

Court, nor of the Supreme Court, shall after the first day of July, 1880, be allowed to draw or receive any monthly salary, unless he shall take and subscribe an affidavit, before an officer entitled to administer oaths, that no cause in his court remains undecided that has been submitted for decision for the period of ninety days."

It has been decided, under this provision, that the failure to make an affidavit does not work a forfeiture of the salary, but that arrears may be claimed as soon as the law has been complied with. The legislators of the Pacific Coast have certainly a practical method of law-making.

NOTES OF CASES.

SUPREME COURT OF CANADA.

OTTAWA, 1881.

POWER V. ELLIS.

Witness—Refusal to answer questions on cross-examination—Privileged communications—Misdirection.

Plaintiff (respondent on appeal), a teller in a bank in New York, absconded with the funds of the bank, and came to St. John, N.B., where he was arrested by the defendant (appellant on appeal), a detective residing in Halifax, N.S., and imprisoned in the police station for several hours. No charge having been made against him, he was released. While plaintiff was in custody at the police station, the defendant went to the plaintiff's boarding house, and saw his wife, and read to her a telegram, and demanded and obtained from her the money she had in her possession, telling her that it belonged to the National Bank and that her husband was in custody.

In an action for assault and false imprisonment, and for money had and received, the defendant pleaded *inter alia*, that the money had been fraudulently stolen by the plaintiff, at the city of New York, from the National Park Bank, and was not the money of the plaintiff; that defendant, as agent for the Bank, and acting for the Bank, received the money to and for the use of the Bank, and paid it over to them.

Several witnesses were examined, and the plaintiff, having been called as a witness on his behalf, did not, on cross-examination, an-

swer certain questions, relying, as he said, upon his counsel to advise him, and on being interrogated as to his belief that his doing so would tend to criminate him, he remained silent, and on being pressed he refused to answer whether he apprehended serious consequences if he answered the questions. The judge then told the jury that there was no identification of the money, and directed them that if they should be of opinion that the money was obtained by force or duress from plaintiff's wife they should find for the plaintiff.

Held (Henry, J., dissenting), that the defendant was entitled to the oath of the party that he objected to answer because he believed his answering would tend to criminate him.

Per Gwynne, J., that there was misdirection in this case.

Burker, Q.C., for the appellant.

Weldon, Q.C., for the respondent.

TEMPLE V. NICHOLSON et al.

Bill of sale—License to grantee to take possession—Progeny—Trover.

Trover. The declaration charged the appellant with the wrongful conversion of a horse and colt, the property of the respondents.

The defendant pleaded, *inter alia*, that the colt was the property of one Thomas Hackett, and the defendant, as Sheriff of York, took the same under an execution against Hackett.

The plaintiffs claimed the property was vested in them by a mortgage bill of sale, and given to them by Hackett as collateral security with other mortgages which they had on his real estate.

The colt was the progeny of a mare which was mentioned in the bill of sale, and which always remained in the possession of Hackett. In the mortgage there was a proviso that until default said Thomas Hackett might remain in possession of all the property mortgaged or intended so to be; but with full power to the plaintiffs, in default of payment, to take possession and dispose of the property as they would see fit. At the time the colt was foaled it was proved that there had been default in payment both of principal and interest money secured by the chattel mortgage.

Held, that the plaintiffs, being under the bill of sale the absolute owners of the mare, and after default entitled to take possession of her,