The Legal News.

Vol. II. SEPTEMBER 13, 1879. No. 37.

SECOND DISTRESS.

In a recent case before the Court of Review at Montreal, *Prime* v. *Perkins*, (*ante*, p. 256,) the question was raised whether a second distress might lawfully be made, where the bailiff had not seized sufficient effects in the first instance to satisfy the judgment. The majority of the Court were of opinion that although it is the duty of the officer charged with the writ of execution to seize enough at one time to satisfy the debt and costs, yet if, without bad faith or malice on his part, the sale does not produce enough to discharge the debt and costs, he may make a second seizure. The question was one of novelty in our courts, and it is a little singular that almost at the same time, a similar question was engaging the attention of an English court, viz., the right of a landlord to distrain twice for the same rent. An English contemporary, in an article which we copy elsewhere, takes occasion to notice the decisions bearing on the point. Some of the authorities cited do not seem to go quite as far as *Prime* v. *Perkins*, because they hold that it is only where the distrainee has done something to prevent the distrainor from realizing that the second distress is justified. The Montreal court, however, intended to follow the principle stated by Lord Mansfield in *Hutchins* v. *Chambers*, that if the seizing party merely mistakes the value of the goods seized, there is no reason why he should not afterwards complete his execution by making a further seizure.

REPETITIONS.

Judges have often to complain of lawyers for useless repetitions in their arguments, and so, too, lawyers have sometimes to make the same complaint of judges as to their judgments. The speeches of counsel to juries are more open to the charge of vain repetitions. But, in truth, an occasion may often present itself when the same argument or fact may usefully be presented more than once, and if there be sufficient variety in the style or in the illustration, the effect is not disagreeable or wearisome. A tired or preoccupied hearer calls for special expedients to fix his wandering attention, and the rhetorical art suggests a resort to repetition as often conducive to perspicuity. It could only, we imagine, have been from a profound conviction of this fact, that a member of the profession in New Hampshire recently took exception to a judicial address, on the ground that the judge neglected to charge the jury more than once on a point of law. The court ruled on this exception: "The law being thus once declared by the court, the defendant had no more right to require it to be repeated once than to require it to be repeated twice or ten times. Whether a statement of the law once distinctly made, and acted upon by counsel throughout the trial, shall be repeated, and how many times, is not a question of law. The court may repeat it; but a judgment cannot be reversed because it was not repeated, especially when no other use was made of the evidence than the legal one announced by the counsel for the prosecution and by the court. The refusal to repeat the law once laid down was not error in law."

THE LATE MR. I. G. THOMPSON.

It is with much grief that we receive intelligence of the sudden decease of Mr. Isaac Grant Thompson, the originator and conductor of our contemporary, the *Albany Law Journal*. Mr. Thompson was recovering from an attack of diphtheria, when congestion of the lungs supervened, and he passed away after an illness of only twelve hours' duration. Possessing scholarly tastes and great literary industry, Mr. Thompson in early life applied himself to one department of professional labor with a persevering attention which was unbroken until his last illness. He was the author of a treatise on the Law of Highways, and a second on Provisional Remedies; he edited an edition of Warren's Law Studies, compiled a volume of National Bank Cases, Manuals for Supervisors, &c. In 1871 he commenced the publication of "The American Reports," 27 volumes of which have been issued. His favorite work, however, was the *Albany Law Journal*, established in 1870, and now in its 20th volume. This most popular weekly bears in every issue the marks of his unwearied attention and versatile talent. We are quite prepared to accept the statement of

his *collaborateur*, that "it was was his pet pro-"ject and hobby; he spared no pains nor "expense upon it; he cared not what it cost "him; he was continually planning to make it "better; he was never satisfied with it. He "was conscious of the demand of the great and "critical audience which he addressed, he had a "high sense of what was due them, and his "conscience was always uneasy lest he was not "giving them his very best." When the publication of the *Legal News* was commenced, Mr. Thompson, not content to notice the work kindly in his journal, privately tendered the expression of his sympathy and encouragement. Legal authorship sustains a serious loss in the untimely decease of a gentleman so richly endowed with the editorial faculty and so well qualified in every way for the special avocation which he had adopted.

RIGHT OF LANDLORD TO DISTRAIN TWICE FOR SAME RENT.

The law of distraint embraces many questions of general interest.

The judgment delivered lately by Mr. Serjeant Atkinson, at the Wakefield County Court, in the case of *Re Duckells and Furness, Ex parte The Leeds Estate Building Society*, touched upon not the least interesting of those questions, viz., the right of a landlord to distrain twice for the same rent. The society in this case put in a distress soon after the 30th Nov., 1878, for two years' rent. The debtors thereupon represented to the secretary of the society that if the distress was persisted in, the credit of this partnership would be ruined. The society accordingly agreed to withdraw, pending a settlement of the claim. The debtors failed to pay an instalment due on the 11th Feb., 1879. On the 26th Feb. a petition in bankruptcy was filed against them, and the society again made a distraint for a year's rent. The trustee in bankruptcy claimed the proceeds of the sale.

