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## DIVISION COURTS.

### OFFICERS AND SUITORS.

*Officers.*—We understand that the Judge of the Co. Court of Simcoe has issued an order to the officers of his Court, to register all letters enclosing papers transmitted under the provisions of the Statute for service or execution in out Divisions or other Counties, as well as letters of notice necessary to be sent by Clerks to *parties* in suits. The loss of some letters, enclosing papers, which it was found impossible to trace, gave occasion for the order referred to. When letters are registered, there is more security to parties and officers; the expense is trifling, and as a necessary postage it is taxable, as part of the costs; it would be better, therefore, that it should be done in all cases. In those Counties in which no such order has been made, we would suggest to Clerks their drawing the attention of the Judges to the matter; for such a regulation will be only a partial benefit unless extended: it should be adopted generally in Upper Canada.

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We have received from Mr. Otto Klotz, the very intelligent Clerk of the Second Division Court of the County of Waterloo, the following communication. We refer to what was said in the February number respecting the manner and form in which officers should send subjects for examination, or put queries: this communication of Mr Klotz comes up to the mark—it is as follows:—

"The following questions, relating to Division Court business, are matters of difference between various Clerks, and I therefore deem it proper to lay them before you.

1. When Transcript of Judgment is sent to a Clerk in due form, Execution thereon issued, Return thereto made by Bailiff, in what manner is the Clerk, to whom Transcript was sent, to make his return to the Clerk that sent Transcript?

Some Clerks return Transcript by writing the return on the back of it; others return Transcript, and notify by a mere letter whatever may have been done in the matter; and where a number of Transcripts are sent, make a return to them in form of a list: others, again, make a separate return for each Transcript, stating style of cause, date of receipt of Transcript, date of Execution, date of return and nature of return attested by the seal of the Court and signature of the Clerk.

2. Are the transmitting and receiving Clerks of Transcripts of Judgment respectively entitled to the fee of 1s. for transmitting papers or receiving papers?

*Note.*—I am alluding to the two last-mentioned fees in Schedule A. 18 Vic. cap. 125.—Some Clerks charge it, and some not.

3. Are Bailiffs entitled to mileage on Executions by them returned *Nulla Bona*, or to the like effect, where no money is made?

4. Are Bailiffs entitled to mileage on Summonses not served by them, although they may have actually travelled a certain distance to the place where plaintiff directed that the defendant resided, but could not serve defendant, either because he had removed, absconded or concealed himself, or because no such party ever lived there?

5. Are Bailiffs, upon service of Summons sent from another county, entitled to the fee of 1s. for attending to swear?

Some Clerks allow mileage in both cases (3 & 4), others only in the 3rd, and others not at all.

Some Clerks allow the 1s. (in 5th), others only when Summons is served out of Bailiff's own Division, and others do not allow it at all.

Since all Clerks and Bailiffs of Division Courts act under the same law, and are to be guided by the same tariff of fees, their charges should be uniform: and I am of opinion that if these matters are discussed in your *Journal*, this uniformity, so much required, may be established."

We willingly give our views on the questions proposed.

1st. The object of the Division Courts Law is to facilitate, as much as possible, the recovery of small demands; and with as little inconvenience, as may be, to suitors. The Legislature evidently contemplated that the machinery of the Courts would be worked out chiefly by the Clerks, and in order to do this effectually there must be system and completeness in the performance of their duties.

The Transcript is directed to the Clerk, is the foundation of the execution to be issued by him, is a *quasi* record of his Court, and ought therefore to be retained. Regular returns should be made to the Clerk sending Transcript by Clerk who receives it, under his hand, and authenticated by the seal of his Court. The form of Return is not essential, provided it shows all necessary particulars. The tabular form would seem to be the most convenient—stating style of cause—date when Transcript received—date when Execution thereon issued—date of Bailiff's Return and nature thereof. Any number of Transcripts received from the same Clerk may be included in one Return, if it is desirable to do so.

2. We think they are; at all events it seems quite clear that the *transmission* fee is taxable; the term "for service" in the schedule seems sufficient to cover the charge; and it may reasonably be so construed. In *Webster's Dictionary* we find the following definitions:—

"Service." *Actual duty*; that *which is to be done in an office.*

"Serving" *performing duty.* "To serve an attachment." *To levy on the person or goods by seizure.* "To serve an execution." *To levy it on goods*, &c. "To serve a warrant." *To read it and seize the person.*

3. Clearly not—as there is no "levy," and no "money made."

4. Certainly not, an allowance for mileage in such cases would open the door for fraudulent delays, and is not taxable.

5. The affidavit may be said not to be *drawn* till the necessary blanks are filled in; therefore, when

the Summons is served *out of the Bailiff's own Division*, the fee of 1s. is taxable for drawing and attending to swear to the affidavit—but not so when served *within* the Division.

On the subject of Bailiff's fees generally, we would observe that the plain duties of Clerks, in all cases coming within their cognizance, is to disallow charges illegally made by Bailiffs. They are the taxing officers, subject to an appeal to the Judge. The great objection to the old Courts of Requests was the excessive and illegal charges of Bailiffs: and it becomes Clerks to keep a watchful eye and strict rein on the Bailiffs who need it. The suitor naturally looks to the Clerk for protection against extortion; and they have a right to expect such protection at their hands.

A. C. asks if the claimant on an Interpleader Summons is a *party* within the meaning of the item in the schedule giving a fee for search.

Undoubtedly he is; although the style of the original cause is retained, he (the claimant) is a necessary party to the proceeding. It is, in effect, a suit between the claimant and the judgment creditor; and therefore the former cannot be charged with the search fee, if the proceeding is not a year old.

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*Bailiffs.*—In another page of this number is the first part of a work written expressly for the *Law Journal*, on the office and duties of Bailiffs: it will, in a great measure, take the place of this department in the *Journal*, but we will still continue to observe on matters submitted to us for examination. We cannot say that Bailiffs, as a class, support us with any share of liberality—a number of them, whom we looked for as new subscribers, have returned the January number sent them. It may be that *these* officers are already *perfect* in their duties, or do not care to inform themselves. The writer of the Manual (a gentleman of large experience) states that not ten out of every hundred Bailiffs are properly informed on their rights and duties—perhaps those who have refused are amongst the *Informed Ten*—we shall see: but as they will, of course, not expect to have the benefit of what others pay for, should a case arise a little above their comprehension, some professional man will be a fee in pocket.

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*Suitors—What the defendant should do between the service of Summons and the Court day.* (*Continued from page* 23.)

*The defence of set-off.*—The law of set-off is simply this: Where two contending parties have *mutual debts*, instead of two distinct actions and judgments being necessary, the defendant has the privilege of setting off his demand against the plaintiff, and then there is one judgment *for the balance*. Two distinct causes of action are thus settled in the same proceeding—the defendant's notice of set off answers to the plaintiff's Summons.

The notice is in effect a summons to the plaintiff to answer the defendant's own demand; and it is but reasonable that the defendant should be held to as much care in *his* particulars of *set off* as the plaintiff is in *his* particulars of *demand*; especially as the plaintiff has only six days' notice to answer, in the one case, while in the other the defendant has ten days.

What is requisite in the plaintiff's particulars of claim, already noticed in previous numbers, is equally necessary in the defendant's particulars of set off. The defendant, in making out his set-off, should give, where practicable, the particular items in detail, in the ordinary form in which an account is made out; he then adds a notice in the form mentioned in the February number, and serves the documents as directed therein.

With regard to the amount of a set-off, the law discloses two courses to the defendant; for if the defendant's demand be for an amount (say £30 or more), exceeding the jurisdiction of the Court, and he is able to prove an amount exceeding £25, the Judge will non-suit the plaintiff, and make an allowance to the defendant for his costs and trouble in attending the Court: or if the defendant's set off, after remitting any portion of it he may please, does not exceed £25, the Judge may give judgment for the defendant for any balance found in his favour; but if a judgment be given for the defendant, it is in full discharge of the whole set off. When, therefore, a defendant wishes to have the matter finally settled, and his set off exceeds £25, if he is willing to abandon all over that amount, he should enter the abandonment on the set off before he serves it. If the defendant's set off does not equal the plaintiff's claim, the one is deducted from the other, and the plaintiff has judgment for the balance only.

It may sometimes happen that a defendant neglects to serve in proper time the notice of "Statutable" defence. Whenever that is the case, the Judge is empowered to adjourn the case to enable the notice to be served: this is usually done upon payment to the plaintiff of his costs for witnesses, &c.; and in any case in which there would be a failure of justice if the adjournment was not made, as where there is a set off and the plaintiff is worth nothing, or leaving the country, the Judge will be sure to grant the defendant's application to put off the case.

With regard to securing the attendance of witnesses and the production of any necessary papers, the defendant can take the same steps to obtain and serve subpœnas as the plaintiff; and should the

defendant wish to have the action tried by a jury, he must, within five days after the service of the Summons upon him, give to the Clerk a notice requesting a jury, and pay the Clerk the fees on such proceeding.

## ON THE DUTIES OF MAGISTRATES.

SKETCHES BY A J. P.

*(Continued from page 24.)*

THE WARRANT TO APPREHEND.—(Continued.)

Every Warrant should shew on the face of it that the Magistrates issuing it has jurisdiction. [1] Sec. 3 of the 16 Vic. c. 178, points out the requirements of the Warrant, and contains ample directions as to when and where it may be executed, and for its being *backed*, the section enacts:—

That every such warrant to apprehend a defendant, that he may answer to such information or complaint as aforesaid, shall be under the hand and seal, or hands and seals of the Justice or Justices issuing the same, and may be directed to all or any of the constables or other Peace officers of the Territorial Division, within which the same is to be executed, or to such constable, and all other constables within the Territorial Division within which the Justice or Justices issuing such warrant, hath or haqe jurisdiction; or generally to all constables within such last-mentioned Territorial Division: and it shall state shortly the matter of the information or complaint on which it is founded, and shall name or otherwise describe the person against whom it has been issued: and it shall order the constable or other Peace officer to whom it is directed, to apprehend the said defendant, and to bring him before one or more Justice or Justices of the Peace, as the case may require, of the same Territorial Division, to answer to the said information or complaint, and to be further dealt with according to law; and that it shall not be necessary to make such warrant returnable at any particular time, but the same may remain in full force until it shall be executed: and such warrant may be executed by apprehending the defendant at any place within the Territorial Division, within which the Justices issuing the same shall have jurisdiction, or in case of fresh pursuit, at any place in the next adjoining Territorial Division, within seven miles of the border of such first-mentioned Territorial Division, without having such warrant backed, as hereafter mentioned: and in all cases in which such Warrant shall be directed, all constables or Peace-officers within the Territorial Division within which the Justice or Justices issuing the same shall have jurisdiction, it shall be lawful for any constable or Peace-officer, for any place within the limits of the jurisdiction for which such Justice or Justices shall have acted when he or they granted such Warrant, to execute such Warrant in like manner as if such Warrant were directed specially to such constable by name, and notwithstanding that the place in which such Warrant shall be executed shall not be within the place for which he shall be such constable or Peace-officer; and if the person against whom any such warrant has been issued be not found within the jurisdiction of the Justice or Justices by whom it was issued; or if he shall escape, go into, reside, or be, or be supposed or suspected to be, in any place within this Province, whether in Upper or Lower Canada, out of the jurisdiction of the Justice or Justices issuing the Warrant, any Justice of the Peace within whose jurisdiction such person shall be, or be suspected to be as aforesaid, upon proof alone upon oath of the hand-writing of the Justice or Justices issuing the Warrant, may make an indorsement upon it, signed with his name, authorizing the execution of the Warrant within his jurisdiction; and such endorsement shall be a sufficient authority to the person bringing the Warrant, and to all other persons to whom it was originally directed, and to all constables or other Peace-officers of the Territorial Division where the endorsement is made, to execute the same in any place within the jurisdiction of the Justice of the Peace endorsing the same, and to carry the offender, when apprehended, before the Justice or Justices who first issued the Warrant, or some other Justice having the same jurisdiction.

This section provides that the Warrant should *name* or *otherwise describe* the defendant. Whenever the name is known it should be accurately stated in the Warrant; but if the name of the party be unknown, the warrant may be issued against him by the best description the nature of the case will allow, as, "*the body of a man whose name is unknown but whose person is well known, and who is employed as a teamster, &c., and who wears,*" *&c.*[2]

It is evidently contemplated by the section that Warrants should be directed to authorised *officers;* and it is better, on every ground, that such persons only should be employed. Constables are the proper officers of Justices of the Peace—are *bound* to execute their lawful Warrants; and publicly known as Peace-officers, and possessing a general authority, they can perform the duty more efficiently and with greater safety.

No objections lie for want of form in the Warrant, but if the defendant has been deceived by any variance in it, the hearing must be postponed, as we will see more particularly when the proceedings at the Hearing are considered—forms of Warrants in the first instance, and after Summons, are subjoined.[3]

[1] In re. Peerless. 1 Ad & E (N.S.) 173.

