his nearest friends, came to believe. The only explanation of his crime was that he was a monomaniac on the subject of fires; and he was sentenced to a long term of imprisonment, with compassion for the man, but to protect the community. It was regarded as an illustration of the remark that circumstantial evidence is often more convincing than direct; for in this case the only chance for doubt was that another person than the carpenter used his shop, which was not for a moment contended by his attorney."

SUPERIOR COURT.

BEAUHARNOIS, June 27, 1891.

Before BELANGER, J.

In re WILSON & McGINNIS, Insolvents;

and MACLAREN et al., Petitioners.

Insolvent, Examination of—Art. 775, *C. C. P.*

HELD:—1. *That an insolvent cannot be compelled to appear for examination under Art. 775, C. C. P., before his abandonment has been contested.*

2. *That a judge sitting in Court may revise an ex parte order granted by himself in chambers.*

An ex parte application had been granted in Chambers for an order, to have the insolvents appear before the Court for examination under Art. 775, C. C. P. On the return day they appeared by counsel, and presented a petition asking that the order granted in Chambers be revised, no contestation of their abandonment having been filed, and the delay mentioned in Art. 773, C. C. P., having expired no contestation could now be filed.

PER CURIAM:—I see no objection to revising this order; the insolvents had not been notified of its presentation, it was granted *ex parte*, and no contestation of their abandonment had been filed; moreover, the delay for contesting has expired. It would be therefore useless, were it practicable to enforce it. I have already decided in a previous case that an insolvent can only be held to appear for examination after contestation of his abandonment (*bilan*), and I see no reason to change this opinion.   Order revised.

Maclaren, Leet, Smith & Smith for petitioner.

McCormick, Duclos & Murchison for insolvents.

(R. L. M.)

ENGLISH *CAUSES CELEBRES.*

BANKS *v.* GOODFELLOW (1870, L. R. 5 Q. B. Div. 549).

Banks v. *Goodfellow*, to the exclusion even of *Regina* v. *Macnaghten*, is the *cause célèbre* of the English law of lunacy.

The younger Holmes, in one of his admirable lectures on the common law (p. 108), has pointed out that the capacity and the responsibility of the insane ought not to be determined by any 'external standard' which leaves their 'personal equation' out of account. In the English lunacy law this just and wholesome doctrine was for a long time lost sight of, and the civil capacity and the criminal liability of persons affected with mental disease were ascertained by the application of different and contradictory tests : (1) Any, the least, delusion was fatal to *testamentary* capacity (*Waring* v. *Waring*, 6 Moo. P. C. 341; *Smith* v. *Tebbitt*, 36 Law J. Rep. P. & M. 97; L. R. 1 P. & M. 398). The argument in favour of this curious theory, for whose vitality Lord Brougham and Lord Penzance were responsible, was put in this way: 'To constitute testamentary capacity soundness of mind is indispensably necessary; but the mind, though it has various faculties, is one and indivisible. If it is disordered in any one of these faculties, if it labours under any delusion arising from such disorder, though its other faculties and functions may remain undisturbed, it cannot be said to be sound. . . . Testamentary incapacity is the necessary consequence' (*Banks* v. *Goodfellow, ubi sup.* at p. 559). (2) On the other hand, the *criminal* responsibility of the insane was determined first by the 'wild beast' theory, promulgated by Mr. Justice Tracy, according to which only that degree of mental disease which reduced the intelligence of a prisoner to the level of the mental endowments of an infant or a wild beast was regarded as a valid exculpatory plea; then by Lord Mansfield's ' right and wrong in the abstract' theory ; and finally by the 'rules in *Macnaghten's Case,*' which made the test of responsibility the prisoner's knowledge not of the general ethical distinction between right and wrong, but of the wrongness and