days before the day named for hearing the application.

(Signed) P. M. VanKoughnet, *C.*
J. G. Spragge, *V. C.*
O. Mowat, *V. C.*

SELECTIONS.

LORD CHIEF JUSTICE OF ENGLAND AND MR. JUSTICE BLACKBURN.

Few members of the bar who were present in the Court of Queen's Bench on June 8, 1868, are likely speedily to forget the memorable scene which then took place. Those who for thirty years had been accustomed to witness the stream of justice flowing in unruffled calmness through those hallowed precincts, felt for a moment as if the idea of Euripides had been realised, and the fountains were flowing up the sacred rivers. But it soon appeared that it was only a temporary obstruction which had occurred; and after the Chief Justice had vindicated himself and the law of which he is the guardian, and Mr. Justice Blackburn had offered his explanation of his apparently wayward course, it became obvious that "the fountains of justice" were undisturbed, however clearly it had been shown that the streams that are derived from them are liable at times to flow unevenly, as well as to "take tinctures and tastes from the soil through which they run." But the strangeness of the event which then took place calls for some comment from us; and we shall state the views we have formed with reference to it and the circumstances out of which it arose, with all respect for the eminent personages concerned, but without any attempt to conceal our own deliberately-formed opinion. We think there can be little doubt, however much it was to be regretted that any necessity should have arisen for the Chief Justice to repudiate the views stated by Mr. Justice Blackburn in his charge to the grand jury of Middlesex in the case of *Reg.* v. *Eyre*, that the former did no more than his duty in publicly expressing his disapproval of the charge of the senior puisne judge. Every one who read the report of the charge in the newspapers must have seen at once its inconsistency with the views stated in the charge of the Chief Justice in the case of *Reg.* v. *Nelson and Brand;* and when Mr. Justice Blackburn stated twice during the course of his charge that he had the concurrence of the Chief Justice in what he said, it certainly seemed at first that the only inference that could be adopted was that the Chief Justice had materially modified his opinions on a question of great importance. Logical as this inference for a moment appeared to be, we confess that we struggled against it. The views which the Chief Justice had laid down had been so clear, and his conclusions so well grounded, his opinions on martial law had been so consistent with themselves and with the whole of our legal system, and he had spoken with such a full conviction of their truth, that we could scarcely suppose that he had abandoned the strong position which he had formerly occupied. Sober reflection, therefore, has led us to the conclusion, that "Some one had blundered:" and where the blame lay has now become tolerably clear and intelligible.

After comparing what was said in court by the Chief Justice on the occasion referred to, with the explanation then given by Mr. Justice Blackburn, and after reading the letter of the former, and that of Mr. Justice Lush, the facts are obvious enough, and supply sufficient grounds on which a correct judgment may be formed. Before charging the grand jury in *Reg.* v. *Eyre*, Mr. Justice Blackburn had embodied the substance of the law he intended to law down in a paper. The view of the law therein contained, and which was assented to by the other judges of the Court of Queen's Bench, may be considered from the statement of the Chief Justice to have been as follows:—

"There was undoubtedly a proposition of law which seemed to us sufficient for the guidance of a jury, and which we understood was the form, if I may so express myself, the basis of the charge, on which proposition we were all agreed, viz., that assuming the governor of a colony had, by virtue of authority delegated to him by the Crown, or conferred on him by local legislation, the power to put martial law in force, all that could be required of him, so far as affecting his responsibility in a court of criminal law, was that in judging of the necessity which, it is admitted on all hands, affords the sole justification for resorting to martial law—either for putting this exceptional law in force or prolonging its duration—he should not only act with an honest intention to discharge a public duty, but should bring to the consideration of the course to be pursued, the careful, conscientious, and considerate judgment which may reasonably be expected from one vested with authority, and which, in our opinion, a governor so circumstanced is bound to exercise before he places the Queen's subjects committed to his government beyond the pale and protection of the law. Having done this he would not be liable for error of judgment, and still less for excess or irregularities committed by subordinates whom he is under the necessity of employing, if committed without his sanction or knowledge. Furthermore, we considered that a governor sworn to execute the laws of a colony, if advised by those competent to advise him that those laws justify him in proclaiming martial law in the sense in which Governor Eyre understood it, cannot be held criminally responsible, if the circumstances called for its exercise, even though it should afterwards turn out that the received opinion as to the law was erroneous. On the other hand, in the absence of such careful and conscientious exercise of judgment, mere honesty of intention would be no excuse for the reckless, precipitate, and inconsiderate exercise of so formidable a power, still less for any abuse of it in regard to the lives and persons of Her Majesty's subjects, or in the ap-