Lord Mansfield stated in an early case, the principle upon which a second distress is allowable (*Hutchins* v. *Chambers*, 1 Bur. 579): "A man who has an entire duty shall not split the entire sum, and distrain for a part of it at one time, and for the other part at another time, and so *toties quoties* for several times, for that is great oppression. * * * But if a man seizes for the whole of the sum that is due to him, and only mistakes the value of the goods seized, which may be of very uncertain or even imaginary value, as pictures, etc., there is no reason why he should not afterwards complete his execution by making a further seizure. * * And if he does not take the value of the whole at first, out of tenderness and consideration, perhaps, there is no reason why he should not complete it by a second seizure, provided it is for the same sum due." So according to Baron Parke, in *Bagge* v. *Mawby* (*infra*), if the tenant has done anything equivalent to saying, "forbear to distrain now, and postpone your distress to some other time," the landlord may again distrain.

Bagge v. *Mawby*, 8 Ex. 641, is cited as a case which limits the right to distrain a second time. Half a year's rent being due and in arrear from a tenant who had previously committed an act of bankruptcy, the landlord put in a distress, and was about to proceed with the sale of the goods seized, when in consequence of a notice from a creditor of the tenant, stating that he was taking proceedings in bankruptcy against the tenant, and that he thereby warned the landlord not to sell, and threatened to hold him accountable if he did, the landlord withdrew the distress, without payment of his rent. At that time no assignee had been appointed, but the tenant was afterwards declared bankrupt, and the creditor who gave the above notice was made assignee. The landlord subsequently distrained a second time for the same rent, but the goods were sold under the direction of the assignee, and the proceeds of the sale were handed over to him. The question before the court was whether the notice that was given by the respondent, who was merely the petitioning creditor, and had no other interest whatever in the property, to the landlord, to desist from selling in the first distress, was a good cause or excuse for his abstaining from exercising the power of distress.

The court unanimously answered the question in the negative, being of opinion that the notice was a mere idle threat which the landlord might and ought to have disregarded. It could not be said that the first distress was abandoned by reason of the act of the tenant.

In an action for use and occupation (*Deare* v. *Edmunds*, 2 Chit. 301), the defendants pleaded a distress for rent seized, taken and retained.

To this the plaintiff demurred, and the court held that the mere statement of the taking of a distress, without saying how long the same was detained, is not a satisfaction. The argument in support of the plea was that it stated that distress was taken on the premises, and the distress was *prima facie* lawful, and that after taking the remedy by distress, the tenant ought not to be harassed by an action for the rent.

The legality of a second distress was definitely raised in the case of *Lee* v. *Cooke*, 3 H. & N. 203, in the Exchequer Chamber. In that case the defendants, who were the commissioners for draining certain lands, distrained a bean stack of the plaintiff for a rate due from him, and sold the stack by auction, one of the conditions of sale being that the purchaser was to take possession and pay for the same at the fall of the hammer. At the time of the sale the plaintiff said that it would be one thing to buy the stack, and another to take it away, and when the purchaser attempted to remove the stack from the plaintiff's premises, he was forcibly prevented by the plaintiff. The purchaser did not pay for the stack, and the commissioners levied a second distress for the same. The present action was accordingly brought for illegal distress. At the trial the jury found that the purchaser had not at any time an opportunity of taking the stack away, and the judge thereupon directed a verdict for the defendant. The Court of Exchequer had refused to grant a rule to show cause. On appeal it was argued on behalf of the plaintiff that the sale under the first distress was sufficient to satisfy the rates, that as between the defendant and the plaintiff there was a valid distress, and that the illegal conduct of the plaintiff did not divest the property from the purchaser, who might maintain an action of trover against the plaintiff for the value of the stack. The true test, it was said, was whether there was such a delivery of the stack to the purchaser as would satisfy the Statute of Frauds. The decision of the court below was upheld. "The whole question," said Chief Justice Cockburn, "turns upon whether the first distress could have been carried out to its complete accomplishment. It is argued that while the stack stood on the ground of the plaintiff there was a constructive delivery to the purchaser, and that the fact of possession being resisted with violence, did not justify him in rescinding the contract, but that the remedy was by trover against the plaintiff. In my opinion this is not the correct view. I think that the right of the commissioners was the same as if, having distrained, they had gone to take possession of the stack for the purpose of selling it, and the plaintiff had interposed with violence and prevented them from completing the distress." The rule of law was stated by Mr. Justice Crompton to be that a person cannot distrain a second time for the same cause if he has had an opportunity of making available the first distress; but if by the unlawful act of the distrainee, the distrainor is prevented from realizing, he may distrain again. *Bagge* v. *Mawby* was distinguished on the ground that there a third person threatened the landlord, and thereby caused him to withdraw the distress; so here, if the purchaser had never made any attempt to get possession of the stack, this case would have come within the same principle. The first distress was rendered fruitless by the wrongful act of the plaintiff.

