

JUDICIAL CHANGES—CRIMINAL PROCEDURE.

The Chief Justices of the respective courts on the first day of Term, in open court, administered the required oaths to Mr. Adam Wilson and Mr. Gwynne.

After this form had been completed, the Hon. J. H. Cameron, the Treasurer of the Law Society, in the absence of the Attorney-General, first, in the Queen's Bench, and afterwards in the Common Pleas, congratulated the new Chiefs upon their promotion, and Mr. Gwynne upon his appointment.

Both Chiefs when assuming their new positions in answer to the address of the Treasurer of the Law Society, referred to the good feeling, which at present exists between the Bench and the Bar, and promised to do their best to maintain it. To this end, want of patience or petulance on the part of the Bench is by all means to be avoided; and towards the attainment of the same object there must be respect and respectful demeanor to the Bench on the part of the Bar. Failing either, there will be conflicts which must result in the destruction of that good feeling which happily has hitherto existed, and which all are so anxious to maintain.

CRIMINAL PROCEDURE.

The questions raised by the counsel for the prisoner Whelan at his trial at the Ottawa assizes will it is supposed be brought before the Court of Queen's Bench during the present term.

The criminal law seems to require that where a prisoner convicted of a felony obtains a writ of error, he must be personally present in court when error is assigned, during the argument, and when judgment is delivered.

This rule, of some practical use to prisoners perhaps a hundred years ago, can scarcely be said to be so now, when every criminal can obtain counsel, or counsel is assigned to him by the merciful practice of our law; and it is open to serious objections, some of which present themselves in a case like the present. The prisoner has to travel from the extreme end of the Province at some expense to the county, and from the nature of things, is afforded opportunities of escape, which would not offer themselves under other circumstances. The danger is the more apparent when the possibility of a rescue by the friends of the prisoner is taken into consideration, and this possibility becomes more or less probable

according to the ease of accomplishment, and will necessary be greater in proportion to the time occupied in the transit of the prisoner from one place to another, and other circumstances. The chances will be increased when the crime partakes of a political character, or in times of great political excitement. We may here remark that it is now rather the rule than the exception, that the presence of prisoners is dispensed with on the return of writs of *habeas corpus* to test the legality of their imprisonment.

Another thing worthy of comment in our criminal law practice is the curious fact, that although a debtor cannot be committed to close custody for a week, for the non-payment of a dollar a month, pursuant to the order of a Division Court Judge, nor a man sent to jail for ten days, or fined ten shillings and costs by a justice of the peace for vagrancy without being called upon to shew cause to the contrary, and after a formal order duly signed and recorded—a man may be convicted of murder and hanged accordingly, without the scratch of a pen to order the execution. Some judges certainly have occasionally relieved the mind of a timorous sheriff by writing opposite the name of the criminal the words *Sus. per col.*, but this is seldom done we believe in practice, and some judges have refused to do even this.

The answer to this is, we suppose, that a record *can* be made up, if required, at any time, and so it may, if the evidence for the purpose has been preserved—but the fact remains the same, nevertheless, though we do not at present know of any case where this curious absence of what is a mere matter of routine in the most trifling cases has worked any injustice.

Proceedings in error in criminal cases being rather out of the common, it may satisfy the curiosity of some, in view of the *cause célèbre* about to come before the Queen's Bench, to give a short sketch of the *modus operandi*.

The writ of error to the court of Oyer and Terminer of the proper county is obtained on the fiat of the Attorney-General, returnable we presume in either court. The return sets forth the proceedings of the court below in full. Upon the return day of this writ, the prisoner, the plaintiff in error who has to be brought before the court by a writ of *habeas corpus ad subjiciendum*, prays oyer of