taxes due, and the treasurer showed him the sum charged on each portion. He made no objection to this, but remitted the amount; not, however, until a further charge had accrued on the property, which, though informed of, he neglected to pay, and hence the sale now sought to be impeached. At all events I think, after such conduct, this court will not aid him, whatever his strict legal rights may be, though in my view he has none, in respect of this objection or the case made. The second objection, as to the mode for rating for statute labor, falls with the first objection; for if the sub-division by the treasurer was right, so also was the sum charged on each parcel for statute labor.

In addition to the references to the statutes, mentioned in the argument of Mr. Livingstone, are chapter 80 of the Consolidated Statutes of Upper Canada and section 28 in the schedule E. of the Registry Act of 1865. The statute, ch. 80, is entitled "An Act respecting claims to lands in Upper Canada for which no patents have been issued." Now if a patent issued for a life, or any leeser term, it might be said that the lands affected by it could not be brought under the statute, though the fee was in the Crown, because a patent had issued for or in respect to such land If it be the true construction that "patent" here means a grant of the fee of the whole estate, then the Commissioner of the Crown Lands is to transmit to every treasurer a list of the lands patented or leased, or in respect of which licenses of occupation issued; and section 125 requires the treasurer, in every warrant, to distinguish lands which have been granted in fee from those which are under a lease or license of occupation. Now the treasurer can only get this information from the return furnished by the Commissioner of Crown Lands, who is told to make a return of *lands granted*, not saying in fee. The legislature seems here to treat grants and grants in fee as meaning the same thing; and so they do in the statute relating to the management of the public lands. Free grants, for instance, are grants in fee. I suppose there is no instance of the Crown having granted an estate in tail. No such estate was evidently in the contemplation of the legislature when the words grant and patent were used. A grant to a man for life is a lease to him for that estate, is so called in the books, and is always so expressed—a lease for life. I agree with Mr. Livingstone's argument, that the legislature have distinguished lands patented from lands under lease or license of occupation, either of which interests might be conveyed by the Crown by patent. Indeed a lease would be so made. The legislature had not in their contemplation estates tail granted by the Crown. Leases they have distinguished from lands patented and patents as expressed in the different statutes. I think they intended to mean in the popular sense in which the words patents from the Crown are generally received, as grants in its fullest sense, that is grant in fee, or as covering such grants.

Here the treasurer's warrant and the sheriff's advertisement described the lands offered for sale for arrears of taxes as "all patented."

I think no one was misled by this description, though, as I have had occasion to remark in other cases, it is very annoying that the officers of the law will not use the language given them by the statute.

I must dismiss the bill with costs.

CHANCERY CHAMBERS.

(*Reported by* MR. CHARLES MOSS, *Student-at-Law.*)

RE JACKES.

Land belonging to infants—Renewal of lease of—12 *Vic. cap.* 72—*Imp. Act* 11 *Geo. IV. and* 1 *Wm. IV. cap.* 65, *sec.* 16.

The Court of Chancery can act, in selling or leasing infants' estates, under the stat. 12 Vic. cap. 72, only when it "is of opinion that a sale, lease, or other disposition of the same, or any part thereof, is necessary or proper for the maintenance or education of the infant, or that by reason of any part of the property being exposed to waste, &c., his interest requires or will be substantially promoted by such disposition."

Upon a petition, styled in the matter of the infant and in the matter of 12 Vic. cap. 72, and 29 Vic. cap. 28, for the sanction of the court to a renewal of a lease made by the infant's ancestor and containing a covenant for renewal, *Held*, that none of the circumstances being alleged under which the court is empowered by the statute to act, the court had no authority to make any order.

Semble, the court has authority under Imp. act 11 Geo. IV. and 1 Wm. IV. cap. 65, sec. 16, to sanction such a lease, but the lease must be produced to the court, in order that it may judge of the propriety of its terms.

[Chambers, January 16, 1867.]

G. Murray presented a petition in the matter of the above named infants, and in the matter of 12 Vic. cap. 72, and 29 Vic. cap. 28, setting forth that the infants were seized of certain lands, which had been leased by their ancestor for twenty-one years, with a covenant for renewal for a further term of twenty-one years; that the lessor, their ancestor, had died intestate; that the term granted by the first lease had now expired, and praying the sanction of the court to a renewal lease in accordance with the covenant therefor, and the appointment of a guardian to the infant heirs, to execute the same on their behalf.

