

LONG VACATION.—JUDGMENTS, EASTER TERM, 1867.

Court of Queen's Bench, decides that the dismissal from office of the plaintiff by the John Sandfield McDonald administration was illegal, and that Mr. Hammond is, notwithstanding, entitled to the fees of the office. It is not likely that the office will be given up without a further struggle, and the decision will doubtless be carried to the Court of Appeal.

Mr. Vice-Chancellor Spragge has returned, and is again engaged in the arduous duties of his position. We trust that his health has received material benefit from his well-earned holiday.

An error crept into the notice of the termination of the proceedings in some of the Jamaica prosecutions (against Nelson and Brand), in speaking of the address to the Grand Jury as having been delivered by Chief Justice Erle. It should have been Chief Justice Cockburn.

LONG VACATION.

The recent decision of *Anderson v. Thorpe*, (*ante* p. 101) does not seem to have altogether satisfied the minds of the profession practising in Chancery, as to the subject discussed in that case, some objecting to the views expressed and others complaining of the practical effects of the judgment.

The argument against the decision may shortly be put thus:—The order referred to in the judgment of the Honourable the Chancellor in this case—No. 77 of the orders of the 12th July, 1841—is expressly abrogated and discharged by the first order of the orders of May, 1850, and is not re-enacted by the orders of May, 1850, which also are abrogated and discharged by the orders of June, 1853. The orders of May, 1850 (orders 5 and 9) refer to vacation.

As to how this matter was regarded by the profession in 1851, the following from a legal work on the practice of that date, may be quoted, from which it appears that the order No. 77 of the orders of 12th July, 1841, was *not then acted upon*, and was considered to be abrogated and discharged by the orders of May, 1850. In remarking upon this order it is said:—

"This is copied from the English order 34 of 1845.

On the principle *expressio unius est exclusio alterius*, it would seem that the time of vacation does count for all proceedings except those above mentioned, which produces a somewhat anomalous result. For instance, the time for answering must count, and so for want of answer a traversing note may be filed and followed up by a replication. Then the defendant would be put to a motion for leave to answer, and although vacation, if the court *sa. and sit*, the plaintiff for all that appears by the orders, must appear and answer the motion, or run the risk of its being granted. The time for passing publication also counts, and therefore the examination of witnesses may often be necessary in vacation, although it is generally supposed that the court does not sit in vacation, except under circumstances of a special nature—such as to hear motions for injunctions, which will not admit of delay. It is a question whether it would not be preferable to abolish the vacation or extend its effect to other proceedings than those named in the order."

It is also argued from the foregoing that the long vacation at the date of 1850, only applied to "certain cases" mentioned in order No. 9 of the orders of May, 1850, and that a proceeding in the masters office as well as the "other" proceedings referred to, were *not* within the terms of that order.

The decision in this case will operate injuriously to country masters, and be a source of great inconvenience to some practitioners, and possibly render void a variety of proceedings taken under an impression at variance with the decision in this case. On the other hand it is contended that a contrary decision would do away with many of the benefits of the vacation, and enforce the transaction of business which it was never intended should be required to be done in vacation.

No steps were taken to obtain a re-hearing in this case; if otherwise and the decision had been reversed, an order perhaps would have been promulgated, settling the practice more definitely.

JUDGMENTS—EASTER TERM, 1867.

QUEEN'S BENCH.

Present—DRAPER, C. J.; HAGARTY, J. and MORRISON, J.

Tuesday, May 21, 1867.

Hammond v. McLay.—Action by plaintiff, claiming to be Registrar of the County of Brack, for fees received by defendant.—Verdict for plaintiff.—Rule nisi for new trial discharged.