

MESSRS. EDITORS,

I PERCEIVE that two writers in your paper have, among other things, discussed the question whether the law of the province respecting bail needs legislative explanation. One of them thinks it a settled point that bail cannot be required where the debt sued for is under £ 10 sterling. The other seems to think that such is the practice in many cases, but that it is not warranted by the law. The true state of the case is, that by the law of England the right of holding to special bail is limited to cases of £ 10. In the statute of this province, regulating bail, no limitation is expressed; and the question is, whether the English law, except so far as it is modified and varied by the provincial statute, is in force here? A similar question arises respecting the condition of the bail bond, as it is required by the provincial statute, that the affidavit to hold to bail shall not only state the amount of the debt, but also add that it is apprehended the debtor is about leaving the province without paying his debts. Without such an apprehension, sworn to by the plaintiff, his agent or servant, a *capias* is not to be issued against the body.—Hence the question; ought the condition of a bail bond, like that of a *recognizance* of bail, (which is expressly directed by statute) to be conformable to this principle; or is the English law in force respecting the form of the bond and its condition, by which a forfeiture may be incurred, and the bail become liable, without the principal's going out of the province and leaving his debts unpaid? These are proper questions for judicial consideration and decision. Such questions may arise upon almost every subject. The laws of England, with some express and other implied exceptions, are adopted in the province. If the legislature were to sit all the year round, they would not have time enough to specify all those English laws which are in force and those which are not, and ascertain the meaning of each particular statute, and its application to the common law. This is necessarily left to the judiciary, under a qualified but undefined adoption of the English laws. The decision of the court settles the construction of a statute, and ascertains the law, without an explanatory act of the legislature. This is the proper way to remove many doubts and uncertainties, which at present exist in the laws. It is the way, in which the laws of the mother country become fixed and known. The adjudications of the court should be reported, and the reports published for the use and information of all persons concerned. In some cases legislative remedies will be necessary; but, in general, it is safer and more practicable to have the interpretation and application of the laws settled by a regular course of judicial decisions, fairly reported, and steadily pursued. That is the best method in any government, and especially in one, whose system of laws is compounded and modified like that of this province. If the court of king's bench have decided the point, that, according to the true construction of the provincial statute taken in connection with the English law, bail is not to be required in cases of debts under £ 10 sterling, a report of that decision, and not a declaratory act of the legislature, is all that is requisite for the ascertainment of the law. If the law, however, is wrong, in that or any other respect, an alteration of it requires legislative interposition.

As the state of the law and the property and rights of all classes of people, depend so much upon the decisions of the superior court of civil and criminal jurisdiction, the importance of correct printed reports of those decisions becomes every day more and more obvious, and, it is to be hoped, some practicable means will soon be devised for introducing them into the province.

AMICUS CURIE.

P. S. In the foregoing remarks it is observed that *such questions may arise upon almost every subject*. I will exemplify the observation, in reference to the marriage law. Two provincial statutes have been passed on that subject, making certain special provisions, but not defining the general law. One of them has authorized a justice of the peace to solemnize marriage, in certain cases, where neither of the parties lives "within the distance of eighteen miles of any parson or minister of the church of England." Are the eighteen miles to be reckoned from the habitation of the episcopal minister, or from the several stations where he officiates? Both of these constructions have been contended for. By the other act ministers of societies professing to be "members of the church of Scotland, or Lutherans, or Calvinists," after certain proceedings in the court of sessions, are authorized to celebrate the marriage of persons, one of whom has been a member of the minister's congregation six months. A question has been raised, whether a preacher

of the methodist denomination of christians is within this provision, so as to be authorized to marry the members of his society? By the law of England, if a marriage is solemnized in any other place than a church, it is illegal and void, and a severe punishment is incurred. The provincial statute declares marriages lawful altho not solemnized in a consecrated church. The word consecrated has occasioned different constructions. One minister understands that the marriage service may be lawfully performed out of a church. Another thinks it must still be in a church, altho the church need not have been consecrated. There are other questions still—Has a catholic priest any authority to marry? If a marriage is solemnized by a person not lawfully authorized, or without the legal prerequisites, what are its effects? Is the minister or magistrate liable to indictment or action? Are the parties indictable for cohabiting under such an unauthorized marriage? Are the issue of such a marriage legitimate? If the wife survive the husband, is she endowable of his estate? These questions may all arise out of the marriage laws. As some of them are, by the laws of England, subjects of ecclesiastical jurisdiction, and there is no ecclesiastical court established in the province, an act of the legislature may be necessary to bring them within the authority of the court of king's bench. But if authorized to take cognizance of them, that court can settle these points by its decisions, without explanatory acts of the legislature. The amendment of the law belongs to the legislature; but their interpretation is a judicial rather than a legislative function; and when their true construction is decided, the decisions ought to be reported and published, that the magistrates and ministers and other subjects who are bound by them, may have the means of knowing them, without paying too dearly for their knowledge. A. C.

