POETRY.

THE GIPSEY FORTUNE TELLER.

Avaun only happy days,
Gipsey, when thy glancing eye,
Fain would dart its piercing rays,
Through her future destiny.

Life is yet without a shade,
She has gathered flowers alone;
Tell her not that roses fade,
When the ardent summer's gone.

Sully not her early dream,
With reality's cold hue,
Let her morning brighter seem,
Glittering with her early dew.

Tell her not, that clouds o'ershading,
Rainbows bright will darkly cover;
Tell her not, that quickly fading,
"All that's bright!" ere noon is over.

Tell her not of memory's tear,
And affection's broken chain;
Tell her not, that every year,
Brings but sorrow, care, and pain!

Soon the mist will roll away,
And the soft enchantment fly:
Gipsey, hasten on thy way,
Ne'er unrol her destiny!

Tell her, if thou wilt, that never,
'Neath the skies may be her home,
And if thou that *hope* hadst ever,
Tell her of a world to come!

[*London Mirror.*

PROVINCIAL LEGISLATURE.

HOUSE OF ASSEMBLY.

FRIDAY, FEB. 9.—*The Judiciary.*

After the routine business had been gone through

The hon. and learned *Speaker* rose, and addressed the Chair at great length. We can only give an outline, which is nearly as follows:—Sir, This subject is one of great importance, upon which last evening I was unwilling to enter, not that I required time to consider it, but that the learned gentleman from Inverness had occupied the committee until a late hour, and had not allowed me sufficient time to answer many of his ingenious arguments, or to express my own opinions of the great organic changes, which his Resolutions contemplate. Sir, I cannot allow so important a subject to pass, without bringing to bear upon it, the experience I have had for many years in the institutions of the country, both as a member of the Legislature, and in an extensive practice at the bar.

The regulations of the jurisprudence which may affect the whole country, not only in the present time but in all time to come, should not be left as a matter of indifferance to the passions or interests of those who, from temporary motives, may be desireus of changing the institutions of the Province, but should be calmly and moderately considered by those who are well conversant with the present state of things, and who from experience, may for see the probable consequences of the changes proposed; and who can judge without passion or prejudice, as to those consequences. If laws which merely affect the right of individuals, (I mean private bills,) are considered worthy of great consideration, surely a measure which may affect the lives, the liberty, and the property of a whole community, should demand greater precaution

I was pleased, Mr Chairman, with the able speech of my learned friend, who proposed the resolutions—I highly respect his legal talent, and the soundness of his opinions as a lawyer, they are invaluable to him in my opinion as a professional man; but when he comes forth in his legislative capacity, to form new systems, and alter the jurisprudence of the country, I meet him as a legislator, and differ with his views when they discord with my own opinions—upon principle, and not merely with that spirit, which arise from the opposite views of counsel, contending for the interests of litigant parties As the speech of the learned gentleman, which he made yesterday, was designed to support those Resolutions, which had for their object the changing of the ancient institutions of the country—I must follow him step by step as well as I can remember the course of his arguments, and test the correctness of his proposition; I will try them out in detail, for practical men always run into detail, and we will then see, whether his plan or any part of it can be safely adopted.

His first resolution relates to the Court of Chancery. Let us examine it. Is such a court necessary? I have the declarations of the learned member himself that such is the case—that for the security of property and the due administration of justice, it is necessary that a court should exist here, proceeding upon the principles of the Court of Chancery in England, and having all the powers of that court, and also the Equity Jurisdiction, as exercised and administered in England; and if any gentleman in this Assembly doubted the correctness of this opinion, I could easily convince him; but in an English country, I would no more attempt to prove the truth of this position to Englishmen, than I would in a christian community, take upon myself to prove the divine origin of the scriptures of truth. The hon. Gentleman has informed you, that he has conversed on this subject with many of the first jurists of the United States, all of whom were in favour of a Court of Equity, and all of whom admitted the necessity of such a jurisdiction, different and distinct, from those proceedings by the ordinary rules of the common Law. Sir, no man can form a higher opinion of the Jurists of America than myself, but when we hear of the American Constitution, I deny that they were the framers of those institutions which secured the liberty of America. They brought with them into the New World, the Common Law of England; they had sufficient discernment, to adopt such parts of that great Code, as were applicable to their condition as Colonists—and whoever have risen highest in legal estimation in America, are those who have studied most deeply the institutions of England, and made themselves most intimately acquainted with that law, which was made up from time immemorial, by the usages and customs of a free people—the Common Law of England, and the Habeas Corpus, the practical affirmation of it was the freedom of America.—And the wisest among them are proud to refer to our institutions, and to cite as authority, as far as principle is concerned, the decisions of our country.

