nigan, 7 W. & S. 423. He says: Granting new trials, does not depend upon the whim or caprice of the Judge, but upon well established and fundamental principles of law. In the trial of issues of fact, the Court judges of the competency, the jury of the effect, of the testimony. But after the verdict, when a motion for a new trial is considered, the Court must judge not only of the competency but of the effect of evidence. If with the newly discovered evidence before them, the jury ought not to come to the same conclusion, a new trial may be granted; otherwise they are bound to refuse the application. The question therefore is, (supposing all the testimony new and old before another jury,) not whether they might, but whether they ought, to give a different verdict." Our judgment on this point we have already stated.

We are therefore compelled to discharge the pending rule, with the general remark, that in the objections taken to the empannelling of the jury, and what was then done, as set forth in the first four reasons, nor in the sixth, seventh or eighth reasons, relating to the admissions of evidence, and the removal of defendant from the Court room—the latter being unsupported by evidence—nor in the ninth, tenth, eleventh, twelfth and thirteenth specifications, when the answer of the Court to the defendant's points are fully and correctly stated, nor in the sixteenth point, that the verdict was received after the expiration of the term for which the jury had been summoned, do we find any sufficient reason for setting aside the verdict and granting a new trial.

In discharging this rule, founded upon the various and important questions which have been argued in support of it, and anxious as we have been to arrive at a correct conclusion, we yet feel it to be a relief to know that if we have committed any error, it is open to examination and review, before the Supreme Court, and it may not be out of place to say, that for our future guidance, and for the purpose of settling the law upon these points, an opportunity ought to be afforded for their re-examination by the highest tribunal in the State.

GENERAL CORRESPONDENCE.

NEW CHANCERY ORDERS.

Chancery practice—Payment of Money—Motion for decree—Filing Reports.

TO THE EDITORS OF THE LAW JOURNAL.

Hamilton, July 17, 1861.

GENTLEMEN,—The Chancery Orders of the 29th June last, direct that mortgage money shall be paid into a bank, instead of to the party entitled to it, according to the present practice. Their Honors the Vice-Chancellors have no doubt seen good reason for the alteration, but to those unacquainted with such reason, the alteration appears to be uncalled for, and will probably work some inconvenience, if not expense and delay. Suppose, for example, the banks refuse to receive such payments (and there is nothing to compel them to do so), what then? The money cannot be paid at all, for in the face of the order no one will be authorized to receive it. If the diminution of costs is the object, that object will probably be defeated; because it is not to be supposed that the banks, if they consent to receive the money, will do so without charging a commission, which in many instances will exceed the costs of the present proceedings. If the money is not paid, will they be at the trouble of certifying the non-payment? I am inclined to think not; for why should they mix themselves up in proceedings in which they have no interest? In case they decline to grant such a certificate, what is then to be the course of proceeding? It seems to me that in all cases in which the banks refuse to receive money or to grant a certificate of non-payment, an application to the Court for further directions will be absolutely necessary, by which an increase of costs and further delay would be incurred.

The first paragraph of the order on this subject directs that the money shall be paid to the joint credit of the party to whom the same is made payable, and of the Registrar. The second paragraph gives the party paying the money the option of paying it either to the credit of the party to whom the same is made payable, or to the joint credit of such party and the Registrar. The first part of the order on this point is imperative; the second part is totally at variance with it. Which direction is to be followed? If the payment is made to the sole credit of the party entitled, then the Master's directions will not be complied with. If paid to the joint account, how is payment of it to be obtained by the party entitled? Will not an application to the Court be necessary?

Motion for Decree.—Will not *three weeks' notice* still be required?

Filing Reports.—Where are they to be filed?—at Toronto or with the Deputy Registrar, with whom the other proceedings in the suit have been filed?

Your opinion, and any explanation you may be able to give on this subject, will oblige

Your obedient servant,

A SOLICITOR.

[We think that the order as to the payment of mortgage money, will be found to be of great practical advantage to the profession. It will assuredly lessen expense, and relieve plaintiffs residing out of the jurisdiction, of the trouble and annoyance of granting powers of attorney, which are often imperfectly executed, and which tend rather to embarrass and delay the suit than otherwise. We anticipate no such difficulty as that the banks will refuse to receive the money, or to give the certificate of non-payment—1st. Because nearly every solicitor keeps a banking account, and has, we presume, sufficient influence with his bank to make the arrangement authorized by the order. 2nd. But should his bank refuse, other banks, either in his town or at their head office, will accept the duty. And, 3rd. It would be an exception to find a bank that would refuse even a temporary deposit. As to banking commission, the practice is to receive deposits without commission, except when the deposit is to be paid out at another office. If any bank should refuse a certificate, a subpœna and an examination before a master or examiner would give the necessary evidence, and obviate the necessity of any application to a judge in chambers to appoint a new day for payment (not to Court for further directions).

Although the Master's report may direct the money to be paid to the joint credit of the plaintiff and Registrar, yet the order goes on to say that notwithstanding such direction, "it shall be competent to the party paying in the same to pay the same to the credit of the party to whom the same is made payable, or to the joint credit of such party and the Registrar;" thus allowing an option which, if exercised in favor of the party only, allows such party to withdraw the funds without an order of court; but if exercised in favor of the party