moneys, chargeable, as they were, with interest. Mr. Crookshank may have thought and considered that this was all he owed.

He had now become an old man, and during the residue of his life was much enfeebled by age and growing infirmities, and for some time before his death was quite imbecile. It does not appear that he was engaged in business at any time, or that he was other than a gentleman of property living on the means which it afforded him. I have said already that Mr. Crookshank appeared to have discharged his voluntary duty to his friend, the intestate, most faithfully, and I see nothing in his dealings with the estate, after he assumed to be its administrator, from which I should infer that he intended to act otherwise, although he has rendered himself liable to charges, which from the relation in which he had stood to the intestate, and from a mistaken notion of his own obligations, he might probably have considered himself free. I have seen nothing to shew that Mr. Crookshank would himself have declined to account for the money which he borrowed from the estate with interest upon it. Indeed Mr. Ewart says that he never heard of that pretence till lately.

The defendants were not parties to the transaction, and were ignorant of it in its inception, and cannot be said to have improperly raised the question as guardians of their testator's estate. For the delays which have occurred of late years in the not rendering of proper accounts, and the paying over of any balance which on these adjustments might be found due, though legally he, Crookshank, cannot be considered morally responsible. His agents, from Mr. Ewart's evidence, are evidently to blame; and although it may be unfortunate for the estate that the evidence of McLean has not been procured, still I think the master would not have been justified in further delaying this report for it. The defendants have waited taking the risk of his return to the country instead of examining him abroad, and they must abide by it.

I have not failed to consider the objection that this is a bill for an account of Mr. Crookshank's transactions, as administrator, and not as agent of Wood in his life-time; but I think the latter are necessarily involved in the other, for it was his duty as administrator to call himself to account with himself as agent.

Mr Crooks insisted again at the close of the argument that the Master's mode of computing interest was wrong, and that interest should be calculated on payments and receipts from time to time; and Mr. McLennan, for the plaintiff, assented to it. If the defendants still wish for this mode, I will order it, though I have already stated I would not have subjected the estate, under the circumstances, to such a rigid rule. The claim for exemption from interest during the pendency of this suit cannot be maintained. An accounting party runs the risk of a report in his favour, or a balance being found against him; he ought to know the state of his own accounts, and what moneys he has in hand, and if he disputes his indebtedness he must be charged with interest on any balance found against him.

I think the cross appeal must be dismissed. This is not a case for compound interest; and any calculation of the master which would charge it should be disallowed. There has been here no wasting of the funds; no trading with them; no concealment of receipts; no making of profits with them; no delaying in accounting or paying over, which can be considered the fault of the administrator himself, though legally responsible for the neglect of his agents. I think also, it is a proper case for the allowance of a commission. In all the powers of attorney referred to, a reasonable compensation, or as the Scotch phrase used expresses it, "gratification" for the services of the administrator is guaranteed him, and I think under the 13th section of the General Order before referred to, the master was right in reporting upon it, though perhaps it will be more proper to allow the sum recommended on the hearing on further directions than now.

I have carefully considered all the cases cited on the argument, and I cannot but feel that there will be often difficulty, and sometimes great harshness in applying rigidly in this country, the rules usually adopted in England. I say usually, because they meet there with frequent relaxation, and, as they should, in no case more often than when there has been a total absence of *mala fides* in the administrator.

COMMON LAW CHAMBERS.

(*Reported by* ROBERT A. HARRISON, Esq., *Barrister-at-Law*)

IN RE SLATER AND WELLS.

Con. Stat. Can., cap. 105, sec. 16—Form of conviction—Habeas Corpus—Liberty of the subject.

It is the duty of a judge hearing an application for discharge from custody on *habeas corpus*, where a person is restrained of liberty under a statute, to discharge the person, unless satisfied by unequivocal words in the statute that the imprisonment is warranted by the statute.

A conviction under Con. Stat. Can., cap. 105, for keeping a house of ill-fame, or being an inmate of such a house, adjudicating that the accused should pay a fine of $50 forthwith, and be imprisoned for three months, unless the fine be sooner paid, is not warranted by sec. 16 of the statute.

(Chambers, December 26, 1862.)

On 18th December last, upon the application of Eliza Slater and Catharine Wells, two prisoners in the common gaol of the county of Wentworth, Mr. Justice Morrison ordered the issue of a writ of *habeas corpus ad subjiciendum* out of the court of Common Pleas.

The writ was in the following form:—

[L. S.] VICTORIA, &c.

To the keeper of our common gaol in and for our county of Wentworth:

We command you, that you have before the Honorable William Henry Draper, C.B., Chief Justice of our Court of Common Pleas for Upper Canada, at Toronto, or other the presiding judge, in Judge's Chambers, at Osgoode Hall, in the said city of Toronto, immediately after the receipt of this our writ, the several bodies of Elizabeth Slater and Catharine Wells, being committed to, and detained in your custody as it is said, together with the day and cause and days and causes of their being severally taken and detained, by whatever names they may called therein, to undergo all and singular such matters and things as our said Chief Justice or other the judge sitting in Judge's Chambers as aforesaid shall then and there consider of and concerning them the said Eliza Slater and Catharine Wells, or either of them, in this behalf.

Witness, &c.

(Signed) L. HEYDEN.

Per Statutum tricesimo primo Caroli Secundi Regis.
JOS. C. MORRISON, J.

On 19th December last the writ was returned.

The return annexed to the writ was in the following form:—

I, George Jamieson, of the city of Hamilton, keeper of the common gaol of the county of Wentworth, to whom the herewith annexed writ has been directed, do hereby humbly certify, that in obedience to the said writ I have present the bodies of Eliza Slater and Catharine Wells therein named, together with the day of their commitment and cause of their detention in my custody, and that such day and cause will more fully appear by the warrants of commitment hereunto annexed, marked with the letter B, under and by virtue of which warrants the said Eliza Slater and Catharine Wells are and have been detained in my custody at hard labor.

(Signed) GEO. JAMIESON,
Keeper of said Gaol.

Annexed were two sets of warrants of commitment bearing date on the same day. The second set, though in no way referring to the first, were evidently substituted for the first—the first being defective in several respects.

The second or amended warrant, under which Eliza Slater was detained in custody, was in the following form:—

CITY OF HAMILTON, TO WIT: } To the Chief of Police, or any constable of the city of Hamilton, and to the keeper of the gaol of said city:

Whereas, Eliza Slater was, upon the complaint of George Graham, police constable of said city, duly convicted before me, G. H. Armstrong, Police Magistrace of the said city, for that she on the third day of December, 1862, in the said city, was guilty of keeping a house of ill-fame in said city, contrary to the provisions of chapter 105 of the Consolidated Statutes of Canada, and was by me adjudged to be committed for the said offence to the common gaol of the county of Wentworth, there to be kept for the space of three months, unless she pay the sum of fifty dollars fine.