tion last referred to was mentioned and partly made the ground of decision.

If this principle be sound law and is to be adopted in the present case, the plaintiff cannot succeed, as the protesting of the note (which is the act giving the cause of action on the third day of grace) was clearly an act to which they were privy.

I cannot find, however, any more recent cases in which this distinction has been followed or approved of; it is alluded to by Parke, B., in *Young* v. *Higgon*, 6 M. & W. 49 (one of the cases cited by the Chief Justice in *Edgar* v. *Magee*,), but without approbation, and he points out that although in *Hardy* v. *Ryles* one of the reasons given by Bayley, J., for the judgment of the Court was that the act creating the cause of action was one to which the plaintiffs could not be considered privy, it would be difficult to support the judgment on that ground, as a man must surely be privy to the act of his own imprisonment, and that the case rests more legitimately on the general ground that the first day is to be excluded from the computation.

Young v. *Higgon* decided that neither the day on which a notice of action against a magistrate is served nor the day of issuing the writ is to be computed as part of the month, over-ruling the case of *Castle* v. *Burdett*, 3 T. R. 623, and ignoring the distinction in *Lester* v. *Garland*, where a notice of action is spoken of as a matter to which the defendant must be considered privy, as he necessarily knows the time at which he is served with the notice, and may immediately begin to consider the propriety of preventing the action by tendering amends.

In *Isaacs* v. *Royal Ins. Co.* L. R. 5 Ex. at p. 300, Kelly, C. B., refers to several cases on the computation of time, and says: "All these authorities illustrate the principle that in general the day on which the engagement is entered into is excluded, and the last day of the time is included." The case itself is not in point.

The rule adopted in *Young* v. *Higgon* and the other judgments of Parke, B., mentioned in *Edgar* v. *Magee*, having been approved and followed in the latter case by the Chief Justice, I consider I am bound by it and must apply it to the present case.

I think it is a fairer and more equitable way to hold that the third day of grace is excluded than included. No doubt fractions of a day are but seldom regarded in our law, still it is clear that the holder of a note or bill has but little benefit from his cause of action accruing on the last day of grace. It does not accrue until late in the day, too late for him to procure the issue of a writ within office hours, and to treat this as the first day of the period of limitation is practically to deprive him of one day.

The argument that this construction gives him seven 27th Septembers in which to sue is technically rather than practically true.

I give judgment for the plaintiffs for $200 and costs, to be paid in fifteen days.

I am glad that it is in the defendant's power to appeal, and thus have the point authoritatively settled; although the exact question in dispute is one not likely to arise often, the principle involved in it is of frequent application.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

QUEEN'S BENCH DIVISION.

IN BANCO, DECEMBER 9, 1882.

REGINA V. O'ROURKE.

Criminal law Selection of jurors—32-33 Vict. ch. 29, sec. 44 (D.)—Writ of error—Challenge to the array.

By 32-33 Vict. ch. 29, sec. 44 (D.) every person qualified and summoned to serve as a juror in criminal cases according to the law in any Province, is declared to be qualified to serve in such Province, whether such laws were passed before the B. N. A. Act or after it, subject to and in so far as such laws are not inconsistent with any Act of the Parliament of Canada.

By 42 Vict. ch. 14 (O.) and 44 Vict. ch. 6 (O.), the mode of selecting jurors in all cases, formerly regulated by 26 Vict. ch. 44, was changed.

The jury was selected according to the Ontario Act, and the prisoner challenged the array, to which the Crown demurred, and judgment was given for the Crown. The prisoner was found guilty and sentenced, and he then brought error.