Courts. How often is it exercised? Not in one case in one hundred and fifty. Surely this is an argument of some weight in favor of the principles contained in Mr. Mowat's bill.

MOSES R. CUMMING.

It will be remembered that this individual was last year tried at Toronto for embezzlement.

He was indicted on two counts.

The first charged that on 11th March, 1857, he being a clerk then employed in that capacity by the Bank of Upper Canada, did then and there in virtue thereof *receive* a certain sum of money, to wit: £1,449 15s. for and on account of the said Bank of Upper Canada, and the said sum of money feloniously did embezzle.

The second count charged that he, on 11th March, 1857, being a clerk, &c., (as in first count), did then and there and in virtue thereof *receive* a certain valuable security, to wit, an order for the payment of £1,439 15s. for and on account of the said Bank of Upper Canada, and the said valuable security feloniously did embezzle.

The jury found a general verdict, "guilty of embezzlement," upon which verdict there was judgment.

The form of the indictment is that given in the schedule to Statute 18 Vic. cap. 92, which, from its language, seems to refer to Statute 4 & 5 Vic., cap. 25, s. 39, which enacts, that "if any clerk or servant of any person employed for the purpose or in the capacity of a clerk or servant, shall by virtue of such employment *receive* or take into his possession any chattel, money, or valuable security, for or in the name or on account of his master, and shall fraudulently embezzle the same or any part thereof, every such offender shall be deemed to have feloniously stolen the same from his master," &c.

The evidence did not prove an offence under this Statute but rather one under Statute 19 & 20 Vic., cap. 121, s. 40, which enacts, that "if any cashier, assistant cashier, manager, or clerk of the said Bank, (Bank of Upper Canada), shall secret, embezzle, or abscond with any bond, obligation, bill, obligatory or of credit, or other bill or note, or any security for money, or any money or effects *intrusted to him* as such cashier, &c., the cashier, &c., so offending, &c., shall be deemed guilty of felony."

The counsel for the prisoner contended that the indictment charged an offence under Statute 4 & 5 Vic., cap. 25, for embezzling money, &c., received by a clerk, &c., *from* third persons *for* his master, of which there was no evidence, and upon this ground, among others, moved the Court of Queen's Bench, under the recent Statute, 20 Vic. cap 61, for a new trial. The counsel for the Crown opposed the motion upon the ground among others that the form of indictment given in Stat. 18 Vic., cap. 92, applies not merely to acts of embezzlement under Statute 4 & 5 Vic., cap. 25, but to acts of embezzlement generally, including embezzlement under 19 & 20 Vic., cap. 121, of money, &c., entrusted *to* a cashier, &c., *by* his master, &c.

The Court of Queen's Bench discharged the rule, and from its decision the prisoner appealed to the Court of Error and Appeal, consisting of the ten judges.

On Saturday last, 26th July, judgment in error was given that the order of the Court of Queen's Bench refusing a new trial be reversed and that the rule be made absolute for setting aside the verdict and for granting a new trial, and that the prisoner be remanded to the same custody and be detained upon the same warrant and authority as before the verdict was rendered until therefrom discharged by due course of law. Chief Justice Draper and Mr. Justice Burns dissented from this judgment, and Justices McLean and Hagarty, being stockholders of the Bank of Upper Canada, declined to express any opinion. Mr. Justice Richards not having been present at the argument also declined to express an opinion. The Chief Justice of Upper Canada who in the Court of Queen's Bench gave judgment refusing a new trial, in the Court of Error and Appeal said that his judgment in the Court below was not given without much doubt, and that since it was given he had seen reason to change his opinion. He therefore concurred with the majority of the judges in appeal in granting a new trial. The majority consisted of The Chief Justice of Upper Canada, Mr. Chancellor Blake, Chief Justice Macaulay, Vice-Chancellor Esten, and Vice-Chancellor Spragge.

LAW REFORMS OF THE SESSION.—GENERAL REVIEW.

(*Continued from page* 128.)

The Bill "to amend and extend the Act of 1857, for diminishing the expense and delay in the administration of justice in certain cases," is of great importance. So far as it proposes to explain and amend the Act which it recites, it is unobjectionable; but so far as it proposes to extend the operation of that Act, it is not free from objection. It is all very well summarily to try persons accused of larceny when such persons assent so to be tried, but it is another thing summarily to try persons for criminal offences with or without assent, who hitherto were entitled to trial by jury. Much as we are prepared to dispense with trial by jury in a certain class of civil cases, we would not without fear and trembling deprive a party accused of crime of its benefits, where that party demands so to be tried. Life and liberty in England are more free than in the Continental