

NEW YORK PENAL CODE—STRACHAN v. HOWCUTT.

[C. L. Cham.

ment might press with much hardship. It would also operate in practice as an obstacle in the way of a conviction whenever there were mitigating circumstances. On the whole, we think that the discretionary power given by our law to the judge is right in principle; and we should regret to see it exchanged for any procrustean rule whatsoever. The adulteration of food is made a misdemeanor (section 451); though we do not quite understand whether this is a repetition of an existing law, or is merely a proposal of the Code Commission.

The existence of a state of society more lawless than our own is indicated by section 455, which makes it a misdemeanor to carry concealed weapons, while the mere manufacture or sale of "slung shot" is in itself a criminal offence (section 453). Section 469 contains a somewhat notable provision. It is thereby made a misdemeanor to make or publish any false statement or rumor in order to rig the market. Another stringent enactment is contained in section 520, which provides that every person making a false statement or return, whether written or oral, as the basis of taxation, shall be liable to the penalties of a misdemeanor.

The New York Code contains a provision directed against birdnesting; this applies, however, only to birdnesting in cemeteries (section 702); but with regard to this particular species of sport, its provisions are exceedingly precise. Not only is birdnesting, or the catching or killing of birds in cemeteries prohibited, but it is a criminal offence to buy or sell any birds so captured. It seems from a survey of this Code, that the New York criminal law is, or is capable of being, more stringent than our own; it certainly descends somewhat further into detail.

A letter appeared in the money article of the *Times* of last Tuesday, which raises a question as to the effect of the indorsement of a cheque by procuration, and is of considerable importance to bankers. It is well known that a forged indorsement upon a bill or cheque usually conveys no title whatever even to a *bonâ fide* indorsee for value. If therefore a banker pays a forged cheque he cannot debit his customers account with such payment, but must bear the loss himself, unless it was caused by the negligence of the customer. It is, however, enacted by section 19 of 16 & 17 Vict. c. 59, that "any draft... upon a banker payable to order on demand which... shall purport to be indorsed by the person to whom the same shall be drawn payable," shall be a sufficient authority to pay the amount, and it shall not be necessary for the banker to prove the indorsement "was made by or under the direction or authority of the person to whom the draft was made payable."

Some doubt has been felt as to whether the section applies to cheques indorsed by procuration. That is, whether a forged indorsement

by A. as agent to B., or by procuration in any other form, would protect a banker forging the cheque. It is clear that if the payee's name is forged the banker is safe, but is he less so if the forger uses his own name stating it to be as agent for the payee?

There is, we believe, no reported case upon this section, and as far as we know this question has never been judicially considered. The letter in the *Times* which we mentioned contains a statement of a case (apparently not reported anywhere) where Martin, B., ruled, it would seem at Nisi Prius, that the bankers were protected in a case such as we have suggested.

We imagine that there are not many persons who are aware of the case which, if the decision was as stated, ought to be more generally known.—*Solicitors' Journal*.

ONTARIO REPORTS.

COMMON LAW CHAMBERS

(Reported by HENRY O'BRIEN, Esq., Barrister-at-Law,
Reporter to the Court.)

STRACHAN v. HOWCUTT.

Law Reform Act 1868, sec. 17.

A summons to refer a Superior Court case for trial to a County Court came on to be heard on 1st February, 1869, (on which day the Law Reform Act, 1868, came into force).

Held, that the plaintiff could amend his issue and proceed under that Act without any order. The summons was discharged, the parties agreeing as to costs.

Quere, as to authority of Judge to order costs to plaintiff. [Chambers, February 1, 1869.]

On 1st February, *Kennedy* moved absolute a summons to refer this case to the Judge of a County Court for trial.

J. B. Read, shewed cause:

This application is unnecessary as section 171 of the Law Reform last, 1868, says that "All issues of fact and assessments of damages in the Superior Courts of Common Law relating to debt, covenant and contract, where the amount is liquidated or ascertained by the signature of the defendant, may be tried and assessed in the County Court of the County where the venue is laid, if the plaintiff desire it, unless a Judge of such Superior Court shall otherwise order and upon such terms as he may deem meet, in which case, an entry shall be made in the issue and subsequent proceedings in words or to the effect of Form A. in the schedule to this Act, in place of the *venire facias*, &c."

The plaintiff can proceed under that Act, and the summons should be discharged.

Kennedy contra. Issue was joined in this case and the summons granted, before the Act referred to came into force and it should not be held to apply retrospectively. The provisions of sec. 18 would seem to show that it is not intended so to operate. In any case the plaintiff should have the costs up to this time.

ADAM WILSON, J.—There is no necessity for this order. When procedure alone is concerned the rule of interpretation of statutes, which might