York, that persons guilty of the crime with which they are arraigned, would on every occasion commit perjury; and whether they did or not, the jury would believe they did, and so be *loth to accredit the testimony of any one.* Thus the rule would inevitably become an engine of self-conviction. The act 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.*

MAGISTRATES, MUNICIPAL, INSOLVENCY, & SCHOOL LAW.

NOTES OF NEW DECISIONS AND LEADING CASES.

CRIMINAL LAW—FENIAN RAID.—The prisoner was convicted upon an indictment under C. S. U. C., ch. 98, containing three counts, each charging him as a citizen of the United States; the first count alleging that he entered Upper Canada with intent to levy war against Her Majesty; the second that he was in arms within Upper Canada, with the same intent; the third, that he committed an act of hostility therein, by assaulting certain of Her Majesty's subjects, with the same intent.

The prisoner's own statement, on which the Crown rested, was that he was born in Ireland, and was a citizen of the United States. It was objected that the duty of allegiance attaching from his birth continued, and he therefore was not shewn to be a citizen of the United States—but

Held, that though his duty as a subject remained, he might become liable as a citizen of the United States, by being naturalized, of which his own declaration was evidence.

Held, also, upon the testimony set out below, that there was evidence against the prisoner of the acts charged.

Held, also, that even if he carried no arms, on which the evidence was not uniform, being joined with and part of an armed body which had entered Upper Canada from the United States, and attacked the Canadian volunteers, he would be guilty of their acts of hostility and of their intent; and that if he was there to sanction with his presence as a clergyman what the rest were doing, he was in arms as much as those who were actually armed.

Held, also, that the affidavits, tendered showed no ground for interference.

A rule *nisi* for a new trial was therefore refused. —*Regina* v. *McMahon*, 26 U. C. Q. B, 195.

In this case, the charge being the same as in the last, it was shewn that the prisoner had declared himself to be an American citizen since his arrest, but a witness was called on his behalf, who proved that he was born within the Queen's allegiance. *Held*, that the Crown might waive the right of allegiance, and try him as an American citizen, which he claimed to be:

The fact of the invaders coming from the United States would be *primâ facie* evidence of their being citizens or subjects thereof.

The prisoner asserted that he came over with the invaders as reporter only but *Held*, that this clearly could form no defence, for the presence of any one encouraging the unlawful design in any character would make him a sharer in the guilt.

Held, also, that the affidavits afforded no ground for interference.—*Regina* v. *Lynch*, 26 U. C. Q. B. 208.

HIGHWAY—EVIDENCE— ADOPTION BY CROWN OF ORIGINAL SURVEY AND CONSEQUENT INABILITY TO ALTER—GRANT TO PRIVATE INDIVIDUAL.—In the year 1826 the original town-plot of London was surveyed under instructions from the Crown, and the plan of such survey, with the field notes, shewed that two of the streets, for obstructing portions of which the defendent was indicted, were extended to within four rods of the river Thames which runs through that town. The overseer of highways for the years 1829, 1830, 1831, stated that he had traced the streets in question all through; that the posts were there; that he opened the streets by the posts; that there was a road reserved four rods along the river bank; that one of the streets ran down to the river, and the posts where then four rods from the river when he opened that street.

In 1832 one R. was duly instructed to survey a mill site in the town, and to lay off for the purchaser such ground as might be necessary, and he thereupon ran a line which crossed these two streets as designated upon the original plan, and cut off portions of several town lots laid out upon this plan.

In 1839 a mill site was sold by the Crown Land Agent to one B. (under whom the defen-