The party who begins, where there is evidence called for the defence, has the right to reply on the whole case. This is the general reply. It is for this that counsel so often contend and to this that success is so often attributed. Of course much depends upon the counsel who has this advantage, whether or not he make a good use of it. It is for him to use and not to abuse his privilege. Where counsel in a general reply abuses his privilege, he is certain to be followed by remarks from the presiding judge of a counteracting tendency. It is much wiser for counsel having the general reply to keep within the bounds of discretion. An opposite course is worse than no reply at all. It renders it necessary for the presiding judge to argue against him and appear to assume the functions of an advocate rather than those of a judge. The influence of the judge, whose position makes him impartial, is in such a case all powerful.

So much for the right to begin and right to reply. Now for the intermediate speeches. Each party has under certain circumstances a right to sum up evidence. Counsel for the party who begins has that right in the event of his opponent *not* announcing his intention to adduce evidence. Where counsel did not announce his intention to adduce evidence, in consequence of which the counsel who began summed up his evidence, the court refused to allow his opponent to change his mind and adduce evidence. (*Darby* v. *Ouseley*, 2 Jur. N. S. 497.) Where plaintiff's counsel opened the case and called his witnesses, and then, without requiring defendant's counsel to announce whether he intended or not to call witnesses, allowed him to address the jury, and at the conclusion of his speech announced that he did not intend to call witnesses, plaintiff's counsel was held to be too late to claim the reply. (*Gibson* v. *The Toronto Roads Company*, 3 U.C. L J. 11.)

The intermediate speech on either side is only allowed for the purpose of summing up evidence, that is, evidence proper for the jury. It is for the presiding judge to determine whether or not there is evidence to go to the jury. If he rule that there is no such evidence, there is no right to sum up that which does not exist. An address to the jury in a case where there is no evidence could only have the effect of inciting the jury to take the matter into their own hands and to decide in opposition to the ruling of the judge. It would be in fact allowing an appeal from the judge to the jury in a matter which is within the jurisdiction of the judge alone. No doubt there may be a discussion as to whether or not there is evidence to go to the jury. That discussion takes place in the presence of the jury as it does in the presence of any others at the time in court. The court is open to all; but the decision of this question, whether there is evidence or not, rests with the judge and none other. Where the judge is of opinion that there is no evidence, it is not the course for him to read his notes to the jury, telling them that he thinks there is no evidence and hoping that they concur with him, but he tells them that there is no evidence, and, unless plaintiff accepts a nonsuit, tells them in law to find a verdict for defendant. If the judge be wrong in such direction, the constitutional mode of correcting the error is either to tender a bill of exceptions, or more commonly to move the court in banc. and not to argue at the judge through the jury or at the jury through the judge (per Pollock, C. B., in *Hodges* v. *Ancrum*, 11 Ex. 214).

If counsel dispute as to the right to begin to sum up evidence or reply, it is for the presiding judge to determine the dispute. The parties for the time at all events are bound by his decision. If it be afterwards clearly made to appear that the judge was wrong in his ruling, and that substantial injustice has resulted therefrom to either party, that party can have the error corrected by an application to the court in banc. (*Brandford* v. *Freeman*, 5 Ex. 734; *Doe Baker* v. *Brazne*, 5 C. B. 655.)

COLONIAL COUNSEL IN ENGLAND.

The following is an extract, which we take from the *Lower Canada Jurist*, from a letter addressed by the Registrar of the Privy Council to Robert Mackay, Esq., an eminent advocate of Lower Canada.

COUNCIL OFFICE, WHITEHALL,
November 25th, 1861.

In answer to your question, I beg to inform you that the Bar of the Privy Council is an open bar to all all advocates duly qualified in the Colonies and Dependencies from which appeals lie to the Queen in Council; and consequently any Canadian advocate would be heard by their Lordships in Canadian appeals.

(Signed,) HENRY REEVE,
Reg. P. C.

The communication is an important one, and as such we copy it for the information of our readers. We do not think that the members of the Bar in Upper Canada have hitherto been aware that they have the privilege which it mentions. The privilege is of great value. The knowledge of Colonial law acquired by counsel in England on occasion of a particular appeal is oftentimes too slender to enable them to do justice to the interests entrusted to them. Therefore it may be that in cases of importance some of our local bar will be found both ready and willing to avail themselves of the privilege.

Any person who has been duly called to the Bar of any of Her Majesty's Superior Courts in England, Scotland or Ireland, not being courts of merely local jurisdiction, are entitled to be called to the Bar in Upper Canada.

It might be well for the English Benchers to consider whether or not reciprocity might not be extended to Colo-