

that have involved most of the British colonies in confusion and ruin.

THE HERALD.

KINGSTON, JULY 10, 1827.

We present our readers with English dates nine days later than the last Herald contained. It will be seen that the Marquis of Lansdowne has a seat in the British Cabinet, but takes no office.

It is gratifying to see, from the official statements produced by Mr. Huskisson, in his late masterly Speech in vindication of the system of free trade introduced by him, that that liberal policy is not, in practice, operating injuriously, as has been pretended, but is attended with most beneficial results. His arguments, founded upon facts, appear to have given almost universal satisfaction. The ex-secretary Peel, the head of the present opposition, expressed his full conviction, & eulogized Mr. Huskisson, on the occasion. In another department of Government, Mr. Peel has himself labored, not without effect, to liberalize and amend the laws of England, and to adapt them to the circumstances and sentiments of the present age. Although no longer in office, it is to be hoped, he will continue his exertions for the amendment of the laws, especially the penal laws, some of which appear too sanguinary and barbarous for the freest Government and most enlightened nation in the world.

The new Solicitor General, Sir N. C. Tindal, has introduced a bill in the House of Commons, abolishing arrest for debt for all sums under £20.

Eggs.—Mr. Huskisson, in a late Speech in the Imperial House of Commons, among other details of the trade of England with other countries, stated that during the last year there were imported into England from France sixty five Millions of Eggs, on which the duties were twenty two thousand pounds sterling.

It is stated that Mr. Justice Boulton retires on a Pension, and that his successor, JOHN WALPOLE WILLIS, Esq. an English Barrister, is now on his way to this country.

The following official document contradicts the rumour which we last week copied from the Canadian Courant.

SOREL, 28th June, 1827.

Sir,—I am directed by His Excellency the Governor in Chief, to contradict the information contained in the paragraph of your paper of the 27th inst. in which my name is mentioned, and which is likely to mislead the public.

His Excellency desires me to assure you, that I was not the bearer of any dispatches whatever to him. That the Solicitor General was not called to Sorrel, that neither His Excellency, nor any individual of his family proceeded to Quebec, and that the arrival of two Regiments from England is simply the relief of two Battalions ordered home.

I am Sir, your most obt. Servt. JOHN RAMSAY, Col. A. D. C. To the Editor of the Canadian Courant.

The second anniversary meeting of "the Waterloo Branch missionary Society" was held in Atkinson's grove, Waterloo, on Saturday last. After the exercises of the day, which were conducted by the Rev. Messrs. Healey and Belton, and listened to with the most profound attention by a large concourse of persons, the following gentlemen were appointed officers for the ensuing year.

Mr. James R. Armstrong, President. Mr. B. Brennan, Vice president. Mr. D. Vanalstine, Treasurer. Mr. E. Beach, Secretary.

MANAGERS.

Mr. Abernathy, Mr. Campbell, Mr. Lockwood, Mr. L. Vanalstine, Mr. Counter, Mr. Rorison, & Mr. Denn, Mr. Clark.

We should not omit to state, that several Indians and Squaws of the Missisagwah tribe attended the meeting, one of whom, in rude but perfectly intelligible language, addressed the audience, and gave a succinct account of the happy change which he had experienced within the last year. By the Treasurer's Report, it appears that the receipts of the General Society last year were £231 12 21—payments £203 1 3—The schools established among the Indians are in a flourishing condition, and about five hundred persons of different tribes have been reformed through the instrumentality of the Society.

COMMUNICATIONS.

FOR THE UPPER CANADA HERALD.

I was astonished to read, in a late Herald, Mr. Dalton's statement of a decision of the Court of King's Bench, in a case of Robert Coleman against him, upon the award of arbitrators, that said Dalton should pay said Coleman £312 10 0, and, as an equivalent therefor, Coleman should convey to said Dalton an unincumbered title to certain lands, of that value; and that upon Dalton's demand any time before the 1st of December, 1826, Coleman should make and execute a deed of the land and lodge it at Mr. Strange's office, to be delivered to Dalton upon his paying £110 4 11, part of the said price of £312 10 0; but that if Dalton should fail to apply for the deed within the limited period, then, as a penalty upon him, the land for £200, (a hundred pounds less than its real value) and Dalton should pay Coleman the balance of £112 10 0.