THE JUDGES' SECRETARY.—This is not a case for applying under the 12 Vic. cap. 72. This court can act under that statute, and sanction sales or leases of an infant's estates only when it "is of opinion that a sale, lease, or other disposition of the same, or of any part thereof, is necessary or proper for the maintenance or education of the infant, or that by reason of any part of the property being exposed to waste and dilapidation, or to depreciation from any other cause, his interest requires or will be substantially promoted by such dispositions," and none of those circumstances are alleged to exist in the present instance. Nor has the act 29 Vic. cap. 28, any bearing on the subject.

Under the Imp. act 11 Geo. IV. and 1 Wm. IV. cap. 65, sec. 16, the Court of Chancery has power, "where any person, being under the age of twenty-one years, might, in pursuance of any covenant, if not under disability, be compelled to renew any lease made or to be made for the life or lives of one or more person or persons, or for any number or term of years absolutely, or determinable on the death of one or more person or persons," to authorise such infant, or his guardian, by an order, "to be made in a summary way, upon the petition of such infant, or his guardian, or of any person entitled to such renewal, from time to time to accept a surrender of such lease, and to make and execute a new lease of the premises comprised in such lease." (McPherson on Infants, pages 313 and 314) and this act is in force here. On the petition being amended, and styled in the matter of the infants and of this statute, an order may be made; but the proposed lease must be submitted, that the court may judge whether its terms are proper.

ENGLISH REPORTS.

GLADMAN v. JOHNSON.

Dangerous animal—Scienter—Evidence—Knowledge of husband inferred from notice to wife.

The plaintiff was bitten by a dog belonging to the defendant; the dog had, four years before, bitten a boy, and, on another occasion, torn a person's dress. These facts were communicated by the aunt of the boy bitten to the defendant's wife, on the defendant's premises, but there was no evidence that the wife had communicated them to her husband.

Held, that there was some evidence from which a jury might infer that the defendant knew of the savage nature of the dog.

[C. P., Jan. 11, 1867.]

Declaration.—For wrongfully keeping a savage dog, which bit the plaintiff, knowing the same to be of a fierce and savage nature.

Pleas.—1. Not guilty.

2. That the dog was properly secured in a place where the plaintiff had no right to go; that the plaintiff was trespassing and came within reach of the dog; and that the injury complained of was occasioned by the negligence of the plaintiff.

Joinder of issue.

The cause was tried before Smith, J., when it appeared that the defendant occupied premises which consisted of a house fronting the road, at the back of which was a yard, where there were some sheds and outbuildings. He carried on the business of a dairyman in the house, which was ordinarily entered by his customers through a door fronting the road. The defendant carried on the business of a corn-dealer in the yard at the back of the house, and the entrance to the yard was from a lane at right angles to the main road.

The plaintiff had been in the habit of purchasing milk at the defendant's shop, and went to the shop one Sunday morning. He attempted to enter the shop by the front door, but finding it locked, he went through the yard to the back door. As he was leaving the house and crossing the yard, a dog belonging to the defendant flew at him and bit him, and did the injuries complained of.

The defendant's wife assisted the defendant in the management of the milk business.

It was proved that, four years before this accident happened the same dog had bitten a boy named Gibson, and on that occasion Gibson's aunt went to the defendant's premises and gave an account of the accident to the defendant's wife. The defendant's wife denied that any such communication had ever been made to her.

It was objected by the counsel for the defendant that the communication could not be taken to have been made to the defendant, and that there was no evidence to prove the scienter. It was also proved that on another occasion the dog had torn a person's dress.

The learned judge thereupon nonsuited the plaintiff, with leave to him to move for a rule to enter the verdict for £15 (the damages agreed upon) if the Court should be of opinion that there was any evidence from which the jury could infer that the defendant was aware of the savage nature of the dog.

On a former day.

Prentice, Q. C., had obtained a rule accordingly.

T. Jones, Q. C., now showed cause, and contended that notice to the wife of what had taken place was not notice to the husband; that the Court could not infer that she had communicated what she had been told to her husband. If a person had stated to the defendant's wife that he served a writ on the defendant, that would not be evidence that the defendant knew that the writ had been served. Nor could the defendant's wife have been asked whether she communicated this statement to the defendant: 16 & 17 Vict. c. 83, s. 3; *O'Connor* v. *Majoribanks*, 4 M. & G. 435. It must also be shown that the defendant knew that the dog was accustomed to bite mankind: *Thomas* v. *Morgan*, 2 Cr. M. & R. 496. Here the evidence only refers to two cases. [WILLES, J.—The plaintiff need only show that the dog indicated an intention to bite.]

Prentice, Q. C., in support of the rule.—There was some evidence that the defendant was aware

of the savage nature of the dog; notice to the wife is always sufficient. The case is governed by the case of *Stiles* v. *The Cardiff Steam Navigation Company*, 12 W. R. 1080, 33 L. J. Q. B. 310.