For the KINGSTON GAZETTE.

MESSRS. EDITORS,

I RECOLLECT my grandmother used to tell me when conversing (as she often did) on the subject of Ghosts, that they but seldom made their appearance upon earth, but when they did it was (as she expressed it) because something troubled their minds—that they must by all means be *spoken to*—and if satisfactory answers were given on the subject of their *behests*, they would immediately vanish from our sight, and without doing the least harm.

I was not a little surprised last week to find that one of those rare visitors had announced himself in your paper, nor could I for a moment, when I observed his unlimited command of language, doubt his being what he pretended; his fine-spun tropes, his blazing metaphors, his sage quotations and apt allusions declare him at once to be something more than mortal. He begins with saying "much has been said and a trifle written upon the establishment of a bank in this place," &c. and I should very seriously apprehend, had he not positively asserted to the contrary, that the object of his mission was to defeat this most valuable institution; or why does he inform the public that 15 or 18 per cent will have to be paid for the loan of money, when he knows very well the laws of this nor any other country will allow more than 6? Why does he pretend that merchants will fail in consequence of a great plenty of cash, when it is a well known fact that a cause diametrically opposite has ever, and in all countries, produced that effect? Why does he, to the great detriment and discredit of the place, pretend that all Kingston, (where are no less than twenty merchants' shops, ten or a dozen respectable inns, besides a large number of mechanics, &c. &c.) would find a difficulty in raising, at any one time, a thousand pounds? And last of all, why does he accuse me, because he finds I am a friend to this undertaking, of assuming a false name, and represent me in want of a capital to manage a concern of which I am totally ignorant? It grieves me sorely, Messrs. Editors, that my reputation should suffer under this false, this cruel aspersion, when I most solemnly assure you that I am in fact no other than what I had subscribed myself in your paper; that I had no sinister, selfish, or unjust motives, in advocating the cause I did; that what I attempted to advance in favor of the establishment of a bank, was from the honest effusions of the heart: that I did most candidly and most sacredly believe, viewing the vast commerce of our mother country, and its great prosperity under the heavy burdens of war, that the establishment of banks, together with other new institutions, had contributed very greatly towards raising her to her present state of opulence and glory; and that a similar establishment in this country, under similar regulations, would eventually produce the same effects: I had fondly imagined the miser's hoard broken up for the sake of gain and a safe deposit in our bank; I had fancied to myself that vast sums of dor-

mant cash, from different parts of the province, would have been mustered together, to aid the establishment of our bank, and been placed in the hands of enterprising, industrious men, who would have converted it to their own and the public good—and still I cannot, notwithstanding all that has been said by your supernatural correspondent, relinquish my fond hope of seeing the public rejoice in the establishment of this excellent institution—Not that I would wish to wound afresh the feelings of your correspondent, to whose manes you have so lately given peace; nor would I wish, by any means, to commence a strife with so formidable a foe.—No! I hope ere this he has recrossed the river Styx, not to join in the gloomy regions of Pluto, where perpetual darkness pervades the clime, but to patrol the Elysian fields, where perpetual spring pervades the year, where pleasures such as mortals know not abound, and from whence he will not wish to return, to throw obstacles in the way of what we consider as a laudable and praise-worthy attempt.

THE PUBLIC'S FRIEND.

FOREIGN INTELLIGENCE.

LONDON, October 8.—The following address to the citizens of Rome was issued by Lucien Bonaparte, and privately distributed two days after he failed: but was immediately suppressed by an official order:

"To the Roman Citizens."

"In the bosom of retirement, occupied with no other cares than those of contributing to the happiness of my family and my neighbors, and tilling on Rome's classic territory all that pure refined bliss which a mind devoted to a love of the arts can enjoy, I was assailed by the ruthless hand of despotism, rendered still more heavy by its being that of a brother; still more galling, as he owes his life and his honors to my intrepidity.

"This infernal mandate was, that I should repudiate an endeared wife, and desert those children whom nature identifies with my existence: that I should ascend a throne created by the most horrible perfidy, and unite my efforts to despoil and subjugate the yet unconquered part of the globe.

"Citizens, I had no choice between unconditional submission and immediate flight. I did not hesitate.—The Tiber on whose banks I had vainly hoped to pass my old age, and the will waff me, I trust in safety to those prows which dreadful when sought in hostility, become a sure place of refuge to the destitute and oppressed.

"Citizens, farewell; my gratitude is all I can leave behind. May your claims sit light upon you; or rather may you soon cease to bear any, by the intervention of that Omnipotent vengeance, which sooner or later punishes usurpation, tyranny, and oppression. LUCIEN BONAPARTE."

ALMEIDA.