[2] 3 Chitty's Crim. Law, 39.

[3] The following forms are taken from the schedule to the Act 16 Vic. c. 178.

*Warrant in the first instance.*

Province of Canada, (*County or United Counties, or as the case may be*) of }

To all or any of the Constables or other Peace Officers in the said (*County or United Counties, or as the case may be*) of :

Whereas information hath this day been laid before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said (*County or United Counties, or as the case may be*) of , for that A. B. (*here state shortly the matter of information*); and oath being now made before me substantiating the matter of such information: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A B and to bring him before (*me*) or some one or more of Her Majesty's Justices of the Peace in and for the said (*County or United Counties, or as the case may be,*) to answer to the said information, and to be further dealt with according to law.

Given under my Hand and Seal, this day of , in the year of our Lord , at , in the (*County, or as the case may be*) aforesaid.

J. S. [L.S.]

*Warrant when the Summons is disobeyed.*

Province of Canada, (*County or United Counties, or as the case may be*) of }

To all or any of the Constables or other Peace Officers in the (*County or United Counties or as the case may be*) of :

Whereas on last past, information was laid (*or complaint was made (before , (one) of Her Majesty's Justices of the Peace in and for the said County or United Counties, or as the case may be*) of

### APPREHENDING THE DEFENDANT.

When a Warrant is put into the hands of a constable, he should, as soon as he possibly can, proceed to find out and arrest the defendant. [4] An arrest may be made in the night as well as the day, but not on a Sunday, unless the offence charged includes a breach of the peace, or felony, &c. [5] A Warrant continues in force until it is fully executed and obeyed, provided the Magistrate granting it so long live. [6] The defendant should be brought without delay before the proper Magistrate; and it is the duty of the Magistrate to make such arrangements with the officer who is entrusted with the execution of a Warrant, that the case may be brought on to a hearing as speedily as possible after the arrest: to detain a party for an unreasonable time on any of the minor charges which Justices are empowered to determine, would be very improper; indeed, it would be both illegal and unjust.

for that A. B. (*&c. as in the summons*): And whereas (*I*) the said Justice of the Peace then issued (*my*) Summons unto the said A. B. commanding him in Her Majesty's name, to be and appear on , at o'clock in the forenoon, at , before (*me*) or such Justices of the Peace as might then be there, to answer unto the said information (*or* complaint) and to be further dealt with according to law; And whereas the said A. B. hath neglected to be and appear at the time and place so appointed in and by the said Summons, although it hath now been proved to me upon oath that the said Summons hath been duly served upon the said A. B.: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B. and to bring him before (*me*) or some one or more of Her Majesty's Justices of the Peace in and for the said (*County* or *United Counties, or as the case may be*) to answer to the said information (*or*) complaint), and to be further dealt with according to law.

Given under my Hand and Seal, this day of , in the year of our Lord at , in the (*County, or as the case may be*) aforesaid.

J. S. [L.S.]

[4] Dalt. 169 p. 401. In making an arrest, no more force than is actually necessary should be employed, and the defendant should in no case be handcuffed unless there be reason to suspect he will use violence or attempt escape (see Wright v. Court, 4 B. & C. 596). The following observations, taken from a published address, *by Judge Gowan*, on the duties of constables, may be subjoined as giving full practical instructions for the guidance of officers:—

*What an Arrest.*]—An arrest is the apprehending or detaining *of the person* in order to be forthcoming to answer an alleged or suspected crime. The officer should not merely content himself with securing the offender, but should actually *arrest* him; so that if he escape, or is rescued by others, he or they may be subject to the penalties of *escape on arrest.*

To constitute an arrest, the party should, if possible, be touched by the constable: bare words will not make an arrest without laying hold of the person, or otherwise confining him. But if an officer come into a room, and tell the party he arrests him, and locks the door, this is an arrest, for he is in custody of the officer. Or if in any other way the party submit himself by word and action to be in custody, it is an arrest.

*How made.*]—A constable sworn and commonly known, acting within his own township, need not show his warrant, but he should in all cases acquaint the party with the substance of it, and the cause of arrest.

In every case where the constable acts out of his own township where he is not known to be a constable, he should produce his warrant if required; and to avoid all excuse for resistance, it is recommended, whenever demanded, that the constable should produce and allow his warrant to be read; but in no case is he required to part with it out of his possession. If the party snatch or take the warrant the constable has a right to force it from him, using no unnecessary violence in doing so.

*Resisting Officer.*]—A constable is bound to use the *utmost* caution and *forbearance* in case of resistance, but he may lawfully use force to overcome resistance. The force used should not exceed the necessity of the case, and should cease the instant resistance is over:—to beat or abuse a prisoner who is powerless is both unmanly and illegal.

*Duty after Arrest.*]—The constable should impose no more force or restraint than may be necessary to prevent escape. Where the charge is for assault, or other comparatively mild offence, and the defendant is of good repute, and there is no probability of his absconding, less restraint may be considered necessary than in offences of a greater magnitude.

The age and bodily strength of a prisoner are matters to be thought of by the constable in determining the amount of restraint he will use. He certainly ought to treat his prisoner with kindness and humanity, and should use no unnecessary severity or constraint. Yet it is his bounden duty to use all reasonable precaution to prevent escape, especially for serious offences, or if there be any apprehension of an attempt to escape on the part of the prisoner, or rescue by others. If several persons are arrested for an offence, and it be a serious one, the parties should be kept separate from each other, and not permitted to have any communication previous to being brought before the Magistrate for examination.

*General directions.*]—Where the constable has made an arrest, with or without warrant, he should, as soon as possible, bring the party before a Magistrate, according to the terms of the warrant, and if guilty of any unnecessary delay he will be liable to punishment; but if the arrest be made in or near the night, or at a time when the prisoner cannot well be brought before the Magistrate, or if there be danger of rescue, or the party be ill and unable then to be brought up, the constable may secure him in the County Gaol, in a lock-up house, or other safe place till the next day, or until it may be reasonable to bring him up before the Magistrate; but a warning is again given against any *unreasonable* detention.

If the warrant be to bring the party before the Magistrate who issued it, the constable is bound to bring him before the same Magistrate; but if the warrant be to bring him before any Justice of the Peace of the County, then the power of election is in the constable, and not in the prisoner, and the former may proceed to any convenient Magistrate in the County. When the prisoner is brought before the Magistrate, he is still considered in the custody of the officer, until bailed or discharged, or committed to prison.

[5] 9 Co. 66. 29 Car. 2 c. 7, s. 6.

[6] Per L'd Kenyon, C. J.; Peak R. 234; 1 Esp. R. 218 (s. c.); and see 16 Vic. c. 178, s. 3

## ON THE DUTIES OF CORONERS.

(CONTINUED FROM PAGE 26, VOL 2.)

### IV.—MINISTERIAL DUTIES OF CORONERS.

Acting ministerially, the Coroner has powers analogous to those of the Sheriff in serving process, levying under execution, &c.; but they are only exercised where that officer is disqualified on account of being a party to the suit. Stephens says that he is the Sheriff's substitute, and that "where just, exception can be taken to the Sheriff for suspicion of partiality, as that he is interested in the suit; the process must then be awarded to the Coroner, instead of the Sheriff, for execution of the King's Writs."[a] There are other ministerial duties attached to the office, in England, which are not applicable to this country; so that we will proceed to notice the Fees payable to Coroners on Inquests, and when acting as the Sheriff's substitute.

### V.—CORONERS' FEES.

By the Stat. 3 Hen. VII. c. 1, "the Coroner shall have for his fee upon every Inquest 13s. 4d. of the goods and chattels of the slayer or murderer, if he have any, and if not, of such amerciaments as shall fortune any township to be amerced for escape of such murderers." And by 25 Geo. II. c. 29, s. 1, for every Inquisition (not taken upon view of a body dying in Gaol) he shall have 20s., and also 9d. for every mile he shall be *compelled to travel from his usual place of abode to take such Inquisition*, to be paid by order of the Justices in Sessions out of the County rates, for which no fee shall be paid. And by sec. 2 of 25 Geo. II. c. 29, for every Inquisition taken, on view of a body dying in prison, he shall be paid so much, not exceeding 20s., as the *Justices in Sessions* shall allow to be paid.

By Rule of T. T. 5 Wm. IV, it is ordered that the following fees be allowed to Coroners for services hereinafter named:—

[a] 4 Just. 271.

"For summoning Jury and making return to Clerk of Assize, for each Juror actually and necessarily summoned, 1s. In other respects, same fees as to Sheriff for similar services."

And by Rule of H. T. 12 Vic. it is ordered, "that in future the same fees be allowed to Coroners, for services rendered by them in the execution and return of process in civil suits, as would be allowed to a Sheriff for the same services; and that when, according to the nature of the process and the service rendered thereon, the Sheriff, if he had discharged the same duty, would have been allowed poundage, the same poundage shall be allowed to Coroners." The poundage and fees allowed by H. T. 10 Vic. are as follows:—

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|---|---|
| Poundage on executions, and on attachments in the nature of executions, where the sum levied and made shall not exceed £100, | 5 per cent. |
| Where it shall exceed £100, and be less than £1000, £5 per cent. for first £100, and 2½ per cent. for residue. | |
| Over £1000, 1¼ per cent. on whatever exceeds £1000, in addition to the poundage hereby allowed up to £1000, in lieu of all fees and charges for services and disbursements, except mileage in going to seize, and disbursements for advertisements; and, except disbursements necessarily incurred in the cause, and removal of property in cases not exceeding £100, to be allowed by the Master in his discretion. | |
| For schedule of goods taken in execution, including copy to defendant, if not exceeding five folios of 100 words | 5s. 0d. |
| For each folio above five folios, | 0s. 6d. |
| Advertisements of lands in the *Gazette*, the sum actually disbursed. | |
| Drawing up advertisements when required by law to be published in a newspaper, and transmitting same, in each suit, | 5s. 0d. |
| Notice of sale of goods in each suit, | 2s. 6d. |
| Notice of postponement of sale in each suit, | 1s. 3d. |
| Service of Writ of Possession or Restitution, besides travel, | 20s. 0d. |
| Bringing up prisoner on Attachment or *habeas corpus*, besides travel at 1s. per mile, | 5s. 0d. |
| For travel from Court-House to place of service of process, and in all cases for actual mileage when service is performed, | 0s. 6d. |

FEES IN RELATION TO INQUESTS.

| | |
|---|---|
| Precept to summon Jury, | 2s. 6d. |
| Impanelling a Jury, | 5s. 0s. |
| Summons for Witness, each | 1s. 3d. |
| Information or examination of each witness, | 1s. 3d. |
| Taking every Recognizance, | 2s. 6d. |
| Necessary travel to take an Inquest, per mile, | 1s. 0d. |
| Taking Inquisition and making return, | 20s. 0d. |
| Every Warrant, | 5s. 0d. |

Coroners, if medical men, when called upon to give evidence in consequence of any professional services rendered by them, or to give professional opinions, are also entitled to receive 20s. per day; and for every 20 miles travel, to and from the Court, 5s.

(TO BE CONTINUED)

## MANUAL, ON THE OFFICE AND DUTIES OF BAILIFFS IN THE DIVISION COURT.

(*For the Law Journal.*) By V.

It is no excuse for the neglect or violation of the Rules and obligations of a calling, that the individual has not taken the pains to learn what they were. The office of Division Court Bailiff is one of great importance to the public at large; and if the duties pertaining to it be not honestly and efficiently discharged, the Division Court, instead of being an advantage to business men and litigants, would become stumbling blocks and shoals.

In this country, dealers are obliged to trust out a very large portion of their means, and the Division Courts were created for the express purpose of affording a speedy and cheap method of recovering outstanding debts and claims.

