

## SELECTION : ALMANACS AS EVIDENCE.

jection as to the necessity for this act, and it is too soon to predicate its success. Since the introduction of the Administration of Justice Act, almost every difficulty relating to the conflict between law and equity has been removed. The old procedure, it is true, was in some respects unskilful and composite, but it had become well understood, and worked smoothly. The new procedure is in theory more perfect, and may ultimately be an improvement upon the old procedure; but some time must elapse before it will become familiar to us, and in the meantime there will have been much confusion and expensive litigation. It is unfortunate that this expense will fall heavily on those who will be sufficiently taxed without it. This, however, cannot now be helped, and it remains for us all to do the best under the circumstances, and we trust that history may record that though in some respects imperfect, and for a time causing confusion, it was on the whole a step in the right direction.

## SELECTIONS.

## ALMANACS AS EVIDENCE.

In *State v. Morris*, 47 Conn. 179, a trial for burglary, for the purpose of showing that the offence was in the night the State was permitted to introduce in evidence a copy of an almanac. The court said: "There is no error in this. The time of the rising or setting of the sun on any given day belongs to a class of facts, like the succession of the seasons, changes of the moon, days of the month and week, etc., of which courts will take judicial notice. The almanac in such cases is used, like the statute, not strictly as evidence, but for the purpose of refreshing the memory of the court and jury." In *Munshower v. State*, Maryland Court of Appeals, October, 1880, 2 Cr. L. Mag. 320, an almanac was admitted to show the time of the rising of the moon on a given night. The court said: "The precise periods at which the sun and moon will rise or set in any particular twenty-

four hours in the future, are as certain and as capable of exact mathematical ascertainment as is the occurrence of the day in which such rising or setting shall take place. Courts have received as evidence weather reports, reports of the state of the markets, prices current, and insurance tables, tending to show the probable duration of human life, though these are records which are not capable of mathematical demonstration, which cannot be tested by any certain law, and which may or may not omit the record of changes which have actually taken place. But an almanac forecasts with exact certainty planetary movements. We govern our daily life with reference to the computations which they contain. No oral evidence or proof which we could gather as to the hours of the rising or setting of the sun or moon could be as certain or accurate as that which we may gather from such a source." In *Sutton v. Darke*, 5 H. & W. 647, Pollock, C. B., said, *obiter*: "The almanac is part of the law of England. In *Regina v. Dyer*, 6 Mod. 41, it is stated that all the courts agreed it was; but it does not follow that all that is printed in every printed almanac is part of it, as for instance, the proper time of planting and sowing. Also in *Brough v. Perkins*, 6 id. 81, it is said that the almanac is part of the law of England; but the almanac is to go by that which is annexed to the common prayer book. Looking at that, I find it says nothing about the rising or setting of the sun, and I rather think that any information on that subject is quite recent." So Taylor (Ev., 1230) says: "The hour at which the moon rose is a fact, and it can fairly be argued upon the general principles of the law of evidence, that the best evidence of that fact is the testimony of some one who observed its occurrence. Books of science are generally not evidence of the facts stated in them, although an expert may refresh his memory by their use." In *Collier v. Nokes*, 2 C. & K. 1012, the court held that although they would take judicial notice of days, they would not of hours, as of the hours of sunrise or sunset. In *Allman v. Owen*, 31 Ala. 167, it was held that courts will judicially take cognizance of the coincidence of days of the month with days of the week, as disclosed by the almanac.

Wharton says (Ev., § 282) that a judge "may refer to almanacs." So says Best. Now if the judge may turn to an almanac to satisfy himself when the sun set on a particular day, why may not the almanac be put in