of administering the oath to a prisoner, and likewise his testimony, would be deemed futile, idle words. At the present time the accused is at liberty to say whatever he pleases, after the case is submitted, and his statements are taken for what they are worth.

So that, under the old-established law, there is as much efficacy in hearing the prisoner, as there could possibly be were the proposed rule adopted. And, finally, in all candour to Mr. Chief Justice Appleton and those who adhere to his school, we can only account for their earnest advocacy, and the people's opposition (where it has been tried) to the new rule, upon the principle of the old proverb, that *a looker-on seeth more than a gamester.*

F. F. B.

—*American Law Register.*

## THE NEW REPORTS.

A circular from the Council of Law Reporting announces at the close of the first year the complete success of the experiment. A uniform series of authorised reports, issued at a moderate price, and with reasonable rapidity, has been found to be practible, acceptable to the Profession, and self-supporting. The work is not without the faults that necessarily attend inexperience, but which time and practice will cure. The complaints are, however, few. It is rightly said that there is not sufficient discrimination in the selection of cases to be reported; that one of the principal objections to the other reports was, that temporary cases, such as mere practice cases, questions of fact involving no law, cases that are mere repetitions of previous decisions were thrust in, causing needless bulk, and that it would be the special virtue of reports not printed for profit that they would preserve only such decisions as would be of value for permanent preservation. It must be admitted that the Council have not faithfully observed this portion of their programme, and the volumes for the last legal year contain a multitude of cases that should not have found admission into a series of reports intended to be the authentic record of judge-made law. But, as the editors gather experience and confidence, we trust they will exercise a more severe judgement in this respect, and that this departure from the scheme, so justly and generally complained of, will be avoided for the future.

The time will soon come when the Council will be entitled to call upon the courts to recognise their authority so far as this—that when a case has been there reported, no other report of it shall be cited. Of course, until its appearance there, it will be citable from any authenticated source.—*Law Times.*

## UPPER CANADA REPORTS.

### COMMON LAW CHAMBERS.

(*Reported by* Henry O'Brien, Esq., *Barrister at-Law, Reporter in Practice Court and Chambers*)

### Boomer v. Anderson.

*Security for costs—Insolvency—Representative capacity.*

Proceedings stayed until security for costs should be given in an action brought in the name of a surviving partner who was in insolvent circumstances, by the personal representative of the other partner, under an award giving such representative a right to collect the debts of the firm. [Chambers, June 2, 1865.]

This was an action brought in the name of George Boomer, surviving partner of the firm of Connor & Boomer, by the executrix of Mr. Connor, the other partner, under an award giving her the right to collect the debts of the firm and to use the name of the surviving partner for that purpose.

The defendant obtained a summons for security for costs on the ground of the alleged insolvency of the plaintiff, who was moreover suing for the benefit of another.

*Snelling* shewed cause.

The insolvency of the plaintiff is not proved, only that he is in insolvent circumstances, which is not sufficient.

The defendant cannot stand in a better position owing to this assignment or right to sue, because, as between plaintiff and another, by no act of the plaintiff had the assignment taken place, and the money if recovered goes to another party.

It is in the discretion of the judge to order security or not, and this is not a case for it, the real plaintiff being an executrix and personal representative.

He cited Ch. Arch. p. 1405, and all the cases there cited; *Morgan* v. *Evans*, 7 J.B. Moore, 344; *Reid* v. *Cleal*, 1 U.C. Cham. Rep. 128; Taylor Ev. 3rd Ed. 647; *Ridgway* v. *Jones*, 6 Jur. N.S. 223.

*Murphy* contra.

John Wilson, J.—The general rule is, that if the plaintiff on the record is suing for another, and is in insolvent circumstances, the defendant is entitled to security for costs.

This the attorney for the plaintiff does not deny, but he contends that she who is really interested is herself suing, not in her own name, but in her representative capacity of executrix, and therefore ought not to be compelled to give security for costs. While the law so stood that she would not have been liable to pay costs, this was reasonable, and the cases were in accordance with it; but since the change in the law, which our Legislature adopted by the 7 Wm. IV. cap 3, sec. 3, executors are liable for costs. But if this executrix would have been liable by this statute to pay costs, as plainly she would, there can be no distinction made between her representative capacity and her own right. I think she ought to give security for costs.

Summons absolute.

See also *Hearsey* v. *Peckell et al.* 7 Dow. 437; *Andrews* v. *Marris et al.* 7 Dow. 712; *Elliot* v. *Kendrick*, 9 Dow. 195; *Perkins* v. *Adcock*, 15 L.J. Ex. 7.