BOVILL, C.J.—I am not prepared to assent to the proposition put forward by Mr. Prentice, that notice to the wife would in all cases be sufficient. Here the wife attended to the milk business; the dog was kept in the yard, when Gibson was bitten by the dog on a former occasion his aunt went to the defendant's premises in order to make a complaint to the defendant; the defendant's wife appeared, and the formal complaint was made to lie; it was contended that that complaint should have been communicated to the defendant; but I think that there was evidence from which a jury might have inferred that that complaint had been communicated to the defendant, and that the scienter was proved.

WILLES, J.—I am of the same opinion. If I had had to try this case, I should have taken the same course as that taken by the learned judge at the trial. There was some slight evidence to show the ferocious character of the dog, and that the defendant was aware of that character. I think the verdict must be entered for the plaintiff. The dog had bitten one person before, and had torn the dress of another; those are the facts; and that is some evidence that the dog was accustomed to bite mankind. Then was there any evidence of the defendant's knowledge? the aunt of the boy who was bitten saw the defendant's wife, at the defendant's house, and communicated the facts to her, the wife in the absence of the husband was the proper person to lock up the dog. That complaint was delivered in the character of a message, and it was the duty of the wife to make known to her husband the circumstances of the case. I cannot say that there was no evidence to prove the scienter, and therefore the rule to enter the verdict for the defendant must be made absolute.

KEATING, J.—I am of the same opinion. The evidence was very slight, so slight that it appeared to my brother Smith that it ought to be withheld; there was some evidence, and therefore the rule must be made absolute

SMITH, J.—I am glad that the Court can come to the conclusion that there was evidence; the only question is as to the defendant's knowledge of the savage nature of the dog. I regret that the law should make it necessary that that should be proved; but as that is the rule, I do not regret that its stringency should be to some extent mitigated. In my opinion there was some evidence from which the jury might infer that the scienter was proved.

Rule absolute.

CRUMP v. LAMBERT.

Nuisance—Injunction—Factory smoke—Effluvia—Noise.

The Court will grant an injunction to prevent a business being carried on so as to be a nuisance where the annoyance caused is such as materially to interfere with the ordinary comfort of human existence, and will not require proof of specific injury, such as, for instance, the destruc- of vegetable life.

Smoke alone, or bad smells or offensive gases alone, or noise alone, are sufficient causes for the interference of the Court by injunction.

(M. R. Feb. 7.)

This suit was instituted to abate a nuisance caused by carrying on some ironworks at Walsall, in Staffordshire,

The plaintiff was the owner of two semi-detached houses at a place called Mount Pleasant in the outskirts of Walsall, together with a garden in the front of them, and was the occupier of one of the houses and the garden. The defendant, who was an iron-bedstead manufacturer, had for some time carried on some works in the town of Walsall, as well as a small place in the neighbourhood of the plaintiff's house, where the manufactured articles were finished off.

Recently he erected a new factory adjoining the wall of the plaintiff's garden, in which the whole process of the business, including the smelting of pigs of iron, was carried on. The factory had a chimney, which soon after its erection was raised on the complaint of some of the neighbours. As the factory was on a lower level than the plaintiff's property, the raising of the chimney only brought the products of the com bustion more immediately upon the plaintiff. The plaintiff alleged three causes of injury to the enjoyment of his property by reason of the establishment of the new factory; first, the great addition to the smoke of the neighbourhood which it caused; secondly, the noisome gases and offensive odours emitted from it; and, thirdly, the noise of hammers, and the voices of the workmen.

The plaintiff not being able to obtain an abatement of the nuisance, filed the present bill for an injunction against the defendant. The motion for injunction was turned into a motion for decree, and the cause now came on for hearing. A large amount of evidence was put in on both sides. That of the plaintiff consisted chiefly of affidavits tending to shew that the neighbourhood of the new factory had suffered serious injury; while that of the defendant tended to establish that there was so much smoke and effluvia already that the small addition made by the new factory was not seriously felt.

Southgate, Q.C., and *Robinson*, for the plaintiffs. —The defendants rely upon the case of *Hale* v. *Barlow*, 6 W. R. 619, 4 C. B. N. S. 334. That case was decided upon an erroneous view of the expression "a convenient place," in 1 Com. Dig. 304. It has never been followed, and is now overruled. The present case comes within the rules laid down by the cases of *Haines* v. *Taylor*, 10 Beav. 75; *The St. Helen's Smelting Company*, v. *Tipping*, 13 W. R. 1083, 11 H. L. Cas. 610; *Elliotson* v. *Faltham*, 2 Bing. N. C. 134; *Soltau* v. *De Hold*, 2 Sim. N. S. 133.