The case came before the court upon Coleman's application for an attachment against Dalton to imprison him until he should pay the said sum of £112 10 0. The court granted a rule to shew cause. Dalton accordingly shewed cause, by four affidavits,

(the proper mode of proof in such cases) proving that, within the limited time, to wit, on the 24th of November, 1826, Dalton caused a letter, signed by him, to be delivered to Coleman, notifying him to have the deed made out and ready at Mr. Strange's office, the next day at 12 o'clock, where Dalton would attend, pay the awarded sum of £110 4 11, and receive the deed; that he did accordingly attend there with the money, ready to pay it, and receive the deed; but that Coleman did not attend, and did not make and execute such deed, and indeed that he had disabled himself from doing it, by having suffered judgments, by which the land was incumbered to the amount of £1250. The delivery of Dalton's letter to Coleman was proved by a witness who annexed to his affidavit a copy of the letter. None of the affidavits specified whether the letter was sealed or open; but as it was called a letter, the court inferred that it was sealed, and upon that ground decided that it was not a sufficient demand, and therefore made the rule for an attachment absolute.

The decision implies that if the letter were unsealed, when delivered, it would have been a sufficient demand. There was no objection to the sufficiency of the words, in which the notice of demand was expressed; nor to the time or place of serving it; and the service, being personal, could not be objected to. The only objectionable circumstance was that it was not proved that the letter was open, and it was presumed to have been sealed. On that point alone the case was decided.

Dalton, who had scrupulously complied with the terms of the award, according to his understanding of it, complains of the decision, as erroneous, partial, and injurious to him; and has appealed to the public, the only court of appeal provided in such cases by our present system of jurisprudence. As one of that Public, to whom the appeal is made, I beg leave, in the exercise of a common right of private judgment, to express my individual opinion of the decision.

It is to be observed, that, according to the report of the case, the award did not prescribe any particular form or manner, in which the deed should be demanded. Any application, therefore, amounting to a demand in any manner or form whatever, would satisfy the conditions of the award. It might, of course, be parol, or in writing; and a written demand need not be personally served, but might be left at Coleman's house. In this respect, a demand and a notice are analogous, and, in point of service and proof, stand on the same footing. Starkie, a judicious writer on Evidence, page 976, lays down the rule of law on the subject in these words, "Service at the dwelling house is sufficient, unless some statute requires personal service." The reason is obvious. A party, on whom a demand or notice is required to be served, shall not be permitted, by his own act or neglect, or by absenting or concealing himself, or by shutting his eyes or his ears, to prevent the requisite notice or demand, and thereby defeat the right of the other party. This rule of evidence is supported, not only by reason and common sense, but also by the authority of adjudged cases, of which I will cite one or two.

A demand must be made upon the maker of a note, to enable the holder to recover against the indorser. In *Saunderson* against *Judge*, 2 Hen. Black. 511, the court declared, "It is not necessary that a demand should be personal; it is sufficient if it be made at the house of the maker of the note."

In an action of Trover, a demand is required to be proved. On this point, the case of *Logan* against *Houlditch* et al. is thus reported, 1st Esp. 22. "Trover for a carriage and harness. To prove the demand, a witness was called for the Plaintiff, who produced a paper, a copy of which he had served on one of the Defendants at his house. This was a demand in writing of the things for which the action was brought, signed by the Plaintiff. There being some doubt as to the person upon whom the demand was served, whether he was one of the Defendants, or not, Lord Kenyon said, that a demand in writing, (such as the present) left at the house of the Defendant, was a sufficient demand, to support that part of the evidence necessary in this action."