Where the Sheriff has ten Writs to serve, the Division Court Bailiff has one hundred or more; and the proportion of Executions is not less. However able, faithful and diligent, the Clerk may be, it is impossible that any Court can be efficiently worked, or the interests of the suitors properly protected without an able Bailiff; and those only deserve that name who are thoroughly acquainted with the nature of their duties. The legal service of the Summons is the foundation of every suit, and all process passes though the officer's hands. An officer whose duty it is to carry out the judgments of the law against offenders, is never a very popular functionary; and Bailiffs, from the nature of their business, and the number of persons (often the worst characters in the community) with whom they are brought into contact, are particularly exposed to prejudices, and must expect constantly to meet with difficulties. They will find at every step persons ready to take advantage of any little error or irregularity, and to annoy by complaints, or to pounce down upon them for damages and

costs. A Bailiff is considered "fair game" at all times; and woe to him if he makes a slip. Of course this feeling springs from a wretched and an absurd prejudice; but as we know it does exist, it becomes doubly necessary for the officer's own protection that he should have a thorough knowledge of his duties, so as to be able to act with safety and without delay on any emergency. He cannot have the Clerk always at his elbow to instruct him, nor can he apply, out of the regular course, to the Judge. There are a great number of Bailiffs in Upper Canada, none of them over well paid; and in the less populous Divisions their remuneration is very small, consequently, in many cases, the office is filled by men of very limited education; and yet the public expect perfection from them all. The writer has been connected with the Local Courts for more than thirteen years: and although a recently published analysis, by one of the Judges, has aided in facilitating an acquaintance with the Division Courts' Statutes, Rules and Forms, yet there is reason to believe that not two out of twenty Bailiffs are able to select the clause in the Act bearing on these duties, and to trace their connection with each other and the rules of practice; therefore the necessity for further instruction to Bailiffs: and the object of this Manual is to place before them, in plain language, every part of their duties in detail, with full and minute instructions how to act with safety under any, and every circumstance likely to arise, and giving all the Forms necessary for a Bailiff to have. There will be no pretensions to originality in the following pages, but all that concerns a Bailiff will be placed in an orderly form, that every officer will be kept from serious blunders by having the Manual to refer to; and even those of the humblest capacity may profit by a perusal. It is hoped that County Judges will furnish notes of their decisions respecting the office, to be engrafted in the work for general information. Every Judge must desire to see officers well instructed; and it may be added, that their own comfort in the discharge of their duties, will be not a little increased by having well informed Bailiffs in their Courts.

An experienced County Judge, in examining the Division Courts Law, observed:—"It is very important that Bailiffs should be kept to the strict line of duty, and that diligence, as well as fidelity, should mark their proceedings. The public value of an Inferior Court is not a little dependant on the activity, intelligence and honesty, of its ministerial officers; and there are few things more galling to a suitor than to find his rights delayed or his claim lost by the carelessness or misconduct of a Bailiff: even for the officer's own sake, particularity is necessary." And it may be added, that the duties incumbent on Bailiffs by the Statutes and Rules are not more obligatory than the duty incumbent on the Judges, to see that these duties are faithfully discharged. The subject will be considered under the following general heads:—Appointment of Bailiffs—Duties of Bailiffs before Courts; in the service of Process, &c.;—duties in Court;—duties after Court in levying Executions and executing Warrants, &c.—Fees of Bailiffs—Actions and proceedings against them—The provision of Law for their protection and indemnity.

## U. C. REPORTS.

### GENERAL AND MUNICIPAL LAW.

(In Chambers.)

*Attorneys' Privilege from Arrest.*

A rule *nisi* was obtained in Michaelmas Term last, calling on Neil Cameron McIntyre, one &c., to show cause why a sum of money found to be due by him, on reference to the Master, to M. Holmes & Co., on account of claims placed by them in his hands for collection, should not be paid over. The The rule was afterwards made absolute, with costs, and a copy thereof, with the Master's allocatur of the costs taxed, was served on him.

In Hilary Term last, a rule for an attachment was moved for and granted, and said McIntyre was immediately arrested in Osgoode Hall.

A summons was taken out in Chambers, by Mr. Burns, to set aside the arrest on the ground that said McIntyre was privileged from arrest while attending at the Hall on professional business.

*Carroll showed cause.*

Reserved.

Burns, J.—Privilege is of two kinds—permanent and temporary. As an attorney, he is privileged from being arrested and held to bail in an ordinary suit; and when arrested, would be discharged upon entering a common appearance. The reason of this privilege is founded on the assumption that he is always in court attending to his clients' business. The privilege does not apply when process of attachment is ordered by the Court against an Attorney, for it would be inconsistent with the power of the Court to punish by attachment, if at the same time there existed a privilege against being arrested. It is quite clear the attorney is not entitled to a general privilege, and the question then is, whether there be any temporary privilege while he was at Osgoode Hall, supposing him to be

there attending to his client's business. These clients, to whom he has been ordered to pay monies collected, had at one time the same right to exact his services in their business as others had, and I do not see that he was relieved from that obligation because they have asked the Court to punish him for disobeying the order of the Court, and for that reason any argument founded upon the privilege being so founded on the rights of suitors, fails. The attachment, it is true, partakes of the nature of civil process, so far as allowing the person attached to put in bail to answer, but it partakes of a criminal nature in this, that if the answers be unsatisfactory, the contempt which has not been purged remains, and the person attached must remain in custody at the pleasure of the Court, or be delivered by due course of law. The attachment issues by reason of the contempt having been committed, and the question is, whether any temporary privilege exists against an arrest being made upon the writ.

In the ordinary case before mentioned, the privilege exists, because it is assumed that the attorney is always in court; but if a temporary privilege exists, it is upon the assumption that the person has gone to court on some business, and has a right to return home before being arrested. To make both these assumptions in an attorney's favor, where his attendance is upon the same court, and against the process of the court, for a contempt of the court, does not appear to me to be consistent. I think he has no personal privilege as against an attachment ordered against him for a contempt. So far as respects the infringement of the franchise of the court itself, by an arrest being made within its precincts, that belongs to the Court, and the arrest would be good. See Kirkpatrick *v.* Kelly, 3 Doug. 30. The fact of the Court having ordered an attachment for a contempt of Court, shows that it was not intended to claim a right exempting the person from being arrested. This power, in my opinion, overrules any privilege which the attorney can claim in favor of his person; and, therefore, I must decline to discharge him.

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THE BANK OF UPPER CANADA *v.* WILLIAM H. WARD, JACOB C. BALL AND HIRAM MARLATT.

*Judgment as in case on non-suit—Confession by some of several defendants after Record entered.*

*Practice Court, Trinity Term, 19 Vic.*

RICHARDS, J.—In Easter Term last a rule *nisi* was obtained for judgment, as in case of a non-suit for not proceeding to trial pursuant to notice. During the term Mr. *Eccles* moves to discharge the rule, and files the affidavit of Mr. *Lawder*, partner of plaintiff's attorney, stating that after the cause was entered for trial, two of the defendants, Ward and Marlatt, gave a cognovit for the full amount due the plaintiffs in the cause, together with all the costs of that suit, as a final settlement thereof, which was accepted and received as such, and the record thereupon withdrawn.

I had intended to make some further inquiry as to whether the defendants were sued as makers or endorsers of a promissory note, so that there might be a separate judgment for each or for one defendant, and against the other two, pursuant to the statute—but the case of Monk *v.* Bonham, 2 Dowl 336, L. C. 2 C. &. M., 430; 4, Tyr 312, seems to me to decide the question. That was an action against defendant, as acceptor of a bill of exchange—plaintiff having given notice of trial without proceeding to trial. Accordingly a rule *nisi* was obtained for judgment, as in case of a non-suit. Cause was shown on affidavit that the bill had been paid and the action abandoned, and that defendant knew of the payment in November. In support of the rule, it was urged that as defendant disputed his liability as acceptor, and had not paid the bill to the plaintiff, he was entitled to a peremptory undertaking in order to recover his costs. The Court held there was a sufficient reason shown for not forcing the plaintiff to trial, particularly as defendant might try the case by proviso, in order to obtain his costs.

I think, therefore, the rule in this case must be discharged, but without costs.

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BOWEN *v.* SAIMS ET AL.

*Arbitration—Award bad if not final in respect to matters in difference and reference being a general one—Affidavits showing facts on which award is based, when allowed.*

*Practice Court.*

In Trinity Term, 19 Vic., Mr. *J. D. Armour* moved to set aside an award made between the above parties. The grounds of the application are fully set forth in the judgment.

BURNS J.—The objections made against the validity of the award are—1st. That the award does not decide the suit, nor right for which the action was brought; nor does it dispose of the suit.—2nd. That it does not decide whether or not the plaintiff was entitled to the use of the stream mentioned in the award.—3rd. That it does not decide whether the defendants had or had not a right to divert the stream.—4th. That it does not show for what the sum of five shillings per annum, directed to be paid by the plaintiff to the defendants, was to be paid, or why the same was ordered to be paid.—5th. That it only puts an end to the differences between the parties (if it does at all) for the period of five years.—6th. That it is not certain, and is not final and conclusive between the parties, and does not finally dispose of the matters in difference.

With regard to the first objection, it does not appear by the submission that there was any suit to be determined or decided upon in particular—none is recited or mentioned.

The reference is by bond, the condition of which is a general reference. Before the condition, it is recited that differences and disputes had arisen between the parties, respecting a certain stream of water or water-course, running on lots numbers 32 & 33, in the 3rd concession of the township of Clarke, and the diverting the same by the defendants, whereby the cattle of the plaintiff were prevented from enjoying the use of the same. The affidavit of the plaintiff, on the application to set the award aside, states that a summons was sued out by him against the defendant in respect of such matters; but before the pleadings, the matters were referred. What the plaintiff might have alleged, as an injury of course, I can only conjecture from the affidavit, and from what is recited in the submission, and what is stated in the award. There is nothing upon which to found an enquiry whether the suit was or was not disposed of. All the other objections came up on the award, which says that the defendants "shall turn the stream so that the plaintiff shall have the same use of the water as formerly he had, for the period of five years from the date hereof: and the plaintiff shall pay or cause to be paid to the defendants, or either of them, or either of their heirs, &c., the sum of 5s. per annum, on the 6th of August in each year during that period." The affidavits filed on the part of the plaintiff state that the stream in question has flowed to the plaintiff's land, just touching it, and then crossing the road and going back to the defendant's land, for upwards of twenty years, and that the plaintiff used the waters for his cattle: and it is said such evidence was given before the arbitrators.

In opposition to the application the arbitrators have sworn that the plaintiff did not satisfactorily show that he was entitled to the use of the water of the stream in dispute, or that the water ran upon the plaintiff's land, except in cases of flood. Affidavits showing the facts upon which the arbitrators based their award are not allowable, unless for the purpose of attacking the award on the ground of corruption of the arbitrators, or that they have taken matters into consideration which they should not have done—not being referred; or have omitted to award upon matters which were referred and brought to their notice. Suppose it to be quite true that the plaintiff did not enjoy the use of the water of the stream except at floods, still that was a right which he had, and could not be deprived of

unless by his own consent. I do not see upon what principle the arbitrators could imagine that they had a right to oblige the defendants to restore the plaintiff's right to the use of the flood water for a period of only five years, and make the plaintiff pay the defendants 5s. a-year for it, if the 5s. a-year was awarded for that purpose.

Taking the award, however, upon the face of it it is clearly bad. It is manifest that it is not final, for after the expiration of the five years the parties would be in a worse situation than they now are. The award admits [illegible] only the plaintiff had some use of the stream, for the defendants are ordered to *turn it as he formerly used it*, and to do so for the space of five years.

If the plaintiff accepts this award, and pays the 5s. a-year for the five years, he would do a great deal to destroy any right he might after that period set up to the use of the water. Why the arbitrators should have disposed of the matters between the parties for five years, leaving them at the end of that time in a worse situation than now, is difficult to understand.

The award must be set aside.

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DEAN v. THE PETERBOROUGH AND COBOURG RAILWAY COMPANY.

*Arbitration—Discovery of fresh evidence after award made out, of itself sufficient to set it aside, defendants being previously aware of such evidence having existed and diligent search therefor having been made—Query. If award could not have been enlarged, or if application to do so had been refused, to enable defendants to make further search?*

*Practice Court.*

BURNS, J.—The facts are, that in March, 1855, the plaintiff commenced two actions against the defendants, one in trespass to his land for building the railway across it, and the second for so constructing the railway as to make a breach in his mill dam, and thereby cause him an injury. In the action of trespass the parties pleaded to issue; and in the other the writ was merely sued out and served. On the 16th of June, 1855, both of these causes of action were referred to arbitration, and also all other matters between the parties, except a certain action of ejectment brought by the plaintiff against the defendants. On the 14th July, 1855, the arbitrators made an award, and thereby awarded that the defendants should pay the plaintiff £16 13s. 4d. for damages *in respect of the action of trespass*; and in respect of the other matters in difference, they found that the defendants did agree with the plaintiff to make and maintain an embankment from the waste way of the plaintiff's dam, and along the line of the railway, so as to enable the plaintiff to raise the water in his mill pond two feet higher than he could before the railway was constructed across his land, and they awarded that the defendants should pay the plaintiff the sum of £88 6s. 8d. for the damage occasioned to the plaintiff in consequence of the breaking away of the embankment.

The defendants have now moved to set aside the award, on the ground of discovering important evidence since the award was made.

The evidence since discovered is as follows.—In 1853 a person was employed by the defendants to purchase the right of way for the railway from the proprietors of the lands through which the railway would pass; and on the 16th May, 1853, the plaintiff signed a paper as follows: "I hereby agree to sell the said Company the right of way across my lot, being part of lot number 9 in the 3rd concession of Hamilton, for the price of £15, including all damage; provided I am not prevented from raising the water on my land two feet above the present working level, and also that a switch is built on said road on lot No. 9 in the 4th concession of Hamilton."