Jessell, Q.C., and *Everitt*.—We do not ask to have the bill dismissed. We wish to have an issue directed, and we believe no substantial damages would be given. The mere fact of the inconvenience caused by the factory is not by itself a reason for the interference of the Court by injunction without some special injury. In the case of *Tipping* v. *St. Helen's Smelting Company* there was actual damage to vegetation. Smoke by itself is not a sufficient cause for an injunction, nor noise by itself, nor a mere disagreeable smell. Where the place is "convenient" for a manufactory, an injunction will not be granted, damages only will be given.

Southgate, in reply, referred to *Durrell* v. *Pritchard*, 14 W. R. 212, L. R. 1 Ch. 224; *Rex* v. *White*, 1 Burr. 337; *Rex* v. *Neil*, 2 C. & P. 485; *Bradley* v. *Gill*, Lutw. 69; *Styan* v. *Hutchinson*,

Selwyn's *Nisi Prius*, 1129; *Walter* v. *Selfe*, 4 De G. & Sm.

Feb. 7.—Lord Romilly, M.R.—The plaintiff, in this case, is the occupier and owner of a house in Walsall, in Staffordshire, and complains that the defendants have recently erected an iron factory adjoining his grounds, the smoke, noise, and effluvia proceeding from which, occasion a nuisance which he applies to the Court to abate. The defence, in substance, is twofold; first, one of law, and secondly, one of fact. The defendants say that smoke alone does not entitle a person to come here for an injunction; that a disagreeable smell alone does not entitle a plaintiff to ask for an injunction; that noise alone does not entitle a plaintiff to ask for an injunction. Secondly, they insist that the evidence shows that there are no noxious gases emitted from the defendants' works, and likewise the evidence on the part of the plaintiff is grossly exaggerated, and that, having regard to the smoke and noise which always prevails in and about Walsall, the defendants' factory has only added an inappreciable addition to what already existed. With respect to the question of law, I consider it to be established by numerous decisions that smoke, unaccompanied with noise or with noxious vapours—that noise alone, that offensive odours alone—although not injurious to health, may severally constitute a nuisance to the owner of adjoining or neighbouring property, and that if they do so, substantial damages may be recovered at law, and that this Court, if applied to, will restrain the continuance of the nuisance by injunction in all cases where substantial damages could be recovered at law. *Elliotson* v. *Feltham* and *Soltau* v. *De Held* are instances relating to noise alone. In the former, damages were reserved in an action at law; and, in the second, an injunction was granted on account of sound alone. What constitutes a nuisance is defined by L. J. Knight Bruce in *Walter* v. *Selfe*, 4 De G. & Sm. 322. But until that time has elapsed the owner of the adjoining or neighbouring tenement, whether he has, or has not, previously occupied it, or is the owner—whether he comes to the nuisance or the nuisance comes to him—retains his right to have the air that passes over his land pure and unpolluted, and the soil and produce of it uninjured by the passage of the fumes by the deposit of deleterious substances, or by the flow of water. And the doctrine suggested in *Hole* v. *Barlow*, that the spot from whence nuisance proceeds was a fit, proper, and convenient spot for carrying on the business or works which produced the nuisance, is no excuse for the act, and cannot be made available as a defence either at law or in equity. This same definition is adopted in *Soltau* v. *De Held* by V. C. Kindersley, and is, I apprehend, strictly correct, and it agreed with the principle of the cases referred to at common law, and approved of in the case of *Tipping* v. *St. Helen's Company*, which settled the law as regards another part of this case, to which I shall presently have occasion, when citing *Hole* v *Barker*, to refer. The law on this subject is, I apprehend, the same, whether it be enforced by action at law or by bill in equity. In any case, where a plaintiff would obtain substantial damages at law, he is entitled to an injunction to restrain the nuisance in this Court. There is, I apprehend, no distinction between any of the cases, whether it be smoke, smell, noise, vapours, or water, or any gas or fluid. The owner of one tenement cannot cause or permit to pass over, or flow into his neighbour's tenement, any one or more of these things in such a way as materially to interfere with the ordinary comfort of the occupier of the neighbouring tenement, or so as to injure his property. It is true that, by lapse of time, if the owner of the adjoining tenement, which, in cases of light or water, is usually called the servient tenement, has not resisted or complained for a period of twenty years, then the owner of the dominant tenement has acquired the right of discharging the gases or fluid, or sending the smoke or noise from his tenement over the tenement of his neighbour.