It was not necessary to show the Defendant's perusal or knowledge of the contents of the written demand. It was sufficient to prove that it was put within his power, by a delivery of it to his house. *A fortiori*, a delivery of it to him in person, in a letter sealed and directed to him, would be sufficient for such a personal service of it would put it more immediately and certainly in his power. It would not be necessary to go further, and show that he opened and read the letter, any more it would be to prove, in case of an open letter of demand, that he actually read and understood it. If he did not, it was his own fault. In either case, he might throw away the letter of notice or demand, without reading it, what he did with it, after it was delivered to him, is a matter of no consequence. It is never required to be stated in the Affidavit of service, or enquired of by the Court.

The service of a writ by a copy is required by statute to be personal; but the Affidavit does not state that the Defendant read or knew the contents of the copy. A delivery of it to him, putting it in his power to know the contents, is sufficient, and is all that is required. In the case of *Coleman* and *Dalton*, if the Affidavit of service had stated that the letter of demand delivered by the witness to Coleman was delivered open, it is admitted that it would have been a sufficient service; but that would not have proved that Coleman saw or knew the contents of this demand, nor would it have put it more in his power, than it was if directed & delivered to him sealed. In either case, and as much in one as the other, it was at his option to read & know the contents, or to refuse or omit to do it. As to the design of the service, and the effect of it, there is not, either in reason or law, any difference. It was as much at his election to open and read the letter, as to read it if it were already open. So far as respects Coleman himself, therefore it could make no difference; and it could make none as to the certainty or ability of the witness to prove the delivery, and to identify the contents by a compared copy. Every lawyer, and every man of common understanding, can see, that in either form, the service of the demand was equally effectual and sufficient. Whether the letter was sealed or not, therefore, is absolutely and perfectly immaterial.

This point is not only clear upon the principles of common sense; but is settled in practice, and by judicial decisions, in an analogous case.

The indorsement, for instance, of a promissory note or bill of exchange is a conditional contract, that the indorser will be answerable, in case of the default of the maker of the note or drawer of the bill, to pay it, of which non-payment the indorser, according to condition of his contract, is to have due notice. To sustain an action against him, such notice must be alleged and proved. Every person, who is in the habit of attending Courts, knows that proof of a sealed letter containing such notice, directed and delivered to the indorser, is admitted as proper evidence of the notice. It is, indeed, sufficient even to prove that a letter sealed and properly directed to the indorser, was put into the post office at such time & place, that it would reach him in due season, according to the regular course of the mail. Such proof of due service of notice is admitted in the English Courts, as well as ours. In the case already referred to in 2 Hen. Black. 511, the opinion of the Court is thus expressed, "as to the notice to the Defendant, the sending the letter by the Post was sufficient evidence of that notice." In *Langdon* vs. *Hull*, 5 Esp. Rep. 157, Lord Ellenborough said, "that notice of the dishonor of a bill of exchange by letter was certainly good evidence, and had been so decided. See also *Kuff* vs. *Wiston*, 3 Esp. 64, *Haynes* vs. *Birks*, 3 Bos. and Pwl. 602, *Parker* vs. *Gorden*, 7 Term Rep. 385. Indeed the English Reports are full of decisions to the same effect; and every cashier and customer of a Bank in this Province knows that a common mode of giving notice to an indorser is by a letter sealed and directed to him.

No man in the least degree conversant with business can doubt that a letter of notice, sealed and duly directed, if proved to have been delivered to a party, sufficient proof of due notice. In point of service, there is no difference between a notice and a demand. Indeed a demand is a notice, and nothing more or less than a notice, of what is demanded. Dalton's letter was a notice to Coleman to have the deed made out and ready at Mr. Strange's office, the stipulated place, to be delivered to Dalton, upon his payment of the awarded sum. As that letter, containing proper notice of the demand, was seasonably and personally served on Coleman, and the service duly verified by the Affidavit of the witness, it was, in my humble opinion, a reasonable, a legal and sufficient demand of the Deed, and a full and perfect compliance with the condition of the award, on Dalton's part. On Coleman's part, there was an absolute and total non-compliance.