Indorsed on this paper, dated 23rd September, 1853, is a receipt for £7 10s., part of the £15. It is shown that this document was not produced to the arbitrators, and has only been found since the award was made. It is further sworn to that the paper was mislaid before the arbitration, and could not, after a diligent search, be found, and has been found since among papers not connected with this matter.

One of the arbitrators swears that if he had seen the document before he consented to the award, it would have made a very material difference in his mind as to the conclusion he would have arrived at.

In opposition to the application, the other two arbitrators swear that had they seen the document, it would not, in their estimation, have made any difference in their minds as to what should have been awarded to the plaintiff.

This is a novel application.—The cases I have been referred to on the subject of the discovery of fresh evidence, where the Court has interposed, are cases chiefly after verdict. What Lord Hardwicke said with respect to awards, is this: "I will not say that in no case whatever, new matter discovered after the award will not affect it—but I do not know any case where it has been allowed. An award differs from a decree in this respect—a decree is compulsory. The parties cannot bring on their cause, or delay it before the Court; but an award is the judgment of Judges of the parties own choosing; and they need not submit, until fully approved of, the merits of their case; and if they do, it is their own fault."*

In the present case the arbitrators were not obliged to make their award by the day named, for authority is given to extend the time; and, in fact, they did extend it. It is strange that the arbitrators were not asked to delay the final award until the document should be found, for I infer from the affidavits that those in charge of the Company's interests before the arbitrators knew of its existence before the award. The arbitrators would surely have granted time for the purpose of searching for it. Suppose, however, that I am not correct in supposing that the document was so known to exist before the award made, then it is purely a case of the discovery of a document after the award made. Eardly v. Otley, 2 Chit. Rep. 42 does not support the present application, because more was required than merely stating the discovery of fresh evidence. It should be shown that there was some surprise, and that the evidence was such as reasonable diligence could not have obtained. In this case it is shown that a person was employed to purchase up the rights of way, and that was one of the very points in issue in the action of trespass. Surely a very moderate amount of diligence might have enabled the defendants to have procured evidence of the plaintiff's assent to the land being taken for the railway, even though the paper showing his assent had been forgotten and could not be found. The price he agreed to sell at was £15, and the amount awarded is £16 13s. 4d. Whether the arbitration took into consideration the £7 10s. paid on the 23rd September, 1853, does not appear; and I have no means of ascertaining. I suppose, however, they did not do so. If they did not, it was a moral fraud in the plaintiff to conceal that fact from them; but I could not, on that account, set aside the award, for the fact of the plaintiff having received the money was equally well known on the other side, and the parties have left all matters to judges of their own choosing, with power to extend the time for making an award, from time to time, to enable every matter to be submitted for the consideration of the arbitrators. How can I tell but that the knowledge or information discovered after an award made, may not purposely have been withheld, if the mere discovery were a sufficient ground to set aside an award?

In Smith v. Samsbery, 9 Bing. 31, it was discovered after an award made, that one of the parties examined had been a convicted felon. The Court did not allow that to be a sufficient ground for setting aside the award. Pelmore v. Hood, 8 Scott, 182; and 8 Dowl. 21. The Court would not interfere against an award where it was shown that the arbitrators had been imposed upon by a false statement of the witness.

The Rule must be discharged.

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*Vide note to Henning v. Swinnerton, 1 Coop. C. C. 418.

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# THE LAW JOURNAL.

## *MARCH*, 1856.

### THE ADMISSION OF ATTORNEYS.

THE Law, as it now stands, respecting the admission of attorneys to practice in Upper Canada, was very fully examined by a contributor (A.B.V.) in the last September number of this Journal. We trust the matter so forcibly put may engage attention, and that the suggestions in the article referred to will be acted on. Our contributor's views are more than fortified by the opinions since expressed in the *Law Times* (a periodical distinguished for the uprightness and talent with which it is conducted), respecting guarantees for the educational fitness of Attorneys.

In England, there is an examination before the Attorney is admitted; in Upper Canada there is no such thing; and therefore the remarks in respect to the English Attorney apply with more force to the same class in Upper Canada. In a late number of the *Law Times*, the editor, speaking of the plan recently submitted by the Inns of Court Commissioners on Legal education, says: "If a Law University is to be created, why should it not be such in its entirety, and embrace the whole profession? It is to the public of vastly more importance that the Attorneys should be honorable and educated gentlemen, than that the Bar should be such. Clients can protect themselves against an ignorant Barrister, but not against an ignorant Attorney. A rogue in a gown and wig can do no great harm; but a rogue, permitted by the Court to style himself "gentleman, one" &c., may (and sometimes does) ruin the client utterly, before the client knows what wrong has been done." Our contributor (A. B. V.) said, in September last: "It is desirable that an educational test should be applied to Attorneys as well as Barristers, and there is more need for it: the former are infinitely more in the way of inflicting injury by ignorance or turpitude than the latter; and, from the very nature of their duties, with fewer checks."

Further, the business of the Attorney lies chiefly in his private office with his clients; the Barrister exercises his calling chiefly before the Judges and the public at large, surrounded by those restraints which an upright and firm judiciary, and a well directed public opinion, impose." It will be observed how closely both writers correspond in their views on the subject. The article in the *Law Times* proceeds:—"A Law University would afford an admirable and most efficient machinery for the advancement of the Attorneys as a class. Why should not the articled clerk be required to be a member of the Law University, admitted after such an examination into general acquirements as would secure in him that he had received a liberal education? When admitted, let him make his choice for which branch of the Profession he will study. If he chooses the prudent course, and prefers thriving as a Solicitor to starving as a Barrister, let him then be articled. Having served his articles, let him apply again to the University for permission to practice; but now after an examination into his legal competency. If at any time thereafter, he should desire to quit one branch of the Profession and go to the other, it should be competent to him to do so, on again offering himself for the special examination to which the applicant for that branch should be subjected. But whether Student, Barrister or Attorney, he should be and continue a member of the Legal University, subject to its regulations, and sharing its privileges.

Thus would one machinery suffice for the government of the entire Profession; and there can be no doubt that it would operate to the immense advancement of both branches of it in ability, influence and reputation. It would give to the Profession that unity which it now wants, and which would enable its members to work together for the common good."

There is an article in *Blackwood's Magazine*, said to be from the pen of Mr. Samuel Warren, Q. C., containing an elaborate review of the entire question, with a decided approval of the proposition for an examination into general acquirements before admission as a Student-at-Law, as well as an examination into legal learning before admission to practice. In the 5th of January number of the *Law Times*, the editor remarks: "The preliminary educational examination to be limited to English History and Latin, has found more objectors, who contend that a man may be a very good Lawyer and a very bad classic, instancing Yorke and some few other remarkable examples. But these are exceptional cases. Extraordinary natural genius will overcome all obstacles. As a rule, a man so ill educated as to be ignorant of the history of his country and of the language in which a considerable portion of the law is expressed, is not a gentleman, and cannot be a sound lawyer; and we must legislate for the rule, and not for the exception. As it is still more necessary for the protection of the public that the Solicitor should be a gentleman, a preliminary examination is still more necessary for that branch of the Profession; and we are glad to see that in this there is now scarcely a difference of opinion."

In Upper Canada every precaution has been taken to secure a learned and honorable bar—there is a preliminary examination on the candidate's general acquirements; and after five years' study he is again examined, to test the nature and extent of his professional knowledge, and unless found to be fit and capable of practising with "honor to himself and advantage to his fellow subjects," the degree of Barrister is not conferred upon him. The Attorney is subject to no examination whatever, preliminary or final. The Barrister must have *proved* his fitness—the fitness of the Attorney is presumed; an inconsistency too palpable to require much enlargement. Our contributor (A. B. V.) did not speak too strongly in saying—

"Existing laws afford no guarantee of fitness. A young man whose only qualification for entering on the study of the law is ability to read and write, may be articled to an Attorney;—spend five years copying and serving papers, or idly kicking his heels against the office desk, or in doing the dirty work of a disreputable practitioner. At the end of this time, armed with a certificate of service, he claims to be sworn in as an Attorney of Her Majesty's Courts, and is sworn in accordingly. He may know nothing whatever of professional duties—may in fact be grossly illiterate and deficient in every acquirement that would enable him to act with safety and advantage for a client, and yet the law entitles him, simply on proof of service under articles, to the certificate enabling the holder to undertake the most important duties of an Attorney—duties which, if not performed with integrity and ability, may bring ruin on the unfortunate client and his family. A man of this stamp will always 'be guilty of the cruel, the scandalous misconduct of essaying to practice the law without the requisite amount of professional knowledge.' Mark! he is put in possession of credentials that, *as a fit and proper person*, he has been admitted to a class possessing the exclusive privilege of conducting the legal affairs of others for reward—is thus enabled to impose upon the unwary; and the discovery of his incompetence may be made only at the moment when the client's (or victim's) ruin has been consummated by some improper act or omission of this accredited agent of the law."

We have not now the urgencies of an infant state to excuse the admission to the profession of half educated men; the facilities for a superior education are everywhere to be found: besides private seminaries, there are from 40 to 50 grammar schools; and the common school system has dotted the country with schools accessible to all. The poorest farmer in Upper Canada can educate his son. It is no longer (to quote again from A. B. V.) necessary

"To make Lawyers by an Act of Parliament, or to invite men to enter the profession, without requiring of them the Shiboleth of fitness. The Land Surveyor and the Common School Master are examined, and their fitness proved before being allowed to pursue their vocations under the sanction of law; the important office of Attorney, with its powers and privileges, is thrown open to any one who has spent a few years in doing, it may be, the mechanical work of an office. There is no Royal road to Law, any more than there is to Geometry."

A remedy may *now* be applied without difficulty and without invasion of vested rights: delay will encumber the question with complications and opposing interests. The cure is simple, but it can only be effectually accomplished by the Legislature. Let an act be passed requiring, as in the case of Barristers, an examination into general acquirements before admission as a student, as well as an examination into legal learning before admission as an Attorney, and the thing is done.

## THE COMMON LAW PROCEDURE ACT.

The Honorable Mr. Attorney Macdonald has laid before the House of Assembly a most important Bill, under the above title, to simplify and expedite the proceedings of the Courts of Common Law. It is a most extensive and ably digested measure of Law Reform, not merely consolidating and improving the present law in relation to the issuing of writs —the mode of pleading—the arrest in mesne process —the proceeding against absconding debtors—the law in relation to indigent debtors, &c., but introducing new and valuable improvements. Amongst the principal changes it embodies are—The power given to the Judge to dispose of questions of fact—to refer matters of account to arbitration—the securing in every case to the party adducing evidence the power of summing up—the power of adjournment at trial—the reversal of the technical rules of evidence in respect to the right of a party to discredit his own witness—the power of attaching debts under an execution—the extension of the writ of mandamus to compel specific performance —the power of granting injunction in certain cases—the right to plead equitable defences, &c. The very crude provisions of the Criminal Law Act for holding Courts of Assize and Nisi Prius and Oyer and Terminer, are also put in a better shape; and on the whole, we feel assured that the Bill will meet the approval of every one who values substantial justice. It is intended, we are informed on good authority, to give the County Courts a similar practice: without this the measure would fall short of justice to all classes.

To enter on any lengthened review of the Bill before us would not be possible in our limited space; but there is one point which we referred to some months ago, and would say a word upon now. Section 152 we like much better than the repealed section it stands in the place of, but it yet falls short of our notions as heretofore expressed. No option should be left to any Government; the Queen's Commission should issue regularly to the Judges, let it include as many qualified persons as may be desirable, but do not dispense with what has been for ages associated in the public mind with the administration of Justice. The system of occasional Judges is established, while the existence of regular Judges is ignored; this is very objectionable. We have long held the opinion that the County Judge should preside in the absence of a Judge of the Superior Court; not that we would interfere with the going Judge of Assize in appointing any qualified person he thought best, far from it—but we would enable him, *in his discretion*, to require the County Judge to act in his absence. The view of the matter held in England will be seen in the following, from an ably conducted Law periodical:—"The proposed measure must also be, in many respects, highly conducive to the administration of Justice upon the circuits. At present, the Judges of Assize are obliged occasionally to have recourse to the Queen's Counsel and Sergeants on the circuit to sit for them, both at *Nisi Prius* and at the trial of offenders. But this is always more or less attended with the evil of delaying the business in which those particular counsel are engaged, to the inconvenience and cost of their own clients; besides which prejudices are often created in the public mind as regards the administration of justice, when they see a barrister one day sitting *as a Judge* to try offenders and to decide between litigants, and the next day appearing in the same court *as an advocate* in a cause, or to defend or prosecute prisoners. Indeed, the evil of such a system has already not only been admitted, but the practice itself has been condemned by the Legislature as regards the County Courts: and a measure was passed (which we first suggested, and repeatedly and at length successfully advocated) prohibiting barristers from acting as Judges of the County Courts in those districts where they practice. That which is bad in principle, in the County Courts, must be more or less so in the Superior Courts. Indeed, it is even more essential to adopt every precaution to prevent a suspicion of injustice in the Superior Courts, where interests of the utmost importance are decided upon, and trials involving life and liberty take place, than it ever can be in the County Courts. The County Judges should be included in the Commissions of Assize, as being eminently eligible for the purpose, from the experience they possess in the trial of civil cases. Several of the County Judges are in the habit of attending both the Assizes and Sessions of the Counties in which they reside in their capacities

of Magistrates, so that no actual additional tax on their time would be imposed by their attendance as Judges instead of auditors."