The real question in all the cases is the question of fact, viz., whether the annoyance is such as materially to interfere with the ordinary comfort of human existence? This is what is established in the *St. Helen's Company* v. *Tipping*, and that is the question which is to be tried in the present case. [His Lordship then proceeded to comment upon the evidence, and proceeded.] I am of opinion the smoke and noise proceeding from the works of the defendants constitute a substantial nuisance, and that the plaintiff is entitled to the assistance of this Court to have it abated. I don't see sufficient doubt about the case to induce me to direct an issue. I shall make such an order as the Vice-Chancellor made in *Walter* v. *Selfe*, that is, an injunction to restrain the defendants, their servants, and workmen, and agents, from allowing smoke and effluvia to issue from their said factory, so as to occasion nuisance, disturbance, or annoyance to the plaintiff, owner, or occupier of the tenement, in the bill mentioned, called Mount Pleasant, and a similar injunction to restrain the defendants, their servants, workmen, and agents, from working or causing to be made noises in the factory, so as to occasion nuisance, disturbance, and annoyance to the plaintiff, or the owner or occupier of the said messuage, as the bill mentioned. I cannot make it more precise—it is always a question of degree; and if the defendants can continue to carry on their works in such a manner as to avoid any substantial issue of smoke or noise, they will not violate the injunction; whether they do or do not, may have to be tried in another proceeding. The costs must follow the event up to and including the hearing, reserve liberty to apply.

Solicitors for the plaintiff, *Walton & Walton.*
Solicitor for the defendant, *Duignan.*

UNITED STATES REPORTS.

NEW YORK SUPREME COURT.

Leonard P. J., Clerke and Ingraham, J. J.

GILLOTT v. ESTERBROOK, ET AL.

Trade Marks—Injunction.

Where one manufacturer exclusively has for a long time used a certain number to designate his goods, and by which they have become extensively known, that number is his trade mark: and an injunction will be granted against its use in like manner by other manufacturers of like articles

Appeal by Richard Esterbrook, et al., Respondents, from decree of special term continuing injunction.

The plaintiff, Joseph Gillott, now appellee, is a manufacturer of steel pens in Birmingham, England, and has been such for many years past. His pens had obtained a great notoriety throughout this country, as well as Europe.

Some time ago he brought an action against the defendants, who are appellants referred to above, for an infringement of his (plaintiff's) trade mark; and the complaint prayed for an injunction enjoining the defendants, and permanently restraining them from what the plaintiff Gillott claims is a trade mark, to wit: No. "303." The testimony in the case tended to show that for many years the plaintiff had used this number "303" with the label; that the number was his trade mark; that he originated it and has used it constantly for twenty years. His name as manufacturer and the No. were impressed on the pen, and the No. was also printed conspicuously on the label on the top of the box which contained his pens. The complaint further sets forth that this number always designated the same pattern and style of pen, and had become well known to the trade as the plaintiff's trade mark, so that these pens were ordered by this mark, and that they had a high reputation and a large sale. Further, that defendants have recently commenced the manufacture of steel pens, and that they imitate the plaintiff's trade mark in every respect except in name of the manufacturer.

The issues formed by the pleadings were tried before Mr. Justice Potter at special term in November 1864. The court on that trial, which lasted several days, found after due deliberation, that the plaintiff Gillott had used this trade mark on pens since the year 1839, and on labels since 1842, and that this usage had become well known to the trade. It was also found that the defendants adopted it, as charged, "with a knowledge of the plaintiff's rights to the same, and with the intent to obtain for themselves the profits and advantages to which the plaintiff was exclusively entitled, in the use of his trade mark, and to mislead the public, and defraud the plaintiff in that respect." That the plaintiff, by the adoption and continued use of the letters and figures—"No. 303" as his trade mark, had in this manner become entitled to the exclusive use of it for this purpose; that it was no defence that the same fraud had been practised by others; that acquiescence could not be inferred, and that it was revocable if it could be. The final conclusion of the special term court was that the injunction restraining the defendants from the use of the trade mark—"No. 303" should be sustained and continued with costs of suit.

The opinion of the court was delivered by

LEONARD, P. J.—The design to defraud by manufacturing and packing pens in all respects similar to the plaintiff's, excepting only in the use of the name, appears very plainly. I cannot reason so artificially as to disguise this conclusion from myself.

To the decision of the court the defendants excepted; first, to the admission of certain testimony on the trial, and generally, to the decision of the court sustaining the trade mark. They also insisted that it was too late for plaintiff to claim the exclusive use of the number 303, even admitting it to be a trade mark; he knew that others were using it long before any legal proceedings were commenced against the defendants.

The defendants, not being content with the decision of Justice Potter, of special term, took an appeal to the general term, where it was argued last month, and the decision which we give below, has just been rendered by a majority of the court, Ingraham, J., dissenting.

