

HAS THE 29TH OF FEBRUARY A LEGAL EXISTENCE.

Wilkes. When the latter was elected Lord Mayor, Bathurst is said to have contemplated annulling the appointment on the ground of unfitness. "If his Lordship disallows my nomination," said Wilkes, "I shall have to petition His Majesty to remove the Lord Chancellor on the ground of incompetence." The Chancellor yielded to the affront and sanctioned the appointment. Wedderburn, who held the Great Seal with the title of Lord Loughborough, was created Earl of Rosslyn before his death, but the name of Loughborough is the one which is associated with his tenure of office. Lord Eldon, the consummate lawyer, and almost the last of those stern and unbending Tory statesmen to whom the first Reform Bill seemed like the letting loose of a new and destructive deluge, was made an earl in 1821, after he had held the Great Seal for eighteen years in all, and for thirteen consecutively. After Lord Eldon's retirement no Lord Chancellor was made an earl until Lord Cottenham's promotion on his retirement in 1850. Brougham and Lyndhurst, like the successors of Lord Cottenham up to the present time, did not rise beyond the rank of baron. We will not pretend to say whether the precedent of Cowper and Macclesfield, of Hardwicke and Eldon, is more worthy of imitation than that of Somers and Thurlow, of Erskine, Lyndhurst, and Brougham, but we are sure that the public judgment will trouble itself little about precedent, and will only see in the Lord Chancellor's promotion the well-earned reward of a laborious, an honourable, and a blameless career.—*Times*.

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This apparently simple question was recently decided in one of the Inferior Courts of Indiana, in the affirmative (6 *Cent. Law Jour.*, p. 301). The same question it appears was formerly presented to the Indiana Supreme Court, in *Swift v. Toucey*, 5 Ind. 196, but was only incidentally passed upon; Stuart, J., in that case referring to the statute, 21 Hen. III., *de bissextili anno*, and saying: "This ancient statute being prior to 4 James I.,

made in aid of the common law, and not inconsistent with our institutions, *would seem to be in force in this State.*"

Following this *dicta* it was held in *Craft v. The State Bank of Indiana*, 7 Id. 219, that a note dated February 25, 1848, at ninety days, payable in Indiana, was payable May 29, and that the protest May 27, was premature. The Court say: "If the 28th and 29th days of February in the bissextile year are to be treated as one day, the demand was premature," citing *Swift v. Toucey*. In *Kohler v. Montgomery*, 17 Id. 220, the same question arose, and presentment was held premature, with the statement, "Commercial February has but twenty-eight days;" and in *Porter v. Halloway*, 43 Id. 35, the same ruling was adhered to.

In the case before Judge Mallott (*Tranter v. Helphenstine*), it appeared that the Indiana statute requires a summons to be served *ten days* before the return day. The summons was served February 25, and judgment taken by default March 6. And it was claimed that, the 29th of February intervening, there was a previous service of *nine days* only, and the Court acquired no jurisdiction.

As the Indiana decisions on the subject rest upon the *obiter dictum* in *Swift v. Toucey*, and the statute 21 Hen. III., had never been examined by the Supreme Court in any of the cases decided, the learned Judge considered himself at liberty to look into the question independently of the ruling of the Supreme Court.

First, said the Court, as to the proposition that, commercial February has but twenty-eight days. If it be true that, by the rules of the law merchant, February has but twenty-eight days, it is reasonable to presume that, in some of the numerous and exhaustive works upon bills, notes, and commercial law, the rule would be found laid down as a part of the law. I have pretty thoroughly examined the English and American reports and digests, and have found no case holding that doctrine. It is not found in the works of Kent, Story, Parsons, Byles, or Daniels. In "Edwards on Bills," 513, it is stated that February 28 and 29 count as one day; but the author cites only the statute 21 Hen. III., and a