Sir, that common law is our main dependence, by it we enjoy Liberty, security, and the right of property. We vainly suppose, that we are Lawmakers, and that all depends upon our puny efforts; but sir, we are mistaken, and happy is it for us that such is the case; we are all in the Colonies too fond of Statute Law, and I could point out to any Gentleman who would have patience to accompany my observations, many, very many, Statutes of Nova Scotia, which merely re-enact the Common Law, abridging its most valuable conditions, and limiting the extension of its benefits. I remember being struck in early life, with the remark of an ancient sage of the Law, who described the Common Law, as a kind, indulgent, and nursing mother; while he represented the Statute Law as a Giant, who run his course by violence. This Common Law, the subjects of Great Britain brought with them to the Colonies. It was sufficient before any Legislature was convened, to afford them protection in life, liberty, and property. It is the Lex non Scripta, framed by the immemorial usages of free men, for none but free men could have produced the Common Law of England; the trial by Jury was a part of it, a mode of trial that has been characteristic of freedom, from the days that Tacitus found it in the mountains of Germany. I take the statement of the learned Gentleman then, that his American friends equally concur with every well informed English jurist in the necessity of a Court of Chancery.

Now Sir, as to the mode of proceeding in this court. I must be short in my description. There is the ordinary legal side of this court, the powers of which I must describe by practical usage, such as inquests of office, which for the most part here are Escheat, and Scire Facias to repeal, and cancel the King's Grants, when made upon improper representation, or against Law. But the extraordinary or equity side, is the most extensive, and reaches to those transactions which are beyond the limits of the common Law. Fraud, accident, trust, the care of infants, specific performance, and many other matters, come within this range. The courts of common Law and the courts of Equity differ not in the legal judgements they pronounce, but in the mode of ascertaining facts there is a wide difference. The courts of common Law have their rules of Evidence from which they cannot depart, any interest in a witness which may be considered sufficient to warp or bias his judgement, or pervert his memory, amounts to a disqualification; but the court of equity, proceeding upon different principles, allows the party who cannot otherwise obtain evidence from the man who has injured him, to file his bill, and call upon the defendant under the solemnity of religion, as well as under subjection to pains and penalties of perjury, to come forth and answer upon his corporal oath, to bring forth papers, documents and evidences, which he may have concealed in his custody, secure against any power of the common Law courts, and to furnish the party complaining with his answer on oath, to all the matters charged against him, but the learned gentleman has told us that it is necessary to assent to his resolutions, that facts may be tried by jury in the court of chancery, but surely his legal research has informed him, that in disputed facts of importance, issues are tried from the court of Chancery in the courts of common Law, by a jury, and not, merely on common Law Evidence, but that court may direct not only the bill, answer, and written depositions of witnesses to be used as Evidence on such trial, but also that the Plaintiff, and defendant may be examined viva voce before a jury. That court also often retains a cause and directs a trial at common law, and if the matter be merely legal, and justice can be done in the courts of common law, the bill is dismissed, otherwise it is retained, and a decree follows upon the facts found by a jury or on the matter of Law certified by the court. (Here the learned Speaker described feigned issues, the mode of asserting, in the fictitious form of such actions, real facts necessary to a decree, which would extend beyond our limits.)

Now Sir, what Rules could we establish by Statute, which would be equal to the Rules of the courts in England, wisely in each case, and tested by the experience of every day practice? I have never found the inconvenience which his resolution states, as to the trial of facts in the court of Chancery, and I have had a long and an extensive practice in that