The plaintiff had the number 303 first in use. We see by his notice in "caution" that he knew that others had also used the same combination of numbers for the purpose of defrauding him, but it does not appear that he had discovered any individual whom he could attack as an offender; nor can I believe that a "caution" to the public against the fraudulent use of his device can be deemed an acquiescence in the use by others of the particular arrangement of numbers upon steel pens and packing boxes, which the plaintiff had first adopted and used, and which had come to be a designation of a particular and popular pen with the public.

It is also to be observed that the defendants have not excepted to any fact as found by the judge. The exceptions are confined only to the conclusions of law. As the defendants have found no fault with the facts as found by the judge who tried by the cause, the general term ought not to discover any, particularly, as it does not aid the ends of justice.

I am for affirming the judgment, with costs.

CORRESPONDENCE.

Appointment of Official Assignees.

TO THE EDITORS OF THE LAW JOURNAL.

GENTLEMEN,—Just before the publication of your article in the last issue of the *U. C. Law Journal*, a question of some importance upon the subject referred to, came up, as questions do very frequently arise, upon which I should like to see some discussion in your Journal.

The creditors prosecuting a compulsory proceeding by attachment in insolvency, applied to the judge of the County Court here, under the 18th sub-section of the 3rd section of the Insolvent Act of 1864, for an order appointing a meeting of creditors to be held before the judge of and in another county. Our judge did not refuse, but granted the order as asked for, intimating, however, that although he was aware some other county judges had made similar appointments, he himself entertained grave doubts as to its legality, for that the words of the 18th sub-section failed to satisfy him that he was at liberty to impose such a duty upon the county judge of another county, or that the duty could be discharged at all by any one out of the county where the proceedings were being carried on; that there was nothing in the statute to require the judge of the other county to discharge the duty, and he might well say, upon such an appointment being made for him, that his own appointments were all that he could reasonably be

supposed to keep, and that the duties of his own courts were all that he could attend to.

At a subsequent day, the plaintiff's solicitor, not wishing to risk a large estate upon so doubtful a question, got the appointment changed, ordering the meeting to be held before the judge here. In a subsequent case, a similar order to the first was asked for, appointing the meeting to be held in a distant city, before another judge, when the judge of this county, having more maturely answered the question, refused, decidedly, to grant the order, and referred to the words of the interpretation clause of the act; that is, the 4th sub-section of the 12th section, as explaining the words, "*The Judge*," and the words, "*or any other Judge*" (where they respectively occur) in the 13, 14, 17, 18, 19, 20, 21, & 23rd sub-sections of the same act. That by the 4th sub-section of the 12th section, those words, as applicable to Lower Canada, may be understood, because it is well known that the judges of the Superior Courts of Lower Canada have not merely jurisdiction over a county, for there are several Superior Court judges having jurisdiction equally over the same section or territory, which is not the case in Upper Canada, unless there is a junior judge in the same county with the senior judge; that the jurisdiction in Upper Canada is purely local, confined to one county, held only by resident judges, and that, therefore, whilst the words "*any other Judge*" may mean a junior or a deputy judge of the *same* county, they could not be intended to mean a judge of the County Court of *another* county, because he could not by any reasonable intendment be held to be the judge of the County Court of the county in which the proceedings are carried on.

And again, that supposing the 13th subsection might authorize the meeting of creditors to take place before such other judge, that "*other Judge*" could only take the advice of the creditors upon the appointment of an official assignee; he could not *appoint* the assignee, because the 14th sub-section provides that "at the time and place appointed, and on hearing the advice of the creditors present upon oath," &c., "*The Judge*" (and not the "*other Judge*") shall appoint, &c. *** and if the creditors are not unanimous, then "*the Judge*" may appoint, &c.

Our judge maintains that the words "*The Judge*" can only mean such judge as the interpretation clause points out, and that the 17th and subsequent sub-sections of the 3rd section prove this position.

Will you, Messrs. Editors, favour us with your views on this question, or invite the correspondents of the *U. C. Law Journal* to discuss it, because it is said that the whole "*Bar*" of the city of Hamilton are unanimous in an opinion adverse to that entertained by the judge and bar here.

Oblige,

Yours respectfully,

A Subscriber.

20th February, 1867.

[We have not at present time to devote to the consideration of the subject above referred to, but we should be glad in the mean time to hear from those who may have had occasion to investigate the point, which is, we believe, a new one and of great importance.]—Eds. L. J.

Division Courts—Abandoning excess of Plaintiff's claim over $100*—Remitting portion of Defendan's set-off exceeding* $100.

To the Editors of the Local Courts' Gazette.