For these reasons, of which every man of sense can judge for himself, the decision of the Court as stated in the report of the case, appears to me to be manifestly erroneous. It has injured Mr. Dalton, to the amount of one hundred pounds, and subjected him to unmerited imprisonment, by the summary process of attachment for an alleged contempt. I would pay all due respect to the decision of a court, especially of our highest court of law; but if in any case it be found upon examination, to be erroneous, the error should be candidly but faithfully pointed out. Judges are men of like passions with others. Like other men, they are liable to err; and, as their official opinions affect the property, the rights, the personal liberty, and the lives of their fellow subjects, their errors are proportionably more injurious, than those of men in ordinary situations. Against the consequences of judicial error or misconduct, under our present system, the most effectual guard is the opinion of a vigilant, impartial and intelligent public. It is our only substitute for a Court of Impeachment.

In no class of cases is the salutary check of public opinion more essential than in those of summary proceedings. The undefined power of punishing or forcing payment by attachment, at the discretion of the Court, without any legal declaration of an offence, or limitation of punishment, and without the intervention of a Jury, is a dangerous engine. In party times, and in the hands of partial or prejudiced or capricious Judges, if we should ever have such, it may be a ready-made instrument of judicial despotism, a convenient means of screening favourites or inflicting vengeance upon persons out of favour.

ONE OF THE PUBLIC.

June 30th, 1827.

Mr. Thomson, The following are copies of four letters passed between John Galt, Esq. Agent for the Canada Land Company, and the subscriber. You are requested to give them an insertion in your useful paper, and Oblige, BOWEN AYLSWORTH. Ernest Town, May 8th, 1827.

Mr. John Galt, Sir; I am desirous to purchase Lot No. 31, in the second Concession of the township of Ernest Town, in the Midland District, containing 200 acres, (which I am informed is a Crown Reserve belonging to the Canada Land Company.) I am willing to pay £125 Provincial Cy. for the same, one fifth part thereof down, and the remainder in four equal annual instalments, with interest: I consider to be a fair price grounded on the actual sale of uncultivated lands in the vicinity thereof, and on the quality of the same—a considerable part of the Lot not having a sufficient depth of soil for cultivation, and almost all the valuable Oak and Pine timber having been taken off, or destroyed by lumber men. For the correctness of the above statement, I beg leave to refer you to Isaac Fraser, Esq. Peter Perry, M. P. or to any of the Magistrates residing in the vicinity. I shall expect a Deed for the Lot on making the first payment, and will give a Mortgage on the same for securing the succeeding payments. I am, with Respect, Sir, Your Ob'dt. Servant, BOWEN AYLSWORTH. Resident in Ernest Town, near Bath. To John Galt, Esq. Agent for the Canada Land Company. York, 17th May, 1827.

Mr. Bowen Aylsworth, Ernest Town. Sir, In reply to your letter of the 8th instant, I beg to state that I am willing to accept your offer, but the first instalment must be paid as soon as possible, when a

letter of Licence to occupy will be given.—The Deed requires to be executed in London, and I cannot apply for it till the first instalment is paid. I do not apprehend that the Directors of the Company will object to give you the Deed and to take a Mortgage, but yours is the first proposal received for a settlement in that manner.

I am, Sir, Your Ob'dt. Servant, JOHN GALT. Ernest Town, 2d June, 1827.

Mr. John Galt, Sir, I received your answer of the 17th, informing me that the first instalment must be paid as soon as possible, and received by you before you can apply for a Deed. As soon as was convenient I have procured a draft on the U. C. Bank, which I have enclosed, it being the most convenient remittance I could make—not doubting but your letter of Licence will be a sufficient warrant to possess the said Lot, expecting you will forward it as soon as convenient.

I shall pay the remaining instalments as soon as possible, probably by the time the Deed is executed or received. I remain, &c BOWEN AYLSWORTH. Mr. John Galt, Agent of Canada Land Company. York, 11th June, 1827.

