This was an action by the assignee of an administration bond, on which the plaintiff declared, assigning for breaches, 1st, that the administrator, for whom defendants are sureties, did not well and truly administer; 2nd, that he did not make or cause to be made a just and true account of his administration; 3rd, that he did not deliver and pay over to the person or persons entitled, the rest, residue and remainder of the goods, chattels and credits which remained, and that a large sum of money remained in his hands unpaid and unaccounted for.

Boswell, for the defendants, moved to stay proceedings, on an affidavit that no decree of distribution had been obtained against the administrator, and that no citation had been issued out of the Surrogate Court, calling on the administrator to file an inventory or to administer.

He cited *Earl of Elgin* v. *Cross*, 10 U. C. Q. B. 97 & 256, and cases there referred to, also *Archbishop of Canterbury* v. *Tupper*, 8 B. & C. 151.

Draper, C. J.—*Archbishop of Canterbury* v. *Wells*, 1 Salk. 115, shows that no citation is necessary to compel the delivery of an account. Still less can it be necessary, in order to make it the duty of the administrator to administer, *i.e.*, to collect assets and pay debts. The condition of the bond is sufficient, and the duty attaches immediately on the taking out administration. The want of a decree is an answer to the breach for not distributing, though it would be a good plea to that breach, and a partial stay of proceedings cannot be granted.

On the breach for not administering full damages may be recovered, *Archbishop of Canterbury* v. *Robertson*, 1 Cromp. & M. 690. Perhaps the breach should show the receipt and misappropriation of funds, in order to the recovery of full damages; but if the breach as it stands be insufficiently assigned, that is rather ground of demurrer than of staying proceedings.

The dictum of Sir John B. Robinson, in *Earl of Elgin* v. *Cross*, 10 U C. Q. B. 246, was not necessary for the decision of that case. It is founded on the case of *The Archbishop of Canterbury* v. *House*, Cowp. 140, which does not apply to a breach similar to the first breach in this case, where it may be that the administrator has wasted the assets. I have not succeeded in finding any case in which the proceedings on the particular breach have been stayed on the grounds of the want of a decree for distribution, or of a citation for an inventory.

The summons was moved with costs; it mus be discharged with costs.

Summons discharged with costs.

The Queen v. Mullady and Donovan.

Application for bail by prisoners committed for murder—Delay in trial.

On an application by prisoners in custody on a charge of murder, under a coroner's warrant, to be admitted to bail, it is proper to consider the probability of their forfeiting their bail if they know themselves to be guilty.

Where in such case there is such a presumption of the guilt of the prisoners as to warrant a grand jury in finding a true bill, they should not be admitted to bail.

The fact of one assize having passed over since the committal of the prisoners, without their having been brought to trial, is in itself no ground for admitting them to bail.

The application is one to discretion, and not of right, the prisoners not having brought themselves within 31 Car. II. cap. 2, sec. 7.

[Chambers, Nov. 18, 1868.]

This was an application to admit the prisoners to bail. It was grounded upon two principal allegations: 1st, that the prisoners were committed on a charge of murder to the common gaol of the county of Huron, before the last assizes for the county of Huron, at which court no indictment was preferred against them; and, 2nd, that upon the depositions which were taken at the coroner's inquest, the case against the prisoners was one of circumstantial evidence only, and amounted to no more than a case of suspicion, which, however strong, would not justify the detention of the prisoners in gaol.

The prisoners were committed in June last, upon a coroner's warrant, founded on an inquest, by which it was declared that they were guilty of wilful murder.

Gwynne, Q. C., for the Crown, showed cause. The prisoners are not entitled to bail as of right, unless they bring themselves (which they do not) within 31 Car. II. cap. 2, sec. 7: *Anon.* 1 Vent. 346; *Lord Aylesbury's Case*, 1 Salk. 103; *Reg.* v. *Barronet*, 1 E. & B. 1, Dears. C. C. 51; *Barthelemy's Case*, 1 E. & B. 8, Dears., C. C. 62.

Nor are they entitled as a matterof discretion; 1st, because in such case they must bring the deposition before the Court, which they do not do, and must establish by the depositions that there was nothing to justify the verdict of the coroner's jury: *Rex* v. *Mills*, 4 N. & M. 6; 1 Ch. Crim. Law, 98. 2nd, because the Crown now brings those depositions, which establish sufficient to justify the conclusion arrived at by that jury. 3rd, because a sufficient explanation is given on affidavit, on the part of the Crown, that a due regard to the ends of justice demanded that the case should be postponed to the next court, for the purpose of obtaining evidence to supply certain missing links in the chain of circumstantial evidence, and to show why the case was not proceeded with at the late court.

The judge cannot try the case. If there be sufficient to justify the charge being made, so as to put the prisoners on their trial, that is a sufficient reason why bail should be refused. The lapse of an assize can make no difference, except in so far as it may enable the prisoners to take such steps as, under 31 Car. II., would entitle them of *right* to bail.

McMichael contra. 1st. We do not ask bail as a matter of right, but appeal to the discretion of the court: *Reg.* v. *McCormack*, 17 Ir. C. L. Rep. 411. 2nd. The Crown have allowed an assize to pass since the prosecution, and this entitles us to ask for bail: *Fitzpatrick's Case*, 1 Salk. 103; *Lord Aylesbury*, Ib.; *Lord Maughan's Case*, Ib.; *Reg.* v. *Wyndham*, 3 Vin. Ab. 515. 3. It does not appear from the depositions that it was a clear case of murder, and therefore a judge has discretion to bail: O'Brien, J., in *Reg.* v. *McCarthy*, 11 Ir. C. L. Rep. 210 & 226.

Draper, C. J.—The prisoners did not pray, on the first day of the assizes, under the Habeas Corpus Act, to be brought to trial, and the Crown was not therefore bound to indict them at that court,