

DUTIES OF JUDGE AT NISI PRIUS—SURROGATE COURT ADVERTISEMENTS—COMMERCE IN LAND.

"The parting address of Mr. Harrison, of course, afforded a butt for the arrows of small wit. Yet, amidst the torrent of electioneering trash, it was, perhaps, the one thing worthy of a moment's remembrance. We shall find that it is necessary to make public life tolerable to sense and self-respect, or to pay for their exclusion."

Of course, there are prominent men, leaders of political parties, who will be found ready, though not willing, to sacrifice their own ease and comfort on the call of patriotism or ambition, but these are so few as to form the exception; and whilst we honour these for their patriotism, or pity those for their ambition, we can scarcely wonder that so few of those who have taken a first place at the Bar, think it worth their while to venture on the stormy sea of politics.

DUTIES OF JUDGE AT NISI PRIUS.

It will be well for our readers to note that some of the views expressed by Mr. Justice Gwynne in *Walsh v. Nuttall*, 13 C.P.453 have been contravened by the effect of a late decision in England. We refer to his remarks as to the duty of the judge at Nisi Prius to stop the case when it appears in the evidence, that a felony was being made the foundation of an action for damages, before the criminal act had been adjudicated upon by the proper criminal tribunal. His views proceeded upon the authority of various English and Canadian cases cited in the judgment, all of which must be now held to be overruled by *Wells v. Abrahams*, 20 W. R. 659, Q. B., a report of which, taken from the *Law Times*, will be found in another place. Mr. Justice Lush was pressed by the defendant to non-suit, or to direct a verdict for him, but he declined to stop the case or to withdraw the issues from the jury. That ruling was upheld by the court, Cockburn, C. J., observing, "The only question which we have to consider is whether my brother Lush was called upon to interfere. Now I am totally at a loss to see from what source that power could be derived. The judge is frequently not even a member of the court in which the proceedings are being tried; he is merely an instrument for the purpose of trying the issues. On a proper application he might, perhaps, let it go to the court to determine what should be done, but at the trial he can only deal with the issues on the record."

With this view all the judges express their concurrence. The effect of the decision is to over-rule *Widdock v. Constantine*, 2 H. & C. 146, upon which Mr. Justice Gwynne's opinion mainly proceeded. These views, though at first not agreed to, appear to be adopted by Hagarty, C. J., in *Williams v. Robinson*, 20 C. P. 255, but they must now be taken not to be law.

SURROGATE COURT ADVERTISEMENTS.

In the palmy days of Chancery practice, administration suits were considered fair game for the profession. One of the English Vice-Chancellors, who loved his joke, was wont to say when pronouncing judgment on applications of this kind, "Let the usual order go for the destruction of the estate according to due course." But now-a-days, "*Nous avons changé tout cela*." Yet still a strict eye has to be kept upon all matters pertaining to the estates of deceased persons. Very often there is no one who has a personal interest in keeping down the expenditure connected with the adjustment of such estates.

Our attention has been lately called to a quite unnecessary outlay for disbursements in publishing advertisements of the Surrogate Courts for next-of-kin and the like, prior to grant of administration. Take, for instance, cases arising under the 35th section of the Act, C. 8. U. C. cap. 16, where a citation or summons is published pursuant to the 20th Rule of Court. It is true that this rule requires the judge to direct by special order in what papers the citation or summons is to appear by way of advertisement, but neither statute nor rule of court requires that both the order and the citation should be published as is almost invariably done. There is no propriety in publishing—no necessity to publish the order: all that is accomplished by so doing is to double the length and the expense of the advertisement. The order is intended, not for the information of the persons cited, but for the guidance of the officers of the court and the solicitors in charge of the business.

COMMERCE IN LAND.

In former years, Mr. Cobden was one of the most conspicuous movers in England in agitating for the adoption of a scheme tending to reform the law relating to land, in its posses-