has come into his possession. We would earnestly recommend this plan to our younger professional readers, and would urge them to adopt it. If the habit were once formed, it would be as difficult to break through it, as it would be, for one who grown gray in loose and careless business conduct, to acquire this precious habit of accuracy and care in relation to the property of clients.

We inculcate the most rigid and iron exactness in the administration of property that comes to you professionally, and is not your own. You owe it, primarily, to yourself; you owe secondarily, to the profession you are a member of. The reputation of the whole body of lawyers suffers with that of every brother. That word "*brother*," so often used in our public intercourse, has great significance in this connexion. We are members of one family—our brother's sins are surely visited upon our head. Confidence in any of us once impaired, faith in the integrity and honor of our brotherhood is invariably shaken—however slightly, still shaken. The utmost sedulousness and particularity in guarding others' property can never be useless, or without its good effect; for as the habit of looking carelessly and callously upon your client's money—of making use of it when there cannot be the possibility of a doubt that every farthing of it will be returned—often leads in the end, under peculiarly tempting circumstances, to positive fraud, so the other extreme of conduct will engender a strong and resolute moral purpose which no temptation, however powerful, will be able to destroy or affect. Thus only is the remark of Tennyson true, that man is "*master of his fate.*—*From the Philadelphia Legal Intelligencer.*

LEGAL CONFLICT.

Many have been the attempts of ingenious conveyancers to evade the Mortmain Act; but all have failed, because the courts have persisted in construing the law according to its spirit and intention, and not by the strict letter. The latest endeavour will be found in a case of extreme importance and interest, *Jefferies* v. *Alexander*, 2 L. T. Rep. N.S. 748, in which the H. of L. once more rescued the law from defeat. The attempt was extremely ingenious. The donor executed an indenture purporting to be made between himself and certain trustees, who, however did not know of it, or of the existence of the deed until after his death. The deed, which was not enrolled as required by the Mortmain Act, and contained no power of revocation, witnessed that B. covenanted that his executors should, within twelve months after his death, subject to his debts and to any legacies and annuities given or to be given by any will or deed of the covenantor, invest £60,000, and pay the annual proceeds for the behoof of certain poor persons. The legacies and debts were of trifling amount, and the bulk of the assets consisted of mortgages of freehold and copyhold land, which formed the only fund out of which the £60,000 could be paid. This deed he kept in his own possession until his death.

The question was, whether this constituted a charge payable upon the chattels real of the covenantor, there being no other assets from which payment could be made?

The difficulty of the question thus raised may be gathered from the division of opinion among the judges. The case was first heard by the M. R., who held it to be a gift of incumbrances affecting the realty. But the Lords Justices, and Erle and Wightman, JJ., who had been called in to their aid, reversed this decision. In the House of Lords the question was twice argued; the law lords present on the first occasion having been equally divided. On the second hearing six of the common law judges were present, and were likewise equally divided; but of the five law lords present three were of opinion that it was a charge upon the realty, and it was ultimately so determined, exhibiting most remarkable conflict of opinion.

For its being a charge upon the realty, were the Master of the Rolls, the Lord Chancellor, Lords St. Leonards and Kingsdown, and Blackburn, Willes and Williams, JJ.

Against its being such a charge, were the Lords Justices, Erle, C.J. and Wightman, J., Lords Cranworth and Wensleydale, and Pollock, C.B., Wilde, B., and Byles, J.—*Law Times.*

THE CONFESSIONAL.

(*From the Jurist.*)

At the Spring Assizes of Durham, in the present year, a case arose involving a moot and rather difficult point in the law of evidence, which has attracted considerable attention, and given rise to a bill in Parliament by Sir G. Bowyer. We allude to the case of *Reg.* v. *Hay*, where the question arose as to whether, and how far, a Roman Catholic clergyman is privileged from being compelled to disclose, in a court of justice, matters confided to him by a penitent in confession. It was said at the time that Hill, J., denied the existence of the privilege, and committed the priest for contempt of Court for refusing to make the disclosure. A report of the case has now appeared in the recently published part of the Reports of Messrs. Foster & Finlason, (*Reg.* v. *Hay*, 2 Fost. & F. 4,) which puts the matter in a very different light, and the report is accompanied by a learned note by the latter gentleman. The case is as follows:—

William Hay was indicted for stealing a watch. An inspector of police stated, that from information he received he went to the house of the Rev. John Kelly, a Roman Catholic priest, from whom he received a watch, which the prosecutor identified as his. The Rev. Mr. Kelly was then called, and objected to take the oath, saying, "As a minister of the Catholic Church, I object to the part that states that I shall tell the *whole* truth." Hill, J., said—"The meaning of the oath is this: it is the whole truth touching the trial which you are asked—which you legitimately, according to law, can be asked. If anything is asked of you in the witness-box which the law says ought not be asked, you would be entitled to say, 'I object to answer that question,' and the law would sustain the objection. You can, therefore, have no objection, as a loyal subject, and in duty to the laws of the country, to answer the whole truth touching the case which may be lawfully asked. Therefore you must be *sworn.*" The witness was then sworn, and deposed that he received the watch produced; and on being asked from whom, answered, "I received it in connexion with the confessional."

His Lordship.—"*You are not asked at present to disclose anything stated to you in the confessional*: you are asked a simple fact—from whom did you receive that watch which you gave to the policeman?"

Witness.—"The reply to that question would implicate the person who gave me the watch; therefore I cannot answer it. If I answered it, my suspension for life would be the necessary consequence. I should be violating the laws of the church, as well as the natural laws."

His Lordship.—"I have already told you plainly I cannot enter into this question. All I can say is, you are bound to answer, 'From whom did you receive that watch?' On the ground I have stated to you, *you are not asked to disclose anything that a penitent may have said to you in the confessional.* That you are not asked to disclose; but you are asked to disclose from whom you received stolen property. Do you answer it, or do you not?"

"Witness saying he really could not, was adjudged guilty of contempt of Court, and committed accordingly.

Previous to this case it was the common opinion that a confession to a clergyman of any denomination was not privileged from disclosure; for which several cases were usually relied on, especially *Rex* v. *Gilham*, (1 Moo. C. C. 186), which we cannot help thinking has been much misunderstood. With respect to Roman Catholic clergymen in particular, the right