farmers, who doubts the results? Suppose (as I saw within a month past) two persons, gentlemen in Toronto, appear in the Division Court to contest a question of the allowance of certain commissions, amounting to nearly one hundred dollars. The character of these gentlemen was unimpeachable. They were examined as to palpable facts in issue by the judge, and swore to facts quite different the one from the other. How was the judge to decide such a case upon their sole evidence (as was the case here) except he nonsuit, or in effect pronounces the one or the other perjured? Who has a right to pronounce the judgment of condemnation? How often would it happen that similar cases would occur if this new rule of evidence were in force in Canada?

Would it not be better, and more for the ends of justice, if each party to a law suit were compelled to make out his case by evidence, and if either plaintiff or defendant wished to call the other to testify, let him do it. In the smaller courts the discretion is with the judge, as it should be.

As for Chancery proceedings, I think I can safely say that, although the parties to the suit testify, the judge very seldom gives judgment, or relies upon the evidence of a party interested. It is, after all, extraneous evidence, circumstances or documents, that rule the judgment.

Whilst writing this, I noticed a judgment in a case of alimony, lately given by Vice-Chancellor Spragge—*McPherson* v. *McPherson*—from Prescott. It was decided on bill and affidavits filed on an application to discharge the husband from arrest, on a *ne exeat regno*, for alimony. Here was the wife, a young woman, swearing positively to specific acts of cruelty, desertion, and threats to leave Canada. On the other hand the husband, an aged and respectable farmer, swore in direct opposition to his wife, that she was the real culprit, and denied acts of cruelty, and any intent to leave Canada. Now, here is a sample of hundreds, perhaps thousands of cases that have been decided in the Court of Chancery in past years. Vice-Chancellor Spragge, not relying on the evidence of either husband or wife, but taking the affidavits of third parties, members of the family, with some circumstances, decided the case entirely on the latter. *Cui bono*, then, was this swearing of the parties.

Let curiosity dive into the musty files of bills and answers, affidavits and examinations in the Court of Chancery at Osgoode Hall, and see what a mass of contradictions, and prejudices too, can be found, where parties litigant have tried by their oaths to uphold their interests. Yet Chancery lawyers (some of them) love the rule. By the common law rule justice may fail at times for want of evidence, but it is gratifying to think at least that perjury did not cause it. People often lose their cases by bad management, for want of business tact, for want of written documents, for want of calling witnesses, and experience should teach them better. Merchants may take receipts for goods sold on credit, lawyers can take written retainers, verbal bargains can be reduced to writing. C. M. D.

Toronto, 26th Feb., 1868.

Assignees in Bankruptcy Matters—The operation of the Act.

To the Editors of the Canada Law Journal.

Gentlemen,—When the present Bankrupt act was passed, every one supposed that an act so long talked of, or should be nearly perfect. The working of the act since 1864, clearly, on the contrary, proves it to be a bungled, defective affair. I propose to point out a few of its defects, and in addition to refer to the conduct of *official assignees*.

Every one knows that the profession of the law is being over-crowded in Canada, and this is not a time when lawyers should silently permit persons who are not lawyers to take the business that legitimately belongs to the profession from them. I have waited in hopes that some other person would draw the notice of the profession to the fact, but seeing no person has done it, I will do so.

Every lawyer who has watched closely the actions of official assignees, especially in Toronto, knows well that these individuals are generally selected by the insolvent, to get him through for a certain fee, generally $50! This fee is in fact a retainer, and except in special cases of difficulty, a professional man is never thought of. One would have supposed, and such was certainly the intention of the act, that the assignee was peculiarly the officer of the creditors, or at least one who stood per-