Now the County Judges in Upper Canada have also experience in the trial of criminal cases, and they should on every account be rendered eligible for the appointment. Acting as Judges of Assize, they would scarcely even have more important functions to perform than those they are constantly engaged in. And what is of high consideration, they would be *responsible officers*, which Queen's Counsel would not be, at least to the same extent. We trust some amendment may be made in this particular.

Should the Bill before us pass into law, and we trust it will, at an early day we purpose laying before our readers comments illustrating and explaining its leading provisions, and will make arrangements to give early reports of the decisions upon the Act.

## THE COUNTY OFFICERS.

*(For the Law Journal.)*

We purpose submitting some remarks on the remuneration of County officers who are paid for services rendered to the Government, *by fees*.

During the last session, the Parliament passed acts for increasing the salaries of certain Judicial and other public functionaries, and amply provided for the enhanced necessities of the persons intended to be benefitted, by a wise and liberal advance: the prices of all the necessaries of life not only justified but required it.

By 18 Vic. ch. 89, the salaries of the "High Public Functionaries," the Judges of the *Superior Courts of* Law and Equity, in both sections of the Province—the Judges of the Circuit Courts, in Lower Canada; and the minor officers of the General Government, were all placed on a more liberal footing. The Government estimates, however, made no provision for augmenting the salaries of the County Court Judges, or to those Upper Canada County officers whose remuneration is fixed by fees.

We cannot see good reason why all holders of office under Government should not also have had a proportionate increase; for we think the Act should either have included the public functionaries of low or inferior, as well as those of high or superior degree, or have been accompanied by a separate Act, providing for increasing the incomes of those officers who are paid by fees.

In July last, it was strongly represented to the Government, that the Tariff of Fees settled by the Judges of the Court of Queen's Bench, under authority of 8th Vic. ch. 38, affords an inadequate remuneration to those officers, and suggesting the propriety of the Government inviting the attention of the Judges to the subject, with a view to a revision of the Tariff; in reply to which the Government stated that the matter would be brought under the early notice of the Judges of the Superior Courts of Common Law in Upper Canada; and although it has never, to our knowledge, publicly transpired that such a reference *was* made, still we have reason to believe that it was, and that the Judges decided that they had no further power under the Statute.

Acting upon this presumption, we must say, it only remains for the Government to assume the responsibility,—which we believe they will not hesitate to do,—of either asking Parliament to fix the fees at a higher rate, proportioned to the necessities of the times, or to pass an act continuing the force of 8th Vict. ch. 38, [illegible] to enable the Judges to revise the Tariff and make it applicable to the present time. And even supposing that were done, those officers would not receive the justice which others have had done them, inasmuch as the increased allowances of others took effect from 1st January, 1855, and it is not likely any increase in the rate of *fees* could be made retrospective.

To insure efficiency, and an honest discharge of duty, public servants must be properly paid and justly dealt by; a rule of increase, too, to be equitable, should advance the salaries and incomes of all in the same ratio; for instance, if the salary of a superior be increased from £750 to £1250 a year, the fee of a constable should be so increased that where he now gets a fee of 5s. he should receive 8s. 4d.

The Tariff of 1845, is unsuited to the price of living in 1856; and whilst common labourers can now obtain 6s. 3d. *per diem* in ordinary seasons, and 10s. *per diem* in harvest time, it will be a difficult matter to obtain the services of respectable

men as Constables, for 5s. per diem, to attend the Courts where they will necessarily expend the whole 5s. in board and lodging at the inns of the County Towns, and leave nothing for travelling expenses to and from the Courts.

With the march of improvement and advancement in this country, it is notorious that amongst other *refinements* we have imported a vast number of burglars and thieves, to keep down which an active, a courageous, and a trustworthy Constabulary is indispensable, and as a forced servitude would be most objectionable and unreliable, we must retain the services of those who have been accustomed to act efficiently—and whom it will be found indispensable to pay well.

Those responsible and efficient officers, the Clerks of the Peace, who receive no salaries, and are frequently professional men, are only allowed 30s. for attending each Court of Quarter Sessions, (irrespective of the number of days they are employed) whilst the Deputy Clerks of the Crown, who are not professional men, under authority of 14 and 15 Vic. ch. 118, receive for the same service 20s. per diem, and an annual fixed salary, besides *fees* as Clerks of the County Courts, when they hold the latter office.

Before we take leave of this subject, we feel it a further duty to express, with all submission to those who may differ from us, that the system of paying people by fees, frequently subjects them to unjust and unpleasant suspicions of doing unnecessary things, in order to multiply fees, and affords, at best, but a precarious livelihood to the receivers of them. It would seem that this view is entertained by the Legislature, for we find by the Acts 16 Vic. ch. 196 and 18 Vic. ch. 98, the principle of paying the Sheriffs, the Clerks and Prothonotaries of the Courts, the Clerks of the Crown and Clerks of the Peace, by fixed salaries, has been established for Lower Canada, and also the Clerks and Registrars, and their deputies, of the Superior Courts in Upper Canada; the latter of whom used to be paid by fees.

## LAW REFORM.—EQUITY JURISDICTION IN THE LOCAL COURTS.

When will Parliament entertain the reform which is now the most needed of any, the extension of an Equity Jurisdiction to the County Courts? Notwithstanding all the improvements that have been effected in the procedure, the expenses of a suit are so heavy as to be a denial of justice in cases of less than £100 in value, *and no conceivable further improvement could materially reduce these expenses, so long as the suit is to be conducted at a distance from the suitors.* We do not hesitate to say that an equitable jurisdiction to the extent of £200 given to the County Courts would be the greatest boon ever conferred upon the public in the way of law reform. It is said that difficult questions of law may arise which County Court Judges would be incompetent to decide. But there are multitudes of cases involving no law at all, as administration suits, partnership suits, and such like, and which might be disposed of in the County Courts with tenfold the speed, double the efficiency, and at one fifth of the cost, that attend them in a Court of Equity. But the decision of legal questions might easily be provided for by a power to either party to remove the suit by order of the Superior Court, on good cause shown—or by a special case; and why should fifty cases in which there is no law, be subjected to the costs of a suit in Chancery because the fifty-first case may involve some law? Would it not be more rational to provide specially for the fifty-first case, and to give the required facilities to the other fifty? Why is not this question taken up by some M.P.P. seeking fame?

And there is no subject on which the County Courts could be more efficiently employed than in the settlement of partnership affairs. Every Lawyer knows what a ruinous process that is now. Give the jurisdiction to the County Court, with its Judge, its Clerk and its Accountant, and that which is now a matter of years would be settled in a week, and that which now costs £500 would be done for £20. Mr. Lowe might add such a provision as this to his Partnership Bill, and thus give the country a small set-off for the mighty mischief he is about to inflict upon its credit and its commerce—the fatal blow he is aiming at honour and honesty.—*Law Times.*

## DIVISION COURT.

*(Reports in relation to.)*

### ENGLISH CASES.

Q.B. ACKROYD *v.* GILL. *Jan.* 15.

*County Court—Officer engaged as attorney in proceeding in—Assistant clerk—Stat. 9 & 10 Vic., c. 95.*

Rule calling on the defendant to show cause why the nonsuit should not be set aside, and a new trial had on the ground of misdirection. The action was brought to recover the penalty of £50, under sec. 30 of the 9 & 10 Vict. c. 95, (County Courts Act.) The first count of the declaration alleged that after the coming into operation of the 9 & 10 Vict. c. 95, the defendant, then being an officer of the county court holden at Knaresborough in the aforesaid county, to wit, the assistant clerk of that court, was directly concerned as attorney for one S. F. in a proceeding in the said court, to wit, in a plaint entered and action pending in the said court, wherein the said S. F. was plaintiff, and one R. S. Ackroyd was defendant, contrary to the said statute, whereby the defendant forfeited for his said offence the sum of £50, &c. There was a second count for having caused a summons to be issued to the said R. S. A. The defendant pleaded not guilty.

At the trial at the last assizes for Yorkshire, the Judge (*Platt*, B.) nonsuited the plaintiff on the ground that an assistant clerk did not come within the terms of the act.

By section 29 it is enacted, "that no clerk, treasurer, high bailiff or other officer of the court shall either by himself or his partner be *directly or indirectly engaged* as attorney or agent for any party in any proceeding in the said court."

By section 30, it is enacted (*inter alia*) that "every clerk, treasurer, high *bailiff or other officer of any such court*, who shall be by himself or his partner, or in any way directly or indirectly concerned as attorney or agent for any party in any proceeding in the said court, shall for every such offence forfeit and pay the sum of £50., to any person who shall sue for the same in any of Her Majesty's superior courts of record, by action of debt or on the case."

The 24th section, after providing for the appointment of a clerk for every court by the judge of the court, subject to the approval of the lord chancellor, enacts, that "in cases requiring the same, such assistant clerks as may be necessary shall be provided and paid by *the clerk of the court*."

13 & 14 Vict. c. 61, s. 4, enacts "that so much of the said act of the tenth year of Her Majesty as relates to the removal of clerks or high bailiffs of the courts holden under the said act shall be repealed: and it shall be lawful for the lord chancellor, or, where the whole of the district of the court or courts for which the clerk or high bailiff shall have been appointed is within the Duchy of Lancaster, for the chancellor of the Duchy of Lancaster, when such lord chancellor or chancellor of the duchy shall in his discretion think fit, to remove the clerk, high bailiff or any assistant clerk of any such court or courts from his office, and from time to time to make such order as to the attendance of any clerk, deputy clerk, or assistant clerk during the sitting of the court or otherwise, as he shall *think fit*: Provided always, that nothing herein contained shall affect the tenure of office of any person who before the passing of the said act held an office in any of the courts mentioned in the schedule (A.) annexed to the said act."

Against the rule cause was now shown by

*Addison.*—The *assistant clerks mentioned* in the 24th section are assistants to the clerks, and not officers of the court within section 30, and such assistants are not *ejusdem generis* with the officers expressly mentioned in section 30, as deputy clerks under section 26, or additional clerks under section 25, would be.

Lord Campbell, C. J.—Even if they were mere assistants to the clerk, they would be within the mischief contemplated by the 24th and 38th sections.

*Addison.*—The *interpretation clause*, section 142, does not make the term clerk include an assistant clerk.

Lord Campbell, C. J.—There are the usual words relative to the effect of the context.

*Addison.*—This is a penal clause, and must be construed strictly. The other side will rely on the 13 & 14 Vict. c. 61, s. 4, and the 2nd section of the same act, directing that the two acts be read as one; but the object of that act was to extend the jurisdiction of the court, and not to impose penalties. Further the *declaration only alleges* that the offence was committed after the passing of the first act.

Wightman, J.—Who do you say the assistant clerks mentioned in the 27th section of the *first act are*?

*Addison.*—The deputy clerk or the additional clerk.

*Hill*, Q.C., and *Hardy, contra*, were not called on.

Per Curiam.—The rule must be made absolute. The assistant clerks are, with "such clerks" by the 27th section of the first act, to issue summonses, warrants, &c. The latter, therefore, have *the same functions* and general character as the former, and are officers of the court of the same kind as those specifically mentioned in the 30th section. All doubt, however, is removed by the 13 & 14 Vict. c. 61, s. 4, which is *in pari materiâ*, and illustrates the character before given to the assistant clerk. The 13 & 14 Vict. *is not* an original statute, and does not make new officers; it refers to those who were constituted under the former statute, and among them, the assistant clerks of the court. That being so, "assistant clerks of the court," are officers of the court, and clearly distinguishable from the hired clerk to an attorney who may be an officer of the court. When the 4th section of the latter act transfers from the judge to the lord chancellor the power of removing the assistant clerk from "his office," it is difficult to say that the assistant clerk is not an officer of the Court.

*Rule absolute.*

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EX. Cawley *vs.* The Northern Staffordshire Railway Company. *Jan.* 17.

*Co. C. appeal—Action against railway company for nondelivery—Companies using a joint station—Liability for laches.*

*The plaintiff brought his action against the railway company for nondelivery of certain goods sent for the purpose of exhibition at an agricultural meeting:*

*Held, that the judge of the Co. C. was right in leaving the amount of damages to the jury.*

Appeal from the decision of the judge of the Co. C. of Cheshire, holden at Nantwich.

