Master and Registrar of the Court of Chancery, and of the Clerks of the Crown and Pleas, in Osgoode Hall, ten days before the time appointed, which notice may be to the following effect:—

In the Court of Error and Appeal.

"This Court will, on the —— day of —— 18—, hold sittings, and will proceed on that day and the following days, in hearing and disposing of the cases mentioned in the following list, and in giving judgment in cases mentioned in the followiag list, and in giving judgment in cases previously argued," [*or if the Court sit only for giving judgment* or in giving judgment in cases previously argued] and in disposing of such other business as the Court in its discretion shall see fit.

(*List to be subjoined*)

(Signed.)

Clerk.

6. From and after the passing of this Act, any six Judges of the said Court, of whom the Chief Justice of the said Court, or the Chancellor, or the Chief Justice of one of the Superior Courts of Common Law shall be one, shall constitute a quorum of the said Court for the dispatch of business: Provided that no more than two of the Judges whose judgment or decree is appealed from, shall sit on the hearing of such appeal.

7. So much of the fifty-second section of chapter thirteen of the Consolidated Statutes of Upper Canada as requires two months' service of notice of appeal, is hereby repealed.

SELECTIONS.

CONVICTION UPON CIRCUMSTANTIAL EVIDENCE.

The injustice of convicting persons of capital offences upon circumstantial evidence has been a fruitful theme of discussion time out of mind. We believe it is now generally conceded that crimes diminish in a country in proportion to the mildness of its laws. Evils certainly arise in having laws on the statute-book which are at variance with the universal instincts of mankind, and which are therefore continually evaded. The abolition of a bad law is attended with less injury to a community than its constant evasion. Heinous crimes are usually committed in secret, and the proof, therefore, is necessarily circumstantial. Evidence so precarious in its nature should indeed be closely scrutinized. In Scotland, long ago, they refused to convict of capital offences upon such evidence; and in England, since the conviction and execution of Eugene Aram—upon whose character and the circumstances of whose death, the versatile Bulwer founded a readable novel, and the gifted Hood wrote a touching poem—the courts have been prone to analyze carefully a case resting entirely upon such evidence. Aram, it will be remembered, was indicted for killing one Daniel Clarke, and was convicted of his murder by a chain of circumstantial evidence, fourteen years after Clark was missed. The *corpus delicti* was not proved. The concatenation of circumstances which led to his conviction is among the most peculiar and remarkable on record.

In the trial of capital cases there are two time-honoured maxims which have always obtained. (1.) That *circumstantial evidence falls short of positive proof:* (2.) That *it is better that ten guilty persons should escape than one innocent person should suffer.* The first qualified by no restriction or limitation is not altogether true. For the conclusion that results from a concurrence of well authenticated circumstances, is always more to be depended upon than what is called positive proof in criminal matters, if unconfined by circumstances, *i. e.*, the oath of a single witness, who, after all, may be influenced by prejudice, or mistaken; and if by the word "better," in the second maxim, is meant more conducive to general utility, it would also seem to be unsound. And here we may endeavour to ascertain clearly what is understood in legal parlance by "circumstantial evidence." It may be observed that, every conclusion of the judgment, whatever may be its subject, is the result of evidence, a word which (derived from words in the dead languages signifying "to see," "to know,") by a natural sequence is applied to denote the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved; *circumstantial* evidence is of a nature identical with direct evidence, the distinction being, that by direct evidence is intended evidence which applies directly to the fact which forms the subject of inquiry, the *factum probandum:* circumstantial evidence is equally direct in its nature, but, as its name imports, it is direct evidence of a minor fact or facts, incidental to or usually connected with some other fact as its accident, and from which such other fact is inferred. Upon this general definition jurists substantially agree. For an illustration, then, of direct and indirect evidence, let us take a simple example. A witness deposes that he saw A. inflict a wound on B., from which cause B. instantly died. This is a case of direct evidence.—C. dies of poison, D. is proved to have had malice against him, and to have purchased poison wrapped in a particular paper, which paper is found in a secret drawer of D., but the poison gone. The evidence of these facts is direct, the facts themselves are indirect and circumstantial, as applicable to the inquiry whether a murder has been committed and whether it was commited by D. The judgment in such a case is essentially deductive and inferential. A distinguished statesman and orator (Burke's Works, vol. II., p. 624), has advanced the unqualified proposition that when circumstantial proof is in its greatest perfection, that is, when it is most abundant