

THE PERILS OF ARBITRATION—EX-CHIEF JUSTICE LEFROY.

to which may criminate the person interrogated may be administered, or whether such a tendency in the interrogatories is a sufficient objection to them. Several cases have been lately before the Courts in which this point has been in dispute, and the decisions are by no means uniform. The result, however, of *M'Fadzen v. The Mayor &c. of Liverpool* (16 W. R. 1212) and *Edmunds v. Greenwood* (17 W. R. 142), the two cases which immediately preceded *Villeboisnet v. Tobin*, appeared to be that it is no objection to interrogatories that they may criminate, but if the direct object is to criminate they will not be allowed. This view of the law is now further sanctioned by the decision in *Villeboisnet v. Tobin*, where it was held in an action for misrepresentations in a prospectus that interrogatories should not be allowed which inquired into the truth or falsehood of the alleged misrepresentations.

Montague Smith, J. says—"The only intelligible rule to be deduced from all the cases, including *Edmunds v. Greenwood*, seems to be that where interrogatories are *bond fide* put to elicit what is relevant to the issue they may be allowed, though the answers may tend to criminate, giving the party interrogated the option of answering or refusing to answer on that ground. But when interrogatories are so put the Court and the judge at chambers will require a stronger case and stronger reasons than in other cases. These interrogatories should not in ordinary cases be allowed on the ordinary affidavit only, but special circumstances must be laid before the judge to induce him to allow them."

This judgment is quite in accordance with *Edmunds v. Greenwood*, and with the decisions which are cited and discussed in the considered judgment of the Court in that case. There seems to be no doubt that the law now is that interrogatories will not be allowed if their direct object is to criminate; but if they are put *bond fide* for the purpose of discovering matters relevant to the issue it is not a sufficient objection to them that they tend to criminate if there are any special reasons why such interrogatories should be allowed, and such reasons are properly brought before the judge at chambers on affidavit.—*Solicitors' Journal*.

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Tribunals of arbitration are, both in the legal and commercial world, rising in favour; and their great value has been authoritatively recognised in that portion of the Report of Judicature Commission which seeks to establish official referees. Yet, as the law stands, there is considerable peril in a resort to such tribunals. If a judge goes wrong in his law at *Nisi Prius*, or a jury blunders, there is ample means of setting the error right. But it is a very old principle that the award of an

arbitrator is final, and not open to review, except where the mistake of the arbitrator is apparent on the face of the award, where he has exceeded or failed to exercise his jurisdiction, or where he has been guilty of misconduct. Yet independently of such cases, injustice may occur. In a case of *Flynn v. Robertson*, referred to a Master of the Common Pleas, it was admitted on both sides that a sum of about 40*l.* was due from the defendant to the plaintiff. The Master found that nothing was due, and condemned the plaintiff in costs. A rule *nisi* was obtained to refer the matter back to the Master, and the Master informed the Court that he had made a mistake, and that he wished the matter sent back. Upon cause being shown against the rule, it was contended that, however gross the injustice might be, the Court had no power to set aside or send back the award. At the same time it was stated that the defendant, to meet the fairness of the case, had offered 40*l.* in settlement of the whole matter. Counsel for the defendant showed that the present rigour of the law was established by the judgment of of Baron Parke in *Phillips v. Evans*, 12 M. & W. 309, and that his ruling had been followed in *Hogkinson v. Fernie*, 3 C. B. N. S., and in a recent Irish case. It is hardly necessary to remark that, in the present day, the Courts lean in favour of doing justice to the parties, and endeavour to break through iron rules which have the direct effect of bringing scandal on the law by working a clear wrong. Actuated by this principle, the Court made the rule absolute, adopting a doctrine that a case shall be sent back when the arbitrator himself states that he has made a mistake. Their Lordships fortified themselves in their decision by what was said by Lord Denman in *Hutchinson v. Shepperton*, 13 Q. B., and by Vice-Chancellor Wood in 13 Kay and J., 66. To have adhered to an old rule, at the hazard of doing what was in the highest degree inequitable, would have tended to throw discredit on a judicial instrument which in the future is destined to prove even of higher advantage than it has in the past.—*Law Journal*.

EX-CHIEF JUSTICE LEFROY.

On Tuesday last died Thomas Lefroy, the late ex-Chief Justice of Ireland, at the age of ninety-three. Three years ago he was on the bench, and his friends assure us that his faculties were unimpaired to the last.

Mr. Lefroy, who was the eldest son of Mr. Anthony Lefroy, of Carrickglass, was born in the year 1776. He took his bachelor's degree at Trinity College in 1766, and was called to the bar in 1797. He soon had an excellent equity practice. He became a bencher of the King's Inns, a King's Serjeant, and a King's Counsel. In 1830 he entered Parliament as member for the University of Dublin. He was from the outset of his public career a staunch Tory. He represented the University