This was an action brought to recover the sum of £35 by way of damages, on the grounds stated in the following particulars:—

| | | | |
|---|---|---|---|
| To loss sustained by the plaintiff in his trade or business of an ironmonger and vendor of agricultural machines and implements, through the nondelivery of a quantity of such agricultural machines and implements in due time at the show-yard of the recent show of the South Cheshire Agricultural Society, held at Congleton, in the county of Chester, on the 6th day of Sept. last, which said machines and implements were delivered into the custody of the said company for that purpose, at their station at Crewe, in the said county of Chester, on the 5th day of September last, at 10.30 a.m. | £30 | 0 | 0 |
| To expenses thereby wrongfully occasioned to the said plaintiff by the defendants in regard to the said machines and implements, and in and about the deportation thereof to and fro.. | 5 | 0 | 0 |
| | £35 | 0 | 0 |

The following statement comprises (in substance) the whole of the evidence adduced by the plaintiffs, the defendants not calling witnesses.

The London and North-Western Railway and the North Staffordshire Railway unite near to Crewe in the county of Chester, which junction is the terminus in that direction of the North Staffordshire Railway, the rails of the North Staffordshire running into the London and North-Western within a short distance (between a quarter and a half a mile) from the station.

To save the expense of two stations, with separate sets of offices and distinct establishments of servants, &c., at the same place, the business of both companies is conducted in the station and buildings belonging to the London and North-Western Company, and with the exception of one passenger-porter, the servants employed are the servants of the London and North-Western Company.

There are no separate booking offices either for goods or passengers, and all goods for places on the North Staffordshire

line are received and loaded in the same manner as if they were intended to be carried to places on the London and North-Western line; the only difference being that, when loaded for places on the North Staffordshire line, the trucks containing such goods are usually attached to an engine of the London and North-Western Company, and conveyed by their servants to a siding or shunt belonging to the North Staffordshire Company at the junction referred to, when the London and North-Western Company have done with them, and they are left to be conveyed by the North Staffordshire Company to the places of destination. The trucks upon which the goods are carried belong sometimes to one and sometimes to the other company, as may be most convenient, and it was stated that the proceeds of traffic received at Crewe and carried over the North Staffordshire Railway were divided between the two companies, but in what proportions did not appear. A deed of arrangement between the London and North-Western Company and the North Staffordshire Company, intended to facilitate the transmission of traffic to and from their respective railways was put in evidence, but it did not appear to provide expressly for the case of goods arriving at Crewe by the common roads, or otherwise than by railway. The following extracts from the deed were read:—

Sixth article: "That all traffic from Liverpool or Chester, or any place between Liverpool and Crewe, or between Chester and Crewe, to any station on the North Staffordshire Railway, or the eastern districts of England (by which expression throughout this article is meant all places lying east of and including Derby) for which the North Staffordshire line of railway, *viâ* Crewe and Willington, and thence through Derby, is now the nearest and most direct route, which shall be under the control of the London and North-Western Railway Company, and which shall be carried by the London and North-Western Railway Company on any part of their railway (except traffic from Liverpool or any place between Liverpool and Manchester to Boston, or to any of the eastern districts of England, north of Boston); and all traffic from Manchester, or any place between Manchester and Macclesfield, to any station on the North Staffordshire Railway, and to the eastern districts of England, for which the North Staffordshire line of railway (*viâ* Macclesfield and Willington, and thence through Derby) is now the nearest and most direct route, and which shall be under the control of the London and North-Western Railway Company, over any part of their railway, shall be delivered or tendered to the North Staffordshire Railway Company at the junction at or near Crewe, or at the junction at Macclesfield, as the case may be, to be by them conveyed on their line of railway between Crewe and Willington or Derby, or Macclesfield and Willington or Derby; and all the traffic from any of the eastern districts of England, or from any part of the North Staffordshire line of railway, to Liverpool or Chester or Manchester, or to any place between Liverpool and Crewe or between Chester and Crewe, or to any place between Manchester and Macclesfield, which shall be under the control of the North Staffordshire Railway Company and carried by them over any part of their railway, shall be delivered or tendered by the North Staffordshire Railway Company to the London and North-Western Railway Company at the junction at or near Crewe, or at the junction at Macclesfield as the case may be, to be by them conveyed over their line of railway to Liverpool, Chester or Manchester, or to any place between Liverpool and Crewe or between Chester and Crewe, or to any place between Manchester and Macclesfield; and the London and North-Western Railway Company shall afford all reasonable facilities for the transmission of the traffic which shall be tendered to them as aforesaid, and all other traffic which shall originate at any station on the North Staffordshire Railway."

Thirteenth article: "That the North Staffordshire Railway Company shall not, under any circumstances, run any trains, engines or carriages, over or upon the London and North-Western lines of railway, or any or either of them, or any part thereof, without the consent in writing of the London and North-Western Railway Company for that purpose first had and obtained."

It was admitted that no other portion of this deed would affect the questions at issue in this action, and no further evidence was adduced as to the pecuniary or other arrangement between the two companies.

It was shown that the London and North-Western and the North Staffordshire Company were respectively carriers over the whole of their own lines, but not over the lines of each other; and there was no proof that the London and North-Western Company had ever given such written consent as was required by the deed of arrangement to the passing of North Staffordshire, &c., engines, &c., over their railways.

On the 5th September, 1854, the plaintiff sent a quantity of agricultural implements, with proper directions to be forwarded from Crewe to Congleton, a station on the North Staffordshire line, intending to exhibit them at the South Cheshire Agricultural Show, which was held at Congleton on the 6th September.

The goods were delivered at Crewe station, where they were received in the customary way by the London and North-Western Company's servants, and loaded in one of their own trucks in ample time to be forwarded and delivered at Congleton on the 5th; and the persons who received and loaded them were told that the goods were intended for the Show on the following day. The truck was taken by a London and North-Western engine to the siding or shunt belonging to the North Staffordshire Company at the junction, and left there in charge of the North Staffordshire Company in ample time to be forwarded for the show; but, owing to gross inattention or mismanagement on the part of the servants of the North Staffordshire Company, the goods did not reach Congleton until late on the 6th Sept., when the whole object for sending them was defeated, and the goods had to be returned without being unpacked.

The plaintiff's right of action against one of the two companies was not denied by the defendants; but it was contended that, as the London and North-Western Company are the owners of the station and the first portion of railway over which the goods had to pass, and their servants received the goods, whatever may be the mutual rights and liabilities of the two companies *inter se*, the plaintiff's right of action was against the London and North-Western Company, and not against the North Staffordshire Railway Company.

It was urged, on the other hand, that the action was properly brought against the North Staffordshire Company, as they only are common carriers from Crewe to Congleton, and that the only part performed by the London and North-Western Company was that of receivers, brokers and porters for and on behalf of the North Staffordshire Company.

The Co. C. judge declined to nonsuit the plaintiff, being of opinion that it was a question for the jury.

The plaintiff Cawley was examined and cross-examined, without objection on either side, as to the mode of calculation he had adopted in arriving at £30, over and above his personal expenses, as the amount of damage he supposed he had sustained, and admitted that he had no other data than the sales he had made and the orders he had received at and arising from other agricultural exhibitions of the like kind, though on a smaller scale.

The Co. C. judge left it to the jury that the whole case turned upon the character in which the London and North-Western Railway Company received the goods in question; that if they undertook to convey them to Congleton, they would be the contracting parties, and ought to have been the defendants, and then there would be a verdict for the present defendants. But if the jury thought that the London and North-Western Railway Company did not undertake to convey

the goods, but only acted as warehousemen or receivers and agents of the North-Eastern Railway Company, then the plaintiff would be entitled to the verdict.

As to the amount of damages, the judge told the jury they must dismiss from their minds the plaintiff's mode of calculation, and must not speculate upon his probable sales and amount of profits; but if they were of opinion that he had sustained an injury, and that defendants were primarily and legally responsible, the question of what was a reasonable amount of compensation rested with them, as it would in a case of assault and battery or other tort.

The jury returned a verdict, damages £20.

If the court should be of opinion that the action could not be sustained against defendants, then a nonsuit to be entered.

If the court should be of opinion that the mode of leaving the amount of damages to the jury was incorrect, then a new trial was to be had.

*Holloway*, for the appellants, the defendants below, was stopped by the court.

The respondent was not called on.

By the COURT.—The jury have said what they think was a fair amount of damages, and we see no reason to interfere.

*Judgment for the respondent.*

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*Chambers.* PICARD *v.* CORNELL. *Jan.* 11.

*Practice—Judge's certificate for costs.*

*The Judge's certificate for costs, under the City of London Small Debts Act, must be given at the trial, or immediately after, before another trial proceeds. Three days after the trial is too late.*

This was a summons taken out by the defendant, calling upon the plaintiff to show cause why the master should not be directed not to tax the plaintiff's costs upon the opinion given by Mr. Under-sheriff Burchell hereinafter mentioned.

*Edward Bullen*, instructed by Mr. J. H. Preston of 9, Carey-street, supported the summons, and

*William Pearce*, instructed by Mr. J. R. Bailey, of Old Jewry-chambers, showed cause against it.

The facts of the case are as follow:—The action was brought to recover the sum of £17. 9s. for goods sold and delivered. Several pleas were pleaded, upon each of which issue was joined, and by an order made by Alderson, B., the whole matter was referred to Mr. Burchell to decide without a jury. The whole cause of action arose within the city of London and within the jurisdiction of the court established under "The London (City) Small Debts Extension Act 1852." On the 24th Dec. 1855, Mr. Burchell heard the attorneys and witnesses on each side. On the 27th of the same month he gave a verdict for the plaintiff, deciding that £7 5s. was due to the plaintiff from the defendant. On that occasion no certificate for costs was applied for. On the 2nd Jan. 1856, the plaintiff's attorney applied to Mr. Burchell for a certificate to enable him to recover his costs, and Mr. Burchell upon that day indorsed upon the order referring the matter to him the following words:—"I am of opinion that the plaintiff is entitled to his costs." The taxation upon that opinion had been adjourned by the master, to enable the defendant to apply to the court to stay his hand.

*Bullen*, in support of the summons, raised several objections both as to the form of the certificate and as to the power of Mr. Burchell to give it, and then proceeded to contend that, under the 121st section of "The London (City) Small Debts Extension Act, 1852," the certificate must be given "forthwith."

ERLE, J.—You had better confine yourself in the first place to that point.

*Bullen.*—The certificates to be given by the judge under the statutes 6 Geo. 4, c. 50, s. 34; and 3 & 4 Vic., c. 24, are required to be given "immediately after the verdict." The word used in this statute is "forthwith," but at any rate means quite as much as the word "immediately." In *Shuttleworth* v. *Cocker*, 1 Man. & G. 289, Maule, J., observed that the intention of the Act seemed to be "to exclude any impression being made on the mind of the judge except what was produced at the trial." This *dictum* was adopted by the court of Ex. in *Thompson* v. *Gibson*, 8 M. & W. 281. In *Chaplin* v. *Levy*, 23 L. T. Rep. 81, in an argument upon the very point now under consideration, Pollock, C. B., says: "It is necessary for the judge to certify 'forthwith' (that is the expression used in respect of the matter.") Here the certificate was not given till six days after the verdict, and that clearly is not a compliance with the statute.

*Pearce* contrà.—The opinion, or whatever else it may be styled, of Mr. Burchell was given in time. His decision was given on the 27th Dec., 1855, in open court, and the certificate was applied for on the next court day. "Forthwith" means in a reasonable time, and the application for costs was most certainly made within the meaning of those words.

*Bullen* was not called on to reply.

ERLE, J.—I have no doubt about the matter. Without deciding the other points raised by Mr. Bullen, I am clearly of opinion that this *quasi* certificate was not given in time. I think Mr. Bullen's contention as to the meaning of the word "forthwith" is the correct one. The certificate to be given under this statute must be given forthwith," *id est* at the trial, or at all events before anything has occurred to remove from the mind of the presiding judge the facts of the case. The remarks of Maule, J. in *Shuttleworth* v. *Cocker*, are very apt, and are clearly applicable to this case, which also appears to be governed by the case cited from the L. T. Rep.

*Pearce* then applied to the learned judge to certify that the action was a proper one to be brought in the Superior Courts.

ERLE, J.—I have no power. No such discretion is vested in me by this statute. I should have had the power to make such an order under the County Court Acts, but I have none under this local statute.

*Order made, with costs, directing the master not to tax.*

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Q.B. REGINA *v.* DOTY.

Trin. Term, 19 Vic.

*Indictment—Perjury—Division Court—Interpleader issue—New trial—13 & 14 Vic., ch. 53, sec. 102.*

[13 U. C. R. R. 398.]