The French official account of the capture of Almeida, gives the following particulars of the awful accident which occasioned its early capitulation:

"One of our bombs fell upon an ammunition waggon which the enemy were filling near the door of the general magazine, set it on fire, and the fire communicated to 150,000 wt. of gun-powder, which exploded like a volcano, destroyed the castle, the cathedral, and a great number of houses, set many in flames, which continued through the night, and threw a great quantity of rubbish into our trenches. The English Governor, Cox, was then again summoned to surrender, which he refused, until the middle of the following night, when he signed the capitulation. There were only three English officers in the garrison."

October 16.—A messenger has arrived from Portugal, which he left on the 7th inst. There had been no second battle. Lord Wellington has obtained such information of Massena's force, that it is said he is determined to risk another battle even in a plain. He thinks his cavalry equal to meet that of the French.

Brigadier General Crawford has died in Portugal.

Additional reinforcements are ordered to Portugal.

An intercepted letter from Massena, September 22, says, "we only march over deserts. Every place is abandoned. Women, children, and aged, all fly."

French Fleets.—The Gazette of Saturday contains dispatches relative to a proud exploit of a small British Squadron off the harbor of Toulon. A division of the enemy's fleet, consisting of six sail of the line and four frigates, availed itself of the temporary absence of the main body of the British fleet, to attempt to put to sea, and had nearly effected two of our frigates, when Captain Black-

wood, of the *Warpite*, with not more than one half the enemy's force, completely frustrated their object.—This gallant affair affords another proud illustration of the superiority of our naval tactics, while the fact of the enemy declining an engagement, though out numbering us by two to one, even at their own threshold, is the highest compliment that could be paid to the irrepressible courage of our countrymen in arms.

DUBLIN, October 23.—A London evening paper by yesterday's packet, says, dispatches of October 5, are received from Lord Wellington, dated Alcobaco, S. W. of Leyria. Having given time to the inhabitants of Coimbra to remove, he retreated from the banks of the Mondego on the 1st. Massena advanced from Avellans, crossed the Mondego, and his head quarters were at Leyria. There had been some sharp skirmishing.

The Dublin paper, notwithstanding the above, publishes an account via Corunna of October 14, from the army of the 12th, of victories over the French on the 1st and 3d of October, and that 5000 French prisoners were made at Oporto.

CADIZ, October 7.—"General O'Donnell has beaten the enemy in Palamas and its vicinity; the result of the expedition has been the taking prisoner General Shuart, 40 officers, 1800 prisoners, and warlike stores, which number of prisoners had arrived at Tarragona, in 76 boats, with all the booty taken from the enemy. General O'Donnell, who was wounded in the foot by a musket ball, has likewise arrived at Tarragona."

The Spanish man of war, *San Pedro de Alcantara*, from Lima, which anchored in this bay yesterday, has on board 3,925,854 dollars, on account of the king and merchants—the has also a cargo of cocoa, block-tin, jesuits bark, &c.

FROM THE UNITED STATES.

LEXINGTON, (K.) Oct. 27.—A gentleman who arrived in this place on Thursday evening last direct from Natchez, has politely favored us with the following interesting information from the Floridas.

An express arrived at Natchez a few hours before I left it, (which was 10 days ago) stating that the government of East and West-Florida was within twelve hours march of the fort at Baton Rouge, with a regular force of 500 men, together with a considerable number of volunteers. His object, it is said, was to take the fort. Baton Rouge contained, at the time I left Natchez, between 5 and 600 men; and the people were still flocking into the fort from every direction.

General Thomas had sent a message to Folch, that if he was willing he would meet him, and decide the contest on the plains, at a short distance from the fort.

It appears from accounts from West-Florida, that General Thomas, after taking the fort, found 1000 muskets, 600 brace of pistols, 300 Spanish swords, 50 pieces of cannon, and a great quantity of powder, and ball, with another article which ought not to be omitted, viz. a strong box with 10,000 Spanish dollars.

WEST FLORIDA.

At the moment our paper was going to press, we received information that General Thomas marched with four hundred men, as mounted infantry, on Tuesday evening last from Baton Rouge for the district of Helena, to establish order, and confine all those who will not submit to the powers of the convention. We hope Mr. Brown, the commandant of that district, and General Thomas, will accommodate their disputes without bloodshed, and form some kind of government, which is infinitely better than the anarchy with which they are threatened.

We are informed by a gentleman in this city, of respectability, that the people of Springfield, a town building at Brooker's Landing, in West Florida, have erected a fort, and named it Ferdinand, for their king, and that they are determined to oppose general Thomas and all the acts of the convention. Our informant adds, that they ordered drums, fises, powder, lead, &c. to be purchased and sent them. *Louisiana paper.*

HORRID!

New-York, November 10.—Yesterday about 12 o'clock, a most shocking murder was committed in Heller street, by a man of the name of Badgley, a mason by trade, on the body of a young woman by the name of Jackson. He struck her on the head as she was sitting in a chair, with a sledge hammer, which killed her instantly. He then knocked down the mother-in-law of the unfortunate young woman in the same way. This woman is yet alive, but it is not expected she can recover. After he had done