3. That as to James, his remaining in the United States so long after 1782 would shew his determination to become an American citizen, in which case, without reference to our statutes, he, as an alien, could not transmit the estate either to John, through whom the plaintiffs claimed, or to Jonathan; but that under 9 Geo. IV. ch. 21, having taken the oath of allegiance, his disability was removed.

4. That as to Jonathan, in the absence of any thing shewing a previous intention to become an American citizen, his coming to this country, taking up land, and taking this oath, shewed a clear election on his part to become a British subject, and his return to the United States could not make him the less one.

It was *held*, therefore, that the plaintiffs' case failed, Jonathan being entitled to inherit.—*Montgomery* v. *Graham*, 31 U. C. R. 57.

Bills and Notes.—1. A company had power to issue "bonds, obligations, or mortgage debentures," to be sealed and registered; also, "to make, draw, accept, or endorse any promissory note, bill of exchange, or other negotiable instrument." The company issued instruments headed "£20. Debenture Bond," promising "to pay to the bearer" the principal, with interest, and sealed with the seal of the company. Interest coupons were attached, headed, "Debenture Bond, No. —, for £20. Interest Coupon, No. —." *Held*, that the instruments were promissory notes.—*Ex parte Colborne and Strawbridge*, L. R. 11 Eq. 478.

1. A. sent B., his agent, a bill to be presented for acceptance. B. presented the bill on Friday at two o'clock, and called on Saturday at half-past eleven, business hours closing at twelve, for the accepted bill. The bill, which had been accepted without B.'s knowledge, was mislaid, and B. departed without it. On Monday the acceptance was cancelled. *Held*, that it being the custom of merchants to leave a bill twenty-four hours for acceptance, and such period running beyond business hours on Saturday, B. was not guilty of negligence in waiting until Monday for an answer from the drawee.—*Bank of Van Diemen's Land* v. *Bank of Victoria*, L. R. 3 P. C. 526.

3. Promissory note as follows: "We, the directors of," &c., "do promise to pay," &c., with the company's seal affixed. *Held*, that the directors were personally liable.—*Dutton* v. *Marsh*, L. R. 6 Q. B. 361.

CANADA REPORTS.

ONTARIO.

COMMON LAW CHAMBERS.

In the matter of Sophia Louisa Leigh *

Custody of children—Con. Stat. U. C. cap. 74, sec. 8.

Upon an application by the mother, under Con. Stat. U C. cap. 74, sec. 8, for the custody of her infant daughter, four years of age, the husband and wife having separated:

Held, (after reviewing the cases decided under the corresponding English Act,) that the statute in question does not take away the common law right of a father to the custody of his child, but only makes the recognition of this paternal right conditional upon the performance of the marital duty, and subjects it, in some degree also, to the interest of the child.

If, therefore, upon an application of this kind, it appears that the husband and wife are living apart, the court will inquire into the cause of their separation, in order to ascertain

(1) Whether the husband has forfeited, by breach of his marital duties, this *primâ facie* right to the possession of his children. (2) And whether the wife, by deserting the husband without reasonable excuse, has relinquished her claim to the benefit and protection of the statute, which was intended "to protect wives from the tyranny of their husbands, who ill-used them."

[Chambers, May 17, 1871.—*Gwynne, J.*]

This was a petition, under Con. Stat. U. C. cap. 74, sec. 8, by Mrs. Henry Leigh, praying that her infant daughter, Sophia Louisa Leigh, aged four years, might be taken from the custody of its father and delivered to her.

It appeared, from the affidavits filed on the application, that the husband and wife had been living apart since April, 1870; the cause of separation alleged by the petitioner being her husband's ill-treatment of and cruelty towards her for eight years previous to that time. The husband, in reply, filed the affidavits and certificates of a large number of his neighbours, all of whom testified in the strongest terms to the high character which he had always borne in his social and domestic relations. He also fully met and disproved the allegation of the petitioner that on account of hereditary insanity in his family, it would be unsafe to entrust him with the custody of the child.

The material portions of the evidence, and the cases cited upon the argument, fully appear in the judgment.

Dalton McCarthy appeared for the petitioner.

William Boys for the respondent, Henry Leigh.

Gwynne, J.—In *Re Taylor*, 11 Sim. 178, which was one of the first cases that arose under the English Act, 2 & 3 Vic. cap. 54, it appeared that on the 20th October, 1837, Mrs. Taylor left her husband's house, alleging, in justification of that step, a charge of adultery, which she then preferred against him, upon grounds of which she afterwards admitted the entire insufficiency, and which were, in fact, wholly without foundation. Overtures for a reconciliation were immediately made by Mr. Taylor, and various negotiations followed; but Mrs. Taylor, by the advice of her friends, refused to return home. Circumstances occurred which convinced Mr. Taylor that his wife's affections were alienated, and that no *bonâ fide* reconciliation could be

* See *In re Kinne*, 6 C. L. J. N. S. 96, and the judgment of Adam Wilson, J., in *Re Allen*, Q. B. H. T., 1871 (not yet reported).—Eds. L. O. G.