The clerk of a Division court, acting under 13 & 14 Vic. ch. 53, sec. 102, issued an interpleader summons of his own authority, without the bailiff's request. Both parties attended before a barrister appointed by the judge of the court, who was ill, and an order was made. The judge afterwards ordered a new trial, which took place. The defendant was convicted for perjury committed upon that occasion. *Held*, that both parties having appeared, the proceedings in the first instance could not be considered void for want of a previous application by the bailiff; but *Held*, also, that it was not competent for the judge to order such new trial, the first order being made final by the statute; and that the conviction was therefore illegal.

Criminal cases reserved. The defendant was convicted on an indictment for perjury committed before the Judge of the Division Court, on an interpleader issue at London.

At the trial at London, before *McLean, J.*, it appeared in evidence that an attachment had issued from Division Court No. 1., in the County of Middlesex, at the instance of one William Webb against Austin Doty, on which a horse called "Bay Boston" was seized by the bailiff, and delivered into the custody of the clerk of the court. A claim was preferred by

Mr. John Monk Graham, asserting an interest in one half the horse as his property, and the clerk of the court delivered the horse to Graham, on receiving from him security that he should be produced when required to be disposed of on execution.—The defendant subsequently returned within the jurisdiction of the Division Court, and gave a confession of judgment for the amount of Webb's debt, on which judgment was entered and execution issued. Before the execution was placed in the bailiff's hands, the clerk of the court, John C. Meredith, issued an interpleader summons, as he alleged, for his own security, considering that he had authority to do so under the 13 & 14 Vic. ch. 53, sec. 102, (See sec. 7, 16 Vic. ch. 177, amending former act), by which summons the parties were required to appear before the Judge of the Division Court, on the 29th day of March, to make good their respective claims.

On the 29th of March, the Judge of the Division Court, The Honourable *J. E. Small*, was ill, and an appointment was made by him of Mr. Scatcherd, barrister-at-law, to act as judge on the trial of the interpleader issue. On the evidence then adduced, Mr. Scatcherd decided against the claim of John Monk Graham to any interest in the horse, but subsequently he became dissatisfied with his own adjudication, and an application being made to Mr. Small, as Judge of the court, for a new trial of that issue, with the concurrence of Mr. Scatcherd, a new trial was ordered to take place on the 26th of April.

On that day, the Judge of the court presiding, directed a jury to be empannelled (considering that he had authority to do so under 13 & 14 Vic. ch. 117) for the trial of the issue, and it became a material question on the trial, whether John Monk Graham had paid to the defendant Doty the sum of two hundred dollars, at Detroit, to enable him to become the owner of one half of the horse. The defendant was sworn as a witness, though objected to on the ground of interest, and then swore that Graham had no interest whatever in the horse, and that he had not paid him two hundred dollars to become the owner of half of the horse, and that he, Doty, had himself paid Harvey Lewis, the coloured man from whom the horse was got, the two hundred dollars on the purchase of the horse.

The indictment was preferred for perjury in thus swearing on the trial of the interplea'er issue before the Judge of the Division Court, and on the trial at the last Middlesex assizes a verdict of guilty was rendered by the jury, on evidence which fully justified such finding. The sentence was suspended, in order that the opinion of this court might be obtained on the following objections taken on the trial by *John Wilson*, as counsel for the defendant.

1. That the whole proceeding by interpleader summons was irregular and extra judicial, the summons not being issued at the request of the bailiff of the Division Court, and the horse not being in the bailiff's possession in execution, or on an attachment at the time.

2. That an adjudication having taken place before Mr. Scatcherd, acting as judge, such adjudication was final, and that being so, no new trial could by law be granted, and therefore also the second trial was irregular and extra-judicial.

3. That the trial was not before the judge, who alone has authority to try interpleader questions, but was before a different tribunal, composed of a judge and jury, and the allegation in the indictment, of the oath having been administered, is not sustained, and the adjudication made before the Judge of the Division Court alone.

The defendant was admitted to bail, and entered into recognizance to appear at the next assizes for the county of Middlesex to receive judgment.

DRAPER, J., delivered the judgment of the court.

The language of 13 & 14 Vic. chap. 53, sec. 102, and of 16 Vic. chap. 177, sec. 7, as regards the question for our decision is the same. In substance both enact, that if any claim be made to goods taken in execution or attached under process from a division court, by any person not being the party against whom such proceeding has issue, it shall be lawful for the clerk of the court, *upon application of the officer* charged with the execution of such process, to issue a summons calling before the court, as well the person issuing such process as the party making such claim. * * * and the judge of the court shall adjudicate on such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to him shall seem fit, and such order shall be enforced in like manner as any order made in any suit brought in such court, *and such order shall be final and conclusive between the parties.*

I am of opinion, that the clerk ought not, without the application of the bailiff, to have issued the summons: but I do not therefore think the proceedings under it—both the claimant and the creditor appearing and submitting to the jurisdiction—void. The bailiff not being in possession is, I think, immaterial.

I think that an adjudication having been made by a competent authority, was final and conclusive, and that it was not competent for the judge under the 84th sec. of 13 & 14 Vic. ch. 53 to grant a new trial.

It follows that, inasmuch as the perjury of which the defendant is convicted was charged to have been committed on the second trial or investigation of the claim preferred to the horse taken in execution, the conviction ought not to have taken place. The order previously made was final, and being so, the subsequent proceeding was without legal authority.

Conviction quashed.

## COUNTY COURTS, U. C.

In the County Court of the County of Essex,—A. CHEWITT, Judge.

(October Term, 1855.)

GRONDEN v. THE GREAT WESTERN RAILWAY COMPANY.

*Negligence—Highway—Guards at Railroad Crossings.*

DECLARATION.—1*st count.*—That defendants, in crossing a certain highway, drove their engine at such a high rate of speed, and with such negligence, &c., contrary to their duty in that behalf, that a mare of the plaintiff's, lawfully crossing the track at its junction with said highway, was struck by said engine and killed.

2*nd count.*—That defendants neglected to fence line of railway where it crosses highway contrary to their duty in that behalf, whereby plaintiff's mare got on the track of said railway at that particular point, and was struck and killed by engine, &c., going at a high rate of speed, and not slacking at point in question.—Damages £30.

Plea: General issue, by Statute.

By the evidence of the trial, it appeared that the highway which leads from the lake, close at hand, crossed the railroad on a level. That the plaintiff's mare had been drinking, and coming from the lake was struck by the engine, and killed on the railroad track where it crosses the highway. That the engineer did not blow whistle or stop steam, but the train was moving at the usual speed. That there was a fence on each side of the railroad up to the cattle guards, which were on each side of the road: and then there was evidence of the value of the animal from $80 to $100.

Township Bye-Laws of the Township where the injury took place, were also put in, prohibiting breachy cattle running at large, but permitting all horses to run unless proven breachy.

The learned Judge charged the Jury as follows:—

On the first Count the Jury were charged that the mare was on the highway, where it was crossed by the railway on a level,

coming from watering and going towards the bush, not encumbering the highway or the track by making any unnecessary delay in crossing, which she had a right to do, and was then struck by the locomotive which was going at its usual fast rate without lessening or slacking its speed so as to avoid injury to the mare or anything there that might be lawfully passing or repassing, and that, under the evidence, was such negligence as made the defendants liable for damages.

And on the second Count, That the defendants were bound to fence on the whole line of their route, including the highway on each side of the railway, fencing the highway in such a manner as to leave proper openings with gates so as to let cattle, carriages, &c., of the public pass with as little inconvenience as possible. And if the highway at this point, as was proved, was not so fenced, or secured with proper gates and conveniences, and the mare got and was on the highway and railway, there crossing each other for want of them, when struck and killed. That as to the defendants, she was lawfully there, and the defendants were liable for the damage caused by their negligence in not fencing and in not taking the ordinary proper and necessary precautions to prevent the accident by lessening speed in time at this point, not having there erected and maintained the fences at this point with the proper conveniences. That the bye-laws only showed that the mare might be at large, unless she was breachy, which latter was not shown. That the absence of these bye-laws would not affect the situation of the parties in the present instance materially. That both species of negligence were proved, as mentioned in this case, in the first and second Counts.

That as to the damages, they had evidence of value, from $60 and $80 to $100, which was a sufficient guide in that respect, and that it did not seem necessary to give vindictive damages over and above what they thought a fair valuation, but moderate damages for the loss might be given.

The Jury found for the plaintiff generally, on both counts, for negligence and for want of fencing to £25.

*Mr. Albert Prince* moved to set aside the verdict, and for a new trial on the ground that it was contrary to law and evidence, and for misdirection, and for excessive damages.

*Mr. J. O'Connor* shewed cause.

The new trial moved for was refused, the Judge being of opinion that the verdict as to the amount was warranted by the evidence of value elicited on the trial under the direction of the Judge, who thinks the Jury exercised a just discretion under all the circumstances, and does not consider the damages excessive, and that there was no misdirection for the reasons and under the authorities both in England and Upper Canada cited in Renaud v. The G.W.R.W. Co., 12 U. C. R. 408, (on appeal from this Court), and in Parnell v. G.W. R.W. Co., 4 C. P. R. 517, (this last, not reported at time of trial), at great length, in both of which cases the questions were very fully considered, and where all the available authorities have been most fully set forth, and therefore that the verdict was not contrary to law and evidence.

Rule discharged.

## MONTHLY REPERTORY.

Notes of English Cases.

### COMMON LAW.

H. of L. WRIGHT *v.* SCOTT. *July* 16.

*Statute—Construction—power to erect Public Works.*

Where a Statute authorizes a Company to construct certain works, as a harbour, it is to be presumed they have power to execute all works incidental to their main purposes, and which they deem necessary, provided they act *bonâ fide*.

Certain public trustees for improving the navigation of the Clyde were authorized by Statute to acquire lands adjoining the river, and to construct a quay or harbour, and having acquired part of W.'s lands, proposed to erect a large goods shed fronting the river, and between the river and the rest of W.'s land.

*Held*, though the Statute gave no express power to erect sheds, it must be presumed that a harbour equipped with all the most approved appliances for trade, was intended by the Legislature, and that, therefore, a power to erect sheds was implied.

EX. CROFT *v.* VIVIAN. *Nov.* 20.

*Declaration—Contract—sale of Shares—Variance.*

The declaration alleged a contract for the sale of Shares by the plaintiff to the defendant. At the trial it appeared that the defendant had employed the plaintiff as a broker to purchase the shares on commission.

*Held*, that the evidence did not support the contract in the declaration.

EX. EBLIN *v.* NEWSOME. *Nov.* 25.

*Costs—Practice—claiming too much in Rule.*

*Semble*, if the party claim in a rule, the costs of the application in a case where he is not entitled to them, and the other side show cause simply on account of such claim of costs, the rule, as to so much of it, will be discharged with costs.

B.C. IN THE MATTER OF JOHNSON, (AN ATTORNEY). *Nov.* 26.

*Practice—order for taxation—setting aside—costs of arbitration—Attorney's bill.*

Where, at the instance of an Attorney, an order is made for the taxation of his bill, the client not appearing to oppose the summons, the latter is concluded from objecting subsequently that the items of the bill are not taxable.

Rule to set aside such order, upon the ground that the items were not taxable, refused.

Q.B. WEBB *v.* CLARKE. *Nov.* 24, 26.

*Award—agreement to cultivate, evidence of—Damages to successive reversioners.*

Where, to a declaration on an agreement for not cultivating according to the custom of the country, the defendant only pleaded Not Guilty, proof that the tenancy was from year to year, is sufficient evidence of the agreement.

Where three actions were referred to an arbitrator, the defendant being the same in each, and the plaintiffs being successive reversioners under the same title.

*Held*, that the arbitrator was right in awarding damages to each reversioner.

C.P. GODTS *v.* ROSE. *Nov.* 22.

*Vendor and purchaser—property passing—sold note—delivery on payment—acceptance.*

The plaintiff entered into a contract to sell to the defendant five tons (unascertained) of oil. The next day the plaintiff went to H.'s wharf, where the plaintiff had some oil, and requested H.'s clerk to transfer oil, entered in H.'s book, from the name of the plaintiff to that of the defendant, which was done, and the plaintiff received from H.'s clerk an instrument in writing, addressed to the defendant, acknowledging that in the name of H., that he held the oil as agent for the defendant. On the afternoon of the same day, a clerk of the plaintiff called

at the office of the defendant, and produced the acknowledgment in writing, to the defendant's clerk, and offered it to him on condition that he would give him a cheque for the price of the oil: the plaintiff's clerk not intending to deliver the acknowledgement, without receiving a cheque. The defendant's clerk seized the acknowledgment, and refused to return it or to give a cheque. The plaintiff's clerk thereupon proceeded to H.'s wharf, and requested H.'s clerk not to deliver the oil to the defendant, but to continue to hold it as agent for the plaintiff, which he promised to do. From some cause, however, the oil was afterwards delivered to the defendant.

