mously that there was no weight in the *dicta* we have referred to in *Jones* v. *Thompson*, and they declined to make a precedent.

There is now power to seize promissory notes under execution in this Province, given, after the *Mellish and Buffalo* case, by 20 Vict. c. 57, s. 22, which was consolidated in C.S.U.C. c. 22, s. 261. But we fail to see how this helps the matter, or how it gets rid of the difficulty indicated by Mr. Justice Lawson. Because, as pointed out by Vankoughnet, C., in *McDonell* v. *McDonell*, 1 Chy. Cham. R. 140, writs of execution only bind moneys or securities for money from the time of actual seizure by the Sheriff or of some act symbolical therewith or tantamount thereto; and he puts this case: A. holds the promissory note of B. in Toronto; an execution issues against A., and is placed in the Sheriff's hands, while he holds the note. A. subsequently discounts, with a bank at Hamilton, the promissory note of B. If that note was bound as the property of A. by the dating of the writ to the Sheriff, what property would the bank have acquired in it?" There seems to be no machinery by which a negotiable note, still current, can be bound in the hands of the judgment debtor by the mere service of the attaching order. It would be inexpedient in the interests of trade to hold that the service of such an order imposes a lien or charge on the note, subject to which any transfer must be made; and that thus an equity attaches to the note so as to affect it, in the hands of an innocent transferee. And if this be so, it seems more expedient that the judges, exercising the discretion they have under the garnishee clauses (see per Martin, B., *in Jones* v. *Turner*: 25 L. J. Ex. 319) should decline to interfere in cases of debts secured by current negotiable instruments.

SELECTIONS.

CONSTRUCTIVE MURDER.

The case of Walter Richards, which came before Mr. Hannay lately, has attracted, and is likely for some time to attract, considerable attention, inasmuch as a more thoroughly representative case on the peculiar theory of our law known as the doctrine of constructive murder could not well be imagined. The unfortunate young man, in shooting at a thief, or a supposed thief, who was retreating from the house where he resided, accidentally killed his mother who was endeavouring to detain the man at the same time. Of course before the doctrine in question can be applied to this case there is, as the magistrate observed, a preliminary point to be decided—namely, whether the firing at a retreating thief is or is not a felony or an unlawful act. On this point, for obvious reasons, we shall not enter into any discussion, nor do more than allude to the case of *Reg.* v. *Dadson*, (2 Den. 35); but we think we may be permitted to make a few general remarks on the theory of constructive murder with a view to showing its extremely dubious origin, and accounting for its existence in our books, a subject which derives additional interest from the fact that the theory will not survive the passing into law of the new Criminal Code.

The rule of our law as it at present exists, stands thus: A felonious purpose, though it be wholly unconnected with any design to occasion death, constitutes, in conjunction with an accidental killing, the crime of wilful murder. And accordingly, to quote the words of the first Report of the Criminal Law Commissioners (40, 41), "if a party shooting at a domestic fowl with intent to steal it, by some accident kill a person not known by him to be near, the felonious intent in shooting at the fowl, when coupled with the fact of a man being so killed, makes the party liable to suffer death as a murderer. In such a case (they proceed) it is very likely that the prisoner would have shrunk from the commission of the act if it had been at all probable that the