Gentlemen,—An unusual case has arisen in the 5th Division Court of this County. A plaintiff had a cause of action against a defendant for $138 58

He allowed the defendant credits for payments on account..... 33 55

And shewed a balance against the defendant of..... $105 03

He abandoned the excess of..... 5 03

And claimed the balance of..... $100 00

The defendant put in a set-off of.... $199 00

Less excess remitted 99 00

And claimed the balance of.... ... $100 00

The defendant proved that his claim was just to the extent of..... $190 00

Besides what the plaintiff had credited in the statement of his claim. 33 55

Shewing that the defendant had a just claim for..... 233 55

Out of which should be deducted the plaintiff's account as above..... 138 58

The true balance then due by the plaintiff to the defendant would be $84 97

Now if the excess abandoned were to be taken into account, the statement would stand thus:—

Plaintiff's claim, after abandoning the excess of $5 05, would be.....		$100 00
Defendant's set-off would be	$190 00	
Less excess remitted as above	99 00	
		91 00
Whereby there would be due to the plaintiff		$9 00

Which would be unjust, inasmuch as that according to equity and good conscience the defendant is entitled to a judgment for $84 97 upon the first shewing. I observed some time ago a communication in your 9th Vol., p. 290, with your own remarks upon the subject. Would it not be profitable for your subscribers to discuss the matter in the *Local Courts' Gazette*, for the enlightenment of those interested in and doing business in the Division Courts? And the subscribers to the *Gazette* would doubtless be glad to have your opinion upon the case submitted. It is to be feared that if the Judges of the Division Courts deal with accounts and enquire into claims exceeding $100 in amount, they will subject themselves to proceedings in prohibition, the 59th section of the Con. Stat. for U. C. sec. 19, p. 145, providing that no greater sum than $100 shall be recovered in any action for the balance of an unsettled account, nor shall any action for any such balance be sustained where the unsettled account in the whole exceeds $200. The Court has direct jurisdiction where the amount or balance claimed does not exceed $100. (See sub-sec. 2 of sec. 55.) Then by sec. 95, "If the defendant's demand, as proved, exceeds the plaintiff's, the Court may nonsuit the plaintiff; or if the defendant's set-off (after remitting any portion of it he pleases,) does not exceed $100, the Court may give judgment for the defendant for the balance found in his favor." I may mention that the County Judge, in the case alluded to, rendered his judgment for the defendant generally, 1st, because the defendant had only set up a claim for $100 against any demand which the plaintiff might prove against him, and had remitted that portion of his claim which exceeded $100, and because the plaintiff proved a demand against the defendant of $100, after abandoning $5 03, and the defendant could only recover $100; after remitting $99 of his demand the two demands respectively balanced each other; and 2nd, because the Judge considered that if he were to render a judgment for the defendant for $84 97, justly due the defendant in equity and good conscience, he would be reclaiming for or allowing the defendant what the defendant himself had voluntarily remitted, (neither party would, in fact, have remitted or abandoned any part of their respective claims,) and that he (the Judge) would thus be stretching his jurisdiction for the sake of equity and good conscience, contrary to law.

Yours, LEX.

St. Thomas, C.W., 26th Feb., 1867.

[We think the judge was right in all particulars, and could not well have acted otherwise on the papers before him. The defendant ought not to have abandoned the excess, but put in his whole claim for $233. Then, on proving an amount exceeding the plaintiff's demand, the judge would have nonsuited the plaintiff with costs, and the defendant would have retained his remedy for the balance due him; and in action against this plaintiff in the County Court, if he recovered the true balance due him, $84 97, he would be entitled to a certificate for full costs. As the case now stands, it is not very clear what remedy he has for that balance.]—EDS. L.C.G.

Division Courts—Adjournment of case—Subsequent defence of Statute of Limitations.

TO THE EDITORS OF THE LOCAL COURTS GAZETTE.

GENTLEMEN,—Will you be kind enough to reply to the following question through the columns of the *Gazette*?

If A. sue B. for an account, and on the day of trial A. has the case adjourned, not being prepared, for want of a witness to prove his case, can B., after the adjournment, plead the Statute of Liminations (which he had not done before)?

I had a case similar to the above at the last sitting of our Division Court held in this town, and had it adjourned for want of evidence. The greater part of the debt was incurred seven or eight years ago. Now the defendant says he can plead the Statute of Limitations. My opinion is he cannot. If he wished to have done so, he should have so pleaded six days before the last Court day, the day of trial for the case, and when if I had been prepared with my witnesses the case would have been decided against him. Our next Court

day will be the first day of May, and ere then I hope to see your opinion in the *Gazette*.

I remain,

Your obedient servant,

RICHARD SHAW.