*Held*, that the plaintiff might maintain trover against the defendant for the oil, as nothing had been done to take the property out of the plaintiff, and vest it in the defendant.

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**C.B.** TOMLINSON AND ANOTHER *v.* STATE. *Jan.* 21.

*17th Section of the Statute of Frauds.*

In order to take a case out of the 17th section of the Statute of Frauds, it is only necessary to prove the broad fact of acceptance to enable the vendor to lay the terms of the contract before the Jury, and it is not necessary to prove upon what terms the goods were accepted.

The plaintiff stated that he sold a piano to the defendant for above £10, upon the terms of payment upon delivery: he proved a delivery, and that the defendant kept the piano. It also appeared that at the time of delivery the defendant said he would keep the piano as a security for the payment of a bill endorsed to him by the plaintiff, but that the plaintiff refused to allow him to do so, and demanded the piano back. The defendant, however, kept possession of the piano. The jury found a verdict for the plaintiff.

*Held*, that this was a sufficient acceptance to enable the plaintiff to prove the contract of sale, and that the Jury having found for the plaintiff, the defendant could not be heard to say that he accepted the piano upon different terms.

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**C.C.R.** REGINA *v.* HUGH JOSEPH SMITH. *Nov.* 24.

*Larceny—7 & 8 Geo. 4, chap. 29, sec. 5—Foreign Railway Scrip—"Valuable Security."*

Certificates treated and dealt with on the London Stock Exchange, as scrip of a foreign railway, are "valuable security" within 7 & 8 Geo. 4, cap. 29, sec. 5, and the subject of larceny.

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STRONG (P. O. OF THE NORTHAMPTON UNION BANK)
**C.P.** *v.* FOSTER. *Nov.* 22, 23.

*Principal and surety—Doctrine of, at law and in equity—Giving time to debtor—Discharge of surety—Payment—Balance on account.*

The bare taking of an accommodation promissory note means that the creditor takes the maker as a principal debtor.

Mere lying by on the part of a creditor and not proceeding to enforce payment from his debtor is not such a "giving time" as will discharge the debtor's surety. The fact that a few days after a promissory note becomes payable, there is for a few days a balance in favour of the maker of the note in an account between him and the payee, of which account the sum due on the note forms no part, does not amount to a payment, or discharge of the debtor's surety.

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**EX.** THATCHER *v.* D'AGUILAR. *Nov.* 26.

*Practice—Attorney and Client—Staying proceedings.*

The Court will not, in the absence of the plaintiff, make absolute a rule calling on the plaintiff's Attorney to shew cause why proceedings should not be stayed on the ground that they are being continued against the instructions of his client.

**C.P.** UNDERWOOD *v.* NICHOLLS. *Nov.* 26.

*Payment—Principal and Agent.*

The plaintiff had by his agent supplied goods to the defendant, and the defendant having in his hands a cheque drawn by the agent, and signed by the defendant for the agent, returned the cheque to the agent as and for payment of the price of the goods.

*Held*, to be no payment as against the plaintiff.

Per JERVIS C. J.—The rule must be absolute. This is nothing more or less than a debtor setting off the debt of an agent which he has no authority to do.

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**EX.** LOWNDES *v.* FOUNTAIN. *Dec.* 1.

*Landlord and Tenant—Farming lease—Covenant to expend hay and straw on land.*

A farming lease contained the following covenant:—"No hay or straw to be sold off the said land without the consent of the landlord or his agent, *except the value of the straw so sold off* be returned in manure."

*Held*, per POLLOCK C. B., and PARKE B., that the tenant was bound only to return upon the land a quantity of manure equal to what would have been produced by straw sold off the land if it had been made into manure.

Per ALDERSON B., and MARTIN B., that he was bound to expend the whole of the price of straw so sold in purchase of manure to be laid on the land.

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**Q.B.** THOMPSON *v.* HOPPER. *Nov.* 13, *Feb.* 23.

*Marine Insurance—Time policy on outward-bound ship in home port—Warranty of seaworthiness—Loss from wrongful act of the assured.*

In the time policy on an outward-bound ship lying in a home port in which the assured resides, there is (per LORD CAMPBELL, C. J., COLERIDGE, J., and WIGHTMAN J.; *dissentiente* ERLE J.,) no implied warrant of seaworthiness, and the assured may recover for a loss from the perils of the sea, even although he knowingly and wilfully sent the ship to sea in an unseaworthy state.

But (*per totam Curiam*) he cannot recover if the loss had occurred in consequence of his wrongful act in so sending the ship to sea.

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## CHANCERY.

Before the Lords Justices.

**C. of A.** HOPE *v.* CORPORATION OF GLOUCESTER. *Nov.* 7 & 8, *and Dec.* 9.

*Perpetuity—perpetual covenant to renew a lease.*

In a deed dated in 1539, and being a grant to a corporation for charitable uses of lands, subject to a ninety-nine year's lease, the corporation covenanted with the grantor, that if, on the expiration of the existing or any future lease, any one of the heirs of the body of M. should claim a new lease of the lands, they would grant him a new lease at a certain rent.

*Held*, that no inheritance or transmissable estate or interest was vested by force of this covenant in M., or in the heirs of the body of M.

*And held*, that inasmuch as the right to a lease under the covenant would vest in the persons answering the description, at the time of the expiration of every lease, the covenant was void as intending a perpetuity.

**V.C.W.** WALLGRAVE *v.* TEBBS. *Dec. 5 and 14.*

*Will—Statute of Mortmain—secret trust for charitable purposes—Statute of Frauds—Parol evidence—dehors the will rejected.*

The testator devised and bequeathed real and personal property to two of the defendants absolutely. They knew nothing of his intentions as to the disposition of the property during his life-time. After his death they were informed of a memorandum amongst his papers intimating his wishes that it should be employed in building alms-houses and a church. The defendants then accepted the devise and bequest, and by their answer, though they claimed to hold the property free from any trust, admitted their moral obligation and willingness to apply it according to the testator's intentions, as indicated by the memorandum.

*Held*, that no secret trust attached to the property devised and bequeathed to the defendants.

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**M.R.** ROBINSON *v.* WHEELWRIGHT. *Dec. 18, 20.*

*Married woman—Restraint on anticipation—Condition.*

Legacy to a married woman on condition that she and her husband should assign to her sisters her interest in certain property settled to her separate use for life without power of anticipation, the legacy not to be paid if the condition could not be performed.

*Held*, that the condition could not be performed, and that the legacy failed.

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**L.C.** FRENCH *v.* FRENCH. *Dec. 6, 7.*

*13 Eliz., cap. 5,—Debtor and creditor—Fraudulent Assignment—Consideration.*

F., being in insolvent circumstances, assigned the goodwill of his business and his stock-in-trade to C., (who had no knowledge of F.'s pecuniary embarrassments,) in consideration of a certain money payment which was received by the creditors, and also in consideration of an annuity to F. for his life, and of a lesser annuity to A., F.'s wife, after his death.

*Held*, that the amount to A. was void under the statute of Elizabeth.

But *semble*, if at any future time the assets should prove sufficient, the benefit intended for A. should be carried out.

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**L.J.** FIELD *v.* BROWN, FIELD *v.* MOORE. *Nov. 15, 16, 17, 20, 21, and Dec. 17.*

*Jurisdiction—Married woman's real estate—Ward of Court.*

A settlement of the property of a married woman, a ward of Court does not bind the real estate without the execution of an acknowledged deed by her; and if she dies without such acknowledgment her heir at law is entitled: and this applies even though the estate be equitable and the husband in contempt.

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**C. of A.** BAKER *v.* BRADLEY. *July 25, Nov. 5 & 20.*

*Influence—parent and child—family arrangement—Ignorantia Juris—construction of Will—restraint of anticipation—pleading—unproved charges of fraud.*

A mortgage of a reversionary estate executed by a son shortly after coming of age, to secure his father's debt, set aside on the ground of parental influence, want of advice, and misinformation as to the extent of liability incurred.

An act of bounty done to a parent by a child shortly after majority cannot be treated on the footing of a family arrangement, but is viewed with jealousy by the Court.

Land was devised in trust for a married woman and her assigns during her life, for her separate use, with a declaration, that the receipts of her, or of some person authorized by her, to receive any payment of the rents after such payment became due, should be good discharges for the same.

*Held*, that the married woman was restrained from anticipation.

Charges of fraud contained in a bill, and not proved, are no bar to relief upon the cases stated and proved but only affect the question of costs.

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## APPOINTMENTS TO OFFICE, &c.

### NOTARIES PUBLIC.

GEORGE M. BARTON, of Dundas Esquire, Solicitor, OLIVER SPRINGER, of Hamilton Esquire, Barrister and Attorney-at-Law, and DANIEL DOME LIZARS, of Stratford Esquire, Barrister-at-Law, to be Notaries Public in Upper Canada.—[Gazetted 1st March, 1856.]

WILLIAM C. MATCHELL, of Metcalf, Township of Emily, Gentleman, to be a Notary Public in Upper Canada.—[Gazetted 8th March, 1856.]

WILLIAM B. WHITTIER, of Concession, Gentleman, to be a Notary Public in Upper Canada.—[Gazetted 22nd March, 1856.]

### ASSOCIATE CORONERS.

MICHAEL LAVELLE, Esquire, M.D., AMOS McCRAE, Esquire, M.D., and THOMAS W. POOLE, Esquire, M.D., to be Associate Coroners for the United Counties of Peterborough and Victoria.—[Gazetted 1st March, 1856.]

JOHN HYNDMAN, Esquire M.D. and PATRICK THOMPSON, Esquire, to be Associate Coroners for the United Counties of Huron and Bruce.—[Gazetted 1st March, 1856.]

HENRY W. SPAFFORD, Esquire, M.D., to be an Associate Coroner for the County of Hastings.—[Gazetted 14th March, 1856.]

NATHANIEL S. APPLEBY, Esq., to be an Associate Coroner for the County of Hastings.—[Gazetted 22nd March, 1856.]

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## THE DIVISION COURT DIRECTORY.

Intended to show the number limits and extent, of the several Division Courts of Upper Canada, with the names and addresses of the Officers—Clerk and Bailiff,—of each Division Court.†

### COUNTY OF ONTARIO.

*Judge of the County and Division Courts*, Z. BURNHAM.—Whitby.

*First Division Court—Clerk*, L. Fairbank—Whitby; *Bailiff*, F. Keller—Whitby; *Limits*—The Township of Whitby.

*Second Division Court—Clerk*, Joseph Wilson.—Pickering; *Bailiff*, George McGibb,—Pickering: *Limits*—The Township of Pickering.

*Third Division Court—Clerk*, Richard Lund.—Reach: *Bailiff*, Edward Majors,—Reach: *Limits*—The Townships of Reach and Scugog.

*Fourth Division Court—Clerk*, J. L. Gould.—Uxbridge; *Bailiff*, A. Plank,—Uxbridge; *Limits*,—The Townships of Uxbridge and Scott.

*Fifth Division Court—Clerk*, John Metcalf.—Brock; *Bailiff*, R. Bethour,—Brock; *Limits*—The Township of Brock.

*Sixth Division Court—Clerk*, Charles Robinson.—Beaverton; *Bailiff*,——Ross,—Beaverton; *Limits*—The Townships Thorah, Mara, and Rama.

### COUNTY OF GREY.

*Judge of the County and Division Courts*, FELD. T. WALKES.—Owen Sound.

*First Division Court—Clerk*, George James Gale.—Sydenham: *Bailiffs*, John Mills, and Paul Dunn.—Sydenham: *Limits*—Townships of Sydenham, Derby, Holland, and Sullivan.

*Second Division Court—Clerk*, William Jackson.—Bentinck; *Bailiff*, Peter Watson.—Bentinck; *Limits*—The Townships of Egremont, Normanby, Bentinck, and Glenelg, excepting the Range parallel to the Toronto and Sydenham Road.

*Third Division Court—Clerk*, John Williams.—Meaford: *Bailiff*, David Youmans,—Meaford; *Limits*—The Township of St. Vincent, and the west half of the Township of Euphrasia.

*Fourth Division Court—Clerk*, Thos. J. Rooke.—Euphrasia; *Bailiff*, Alexander Mitchell.—Euphrasia; *Limits*—The Township of Collingwood, the east half of the Township of Osprey, and the east half of the Township of Euphrasia.

*Fifth Division Court—Clerk*, George Armstrong.—Proton; *Bailiff*, Fred. Armstrong.—Proton; *Limits*—The Townships of Artemesia, Proton, and Melancthon, the west half of Osprey, and that part of Glenelg being the Range parallel to the Toronto and Sydenham Road.

† *Vide* observations *ante* page 196, Vol. I. on the utility and necessity for this Directory.