

ence suggested was legally incapable of being drawn. We are inclined to think that the reader of the circular would not be a very unreasonable man if he drew it.

Lord Justice Brett appears to have taken the opportunity for recording something like an apology for his court. No such proceeding was necessary, in spite of the seeming incongruity of two judges prevailing over four. There are still great anomalies in the constitution of the court of appeal as a court of review for the high court; such, for example, as the fact that Lords Justices can overrule Chief Justices, who are superior to them in social rank and salary. But, in spite of these drawbacks, the decision of the court of appeal is accepted with the highest respect. Consisting, as it does, of the class of judges who, in former days would have formed the best of the puisne judges and Vice-Chancellors, it is as good an intermediate court as is, probably, available. The court of appeal was by no means intended simply to affirm the court below. It over and over again has reversed the high court; and the smallness of the number of cases in which its own decision has been reversed by the House of Lords is a proof of its success. The late Lord Westbury used, irreverently, to compare judges to sheep going through a gap. They would go in any direction so long as they had a lead. It is no discredit to the court of appeal that it is not affected by this evil tradition, if tradition it be. It gives cases a fair second hearing, as was intended, and it has even gone so far in refusing to follow the lead as to overrule the previous decisions of its predecessor. The case of the *Capital and Counties Bank v. Henty & Son*, is of a kind very likely to produce differences of opinion. It is a case of great general interest as an illustration, and of importance to bankers, although many cases in the future are not likely to be governed by this decision. It is, however, necessary for bankers to know how far the law assists them in the conduct of a business very sensitive to all kinds of influence from without.—*The Law Times (London)*.

—The Texas Court of Appeals has decided that a statute, making it a felony for a white person to marry a negro or a person of mixed blood, is not in conflict with the Federal Constitution.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, June 22, 1880.

SIR A. A. DORION, C.J., MONK, RAMSAY, TESSIER
CROSS, J.J.

MOLSON (def., petr. below), Appellant, & CARTER
(plff. below), Respondent.

Capias—Secretion—Lapse of time between alleged act of secretion and issue of capias—Examination of attorney as a witness on behalf of his client.

This was an appeal from a judgment of the Superior Court, rendered by Papineau, J., dismissing the petition of Alexander Molson, appellant, which prayed for his discharge from arrest on a capias issued at the suit of the respondent, John T. Carter. It appeared that Alexander Molson borrowed from the respondent the sum of \$30,000 on a mortgage given by Molson on property which, it turned out, did not belong to him absolutely, but, apparently, was subject to a substitution in favor of his wife and children. The \$30,000 was deposited by Molson in the Mechanics Bank in his own name, but subsequently the words "mortgage, in trust for Eliza A. Molson" were added, and shortly afterwards the money was all withdrawn from the Bank by Molson. The capias issued upon an affidavit made by the Hon. J. J. C. Abbott, the respondent's agent, setting out the facts of the mortgage, the deposit in the Mechanics Bank, the withdrawal of the money, Molson's insolvency, etc., and charging Molson with secretion and making away with his property and effects, with intent to defraud.

Cross, J., (*diss.*) On the 1st June, 1877, the respondent John Thorold Carter, on the affidavit of the Hon. Mr. Abbott, sued out a writ of capias against Alex. Molson, the appellant, on which he was arrested for a debt of \$32,073.71, for which judgment had already been obtained.

The affidavit asserted that the defendant Molson had secreted and made away with his property and effects with intent to defraud his creditors generally and the plaintiff in particular. The reasons for belief were stated to be:

That Molson had applied to deponent and obtained from him, as agent for Carter, a loan on the security of a property, in St. James street, standing in his own name, on which he