Mr. Bowen Aylsworth, Ernest Town. Sir, In answer to your letter of the 2d instant, enclosing a draft of £25 as the first instalment of the purchase money, for Lot No. 31, in the 2d Concession of Ernest Town, I beg leave to state, that said Lot does not belong to the Company. Your draft you will find enclosed, and should you feel inclined to offer for any Lots at the Company's disposal, your application shall meet with immediate attention. I am, Sir, Yours &c. JOHN GALT. (Signed)

I would just observe for the information of John Galt, Esq. Agent for the Canada Land Company, that I do not feel inclined, at present, to offer to him for any Lots at the Company's disposal—there being Landholders enough to whom I can apply, who probably would deal with more sincerity or honor, or at any rate, with more certainty than I have met with in this case. B. A.

MARRIED, At Montreal on the 27th ult. by the Rev. Mr. Mason, John R. Glover, naval Store-keeper, at this place, to Miss Margaret Sweeney of Montreal. BIRTH, This morning, Mrs. John McDonald of a son. DIED, Lately, at Whitesboro, the Hon. JOHN HUNT, one of the Judges of the Supreme Court of the Michigan Territory.—Com. At Belleville on the 21st Ult. after a lingering illness, Mr. Theophilus Nelson aged 59. His well merited eulogium—the heart-felt sorrow of those he has left behind him to mourn the loss of, of a tender Husband, an affectionate Father, and a social and open hearted Friend.—Com.

THE Committee of the Montreal Auxiliaries of the Bible Society, inform the inhabitants of Upper Canada, especially those residing in frontier and destitute settlements, that they are willing to supply them and their Sunday Schools with Bibles and Testaments at the reduced prices of their Depository; provided, application be made by Branch Societies and Associations, Auxiliary to this Institution. Printers generally in the Upper Province are requested to give this circular an insertion in their Papers. By order of the Committee: J. S. CHRISTMAS, Domestic Sec'y. Montreal, June, 1827.

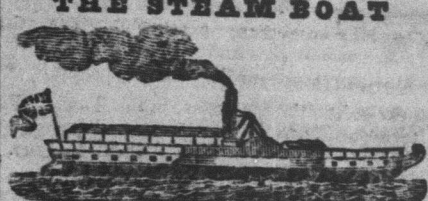
N. B. It having been communicated to the Committee of the Montreal Bible Society, that there were no Bibles or Testaments in the Depository at Kingston, and that copies of the scriptures were frequently inquired after, it was thought expedient to pass the above resolution; but it is not intended to interfere with any other Society or Association.

LOOK AT THIS. MR. Benniker's notice in the last Herald, deserves a little comment. The fact is, that document was drawn by McBean to suit his own vile machinations and usual bad language. Benniker is a very illiterate man, and the witness also is a very ignorant peasant, (a discharged soldier, living at Benniker's), I would ask Mr. McBean the reason he did not take Benniker to some respectable farmer, and have his certificate explained and witnessed? I can tell the reason, (and he knows it) that there is not a respectable man in the country who knows McBean, will have anything to say to him. Look at the respectability of my certificate, and that will show how I came by the deed for lot 18, and the west half of 19. JOHN BURLEY. Kingston, 9th July, 1827.

I CERTIFY that about eight years since, Wm. Benniker and John Burley came to my office, and Benniker transferred to Burley lot 18 and the west half of 19, east of the rock, Marysburgh; and writings from Burley were given to Benniker for his security of payment, and Benniker appeared to be well satisfied with the transaction. All the writings were done in the office before me. DAN. WRIGHT, Sen. Late Dep'y Register for the county of Prince Edward. Marysburgh, 5th July, 1827.

STRAY COLT. STRAYED from the Subscriber, on or about the last of April or the beginning of May, a bay MARE COLT, two years old, one of her hind feet white, and a few gray hairs about her tail. Any person giving information to the Editor of the Herald, or to the subscriber, in Portland, where said colt may be found, shall be rewarded for their trouble. ABSALOM DAW. Portland, 28th June, 1827.