Perth, 14th March, 1867.

[We think you are correct. See Editorial remarks on page 35.]—EDS. L.C.G.

Chattel mortgages.

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

GENTLEMEN,—A. gives B. a chattel mortgage on his stock, &c., to secure a debt. C. sues and gets judgment against A. on a note, after the mortgage is given. *Quære*, does the mortgage debar C. from seizing and selling the mortgaged chattels. An answer in your next will much oblige Yours, &c.

THOS. R. K. SCOTT.

Hillsboro', March, 1866.

[By the mortgage the chattels become the property of the mortgagee, subject to a right of redemption by the mortgagor upon certain terms. A subsequent execution against the mortgagor would therefore only affect (supposing the mortgage to be valid) his equity of redemption or interest in the goods, and a sale would put the purchaser in the shoes of the mortgagor. The goods themselves cannot be sold and the possession of them given to the purchaser.]—EDS. L. C. G.

There is an anecdote current at the bar, of the late Judge Bacquet, which we believe to be well authenticated. He went the circuit below Quebec and decided a case at St. Thomas. Subsequently, by one of those singular coincidences which mark every condition in life, a similar case came before him at Kamouraska. The same issues were raised, the same pleadings, and the same lawyers. But it pleased Judge Bacquet to deliver a judgment at Kamouraska diametrically opposed to the judgment he delivered at St. Thomas. When the facts were brought before his notice by the counsel for the defendant, the only consolation he received was the assurance that, if the judgment at Kamouraska was wrong, the judgment at St. Thomas was right. It is only fair to explain that the learned judge was suffering from marasmus—a disease which soon after terminated his life.—*Montreal paper.*

MIMETIC POWER.—Whatever qualities the advocate may wish to represent as the client's distinctive characteristic, it must be suggested to the jury by mimetic artifice of the finest sort. Speaking of a famous counsel, an enthusiastic juryman once said to this writer—"In my time I have heard Sir Alexander in pretty nearly every part: I've heard him as an old man and a young woman; I've heard him when he has been a ship run down at sea, and when he has been an oil factory in a state of conflagration; once when I was a foreman of a jury, I saw him poison his intimate friend, and another time he did the part of a pious bank director in a fashion that would have skinned the eyelids of Exter Hall; he ain't bad as a desolate widow, with nine children, of which the eldest is under eight years of age; but if ever I have to listen to him again, I should like to see him as a young lady of good connexions who has been seduced by an officer in the Guards."—*Jeaffreson's Book about Lawyers.*

LORD NORBURY'S SARCASM.—To men who questioned his patriotism Lord Norbury's was wont to answer, "Name any hour before my court opens to-morrow," but to the patriotic Irish lady who loudly charged him in a crowded drawing, room with having sold his country, he replied, with an affectation of cordial assent, "Certainly, madame, I have sold my country. It was very lucky for me that I had one to sell—I wish I had another." On the bench he spared neither counsel nor suiters neither witnesses nor jurors. When Daniel O'Connell, whilst he was conducting a cause in the Irish Court of Common Pleas, observed, "Pardon me, my lord, I am afraid your lordship does not apprehend me;" the Chief Justice (alluding to a scandalous and false report that O'Connell had avoided a duel by surrendering himself to the police) retorted, "Pardon me also, no one is more easily apprehended than Mr. O'Connell"—(a pause and then with emphatic slowness of utterance)—"whenever he wished to be apprehended."—*Jeaffreson's Book about Lawyers.*

The senior of the Cambridge Law Tripos in December was also stroke of the University eight in the race at Putney in the previous Spring. Mr. Griffiths has therefore done much to upset the prejudice which most of the Dons have against boating men, on the score that it is almost as difficult for oil and water to mix as for a man to combine reading with rowing. In addition to being stroke of the university eight, Mr. Griffiths, during his time, has obtained the lions' share of the honours and rewards which are to be gained by oarsmen on the Cam.

APPOINTMENTS TO OFFICE.

NOTARIES PUBLIC.

JOHN COYNE, of Brampton, Esquire, Barrister-at-law, to be a Notary Public for Upper Canada. (Gazetted 23rd February, 1867.)

JOHN McKINDSEY, of Bothwell, Esquire, Attorney-at-law, to be a Notary Public for Upper Canada. (Gazetted 23rd February, 1867.

CORONER.

CABEL ELSWORTH MARTIN, of Lindsay, Esquire, M.D., to be an Associate Coroner for the County of Victoria. (Gazetted 23rd February, 1867.)

TO CORRESPONDENTS.

"A SUBSCRIBER," "LEX," RICHARD SHAW," "THOS. R. K. SCOTT"—Under "General Correspondence."