THE STEAM BOAT



Charlotte, H. GILDERSLIEVE, MASTER, WILL as usual leave Kingston for the Bay of Quinte every Monday and Thursday at 10 o'clock; leave the

CARRYING PLACE for Kingston every Tuesday at noon, and BELLVILLE for Kingston every Tuesday evening and Friday morning; leave HALLOWELL for Kingston every Wednesday morning at 7 o'clock, and Friday afternoon at 3 o'clock. Leave Kingston for PRESCOTT every Saturday morning, and Prescott for KINGSTON on Mondays, touching at BROCKVILLE & GANANOQUA on the way up and down.

The York Stage meets the Boat at the Carrying place, every Tuesday morning. Kingston, May, 1827.

FOR SALE, LOT No. 7, 4th concession of Bastard, with in 5 miles of the village of Beverly, and not far from the line of the Rideau Canal.—Apply at the Herald office. Kingston, July 5, 1827.

DEFAULT having been made in the payment of a certain sum of money, secured by indenture of mortgage bearing date the twenty-ninth day of July, in the year of our lord one thousand eight hundred and twenty-two, executed by Robert Kidney, of the township of Kingston, in the Midland District and Province of Upper Canada; all that certain tract or parcel of land situate lying and being in the second Concession of the township of Kingston, being a part of lot No. 15, which said tract commences on the old line between the lot No. 14 and 15, six chains south from the Stone Monument at the third concession road, then south to the centre of the concession, then east to a tract of land sold by Sheriff Stuart to Samuel Purdy; thence north as the fence now stands to the allowance of road in the third concession, then west to a tract described to Captain Henry Murney, then south six chains, then west ten chains to the place of beginning, 55 acres, be the same more or less.—Notice is hereby given, that by virtue of a power contained in said mortgage, the premises described in said mortgage will be sold at public vendue in the village of Waterloo, on the 4th August next, at 12 o'clock on the same day. Dated July 5, 1827.

AMOS ANSLEY: WHEREAS I (through inadvertency) have circulated a report that Thomas H. Powers of Bath, had forged an order on Mr. Angus McDonald, Merchant of Bath, and had signed my name to it, this is therefore to certify that that report is incorrect. Given under my hand the 27th of June, 1827. JOHNSTON HAWLEY.

SHERIFF'S SALE. Midland District, ON Saturday the 7th day of July next, will be sold, at the Court House in the town of Kingston, the following Lands, as belonging to Thomas Sparham, seized by virtue of an Execution issued out of His Majesty's Court of King's Bench, to me directed, at the suit of George H. Markland and Neil J. MacLean, Executors of Patrick Smyth, viz: Lots No. 11, 12, 13, and 14, sixth concession, east 3-fourths of No. 14, and west half of 15, seventh concession of the township of Loughborough. All persons having claims on the above land or any part thereof are required to make the same known to me on or before the day of sale. Sale to commence at 12 o'clock, noon. JOHN MACLEAN, Sheriff, M. D. Kingston, April 3d, 1827.

The above sale is postponed until Saturday, the fourteenth day of July inst. JOHN MACLEAN, Sheriff, M. D. Kingston, 7th July, 1827.

REQUIRED, IMMEDIATELY at Jones' Rapids or Long Fall, on the Rideau Canal From 50 to 100 STONE CUTTERS, Where constant employment will be given for Two Years and Liberal Wages. R. SHERWOOD. South Crosby, 11th June, 1827. 6w.

MARMORA IRON WORKS NOTICE. THE WARES of this Establishment are now selling at KINGSTON, AT 25% PER CENT. This reduction of price offers to the Merchants of Upper Canada, a chance to display their patriotic feelings at no inconsiderable premium, and it is to be hoped they will not let slip the opportunity. A. MANAHAN. June 26th, 1827.

FOR SALE, And immediate possession given, THE South half of Lot No. 21, 5th Concession of Thurlow, thirty Acres are cultivated, with a good house on the premises: For terms apply to Mr. Leonard Ross, of Thurlow, or the Subscriber at Adolphustown. HENRY DAVIS, Jr. June 1st, 1827.