In the case before Mr. Serjeant Atkinson, it was contended by the counsel for the trustee that the case fell within the principle of the decision; that where there has been a withdrawal from the distress by the landlord, there having been sufficient goods to satisfy his claim for rent, the power to distrain a second time for the same rent is gone. There was another contention with which we are not here concerned. The judge decided in favor of the society, holding that the second distress was valid, on the ground that the withdrawal of the first distress was at the request of the debtor and for their accommodation, and that the second distress was consequently valid in law. The *ratio decidendi* here adopted is clearly supported by the expressions used by Baron Parke in *Bagge* v. *Mawby*.—*Law Times* (London).

—It may be interesting to lawyers to learn the source of that hackneyed line in "Pinafore," "And so do his sisters, and his cousins, and his aunts." The exact collocation of these relationships may be found in Blackstone's chapter on Coparcenery, and as Mr. Gilbert, the author of the *libretto*, is a lawyer, he has probably been consciously or unconsciously pilfering from Sir William.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, Sept. 5, 1879.

THE HERITABLE SECURITIES & MORTGAGE ASSOCIATION v. RACINE.

Order of Judge in Chambers appointing a sequestrator—Revision—Opposition.

This case came up on the orders severally made by Judges Torrance and Mackay, noted on page 287.

RAINVILLE, J., after stating the various proceedings which had been had in the case, remarked that one of the reasons assigned in support of the *requête à fin d'opposition* was that the order of Mr. Justice Johnson had not been legally served. Service had been made on the defendant's attorney by pushing a copy under the door of his office, the door having been found locked. His Honor was disposed to think that this service was insufficient. But the Judge had been of opinion that it was not necessary to serve a copy of the order, and had appointed a *séquestre*, and the Court had no jurisdiction to revise the order of Mr. Justice Johnson. This order would, therefore, be declared in force, and the order of Mr. Justice Torrance would be set aside.

The judgment was as follows:—

"The Court, having heard the parties, as well upon the petition of plaintiffs filed on the 20th of August last, as on the *requête à fin d'opposition* made and filed by the defendant in the present cause, having examined the proceedings, proof of record, and deliberated; doth grant the said petition of plaintiffs, in consequence doth cancel and annul the order given in Chambers on the 15th of August last by Mr. Justice Torrance, and declare the judgment of Mr. Justice Johnson given on the 12th of said August last, to be in full force and virtue, and the sequestrator thereby named and appointed is allowed to enter on his duties according to law;

"And the Court doth reject the said *requête à fin d'opposition*, the whole with costs against defendant, petitioner."

John L. Morris, for the plaintiff; *W. B. Lambe*, counsel.

L. Forget, for defendant; *E. U. Piché*, *Q. C.*, counsel.

MONTREAL, July 9, 1879.

MCCLANAGHAN v. HARBOR COMMISSIONERS OF MONTREAL.

Disavowal—Procedure.

The plaintiff filed a petition *en désaveu* against his attorneys of record, Messrs. Duhamel, Pagnuelo & Rainville, who had instituted an action of damages in his behalf against the defendants. This disavowal was subsequent to judgment in the suit.

The defendants *en désaveu* filed an exception *à la forme*, alleging, first, that the disavowal was not to be found in the record; and, secondly, that ten days' notice was not given to them before presentation of the petition *en désaveu*.

MACKAY, J., said that Art. 196 of the Code of Procedure required the party disavowing to proceed without delay to have the disavowal declared valid, and ten days' notice was not required. The *exception à la forme* was unfounded and must be rejected.

Doherty & Doherty for petitioner *en désaveu*.

Duhamel, Pagnuelo & Rainville defendants *en désaveu*.

GIBEAU v. CONWAY et al.

Service—Ontario corporation.

JOHNSON, J. The defendant Conway is a contractor, and was sued by the plaintiff, who brought his action not only against him but also against the other defendant (The Waterous Engine Co., limited, a corporation in Ontario, having its principal office there), and he got judgment against both of these parties jointly and severally by default. The Company now comes in by an opposition *à jugement*, and alleges that it never was served with process, the only service made having been one made on Conway at Longueuil, at the place of business, so the return says, of the defendants, and they, the Company, being sued as copartners with Conway. It is quite obvious that the Company has not been served with process, and they say they have a good defence to this demand, which was for board and lodging due by Conway, and for money lent to him, for which the Company is in no way liable. The plaintiff has joined issue with this Company's petition; and evidence has been adduced on one side and the other, and it appears that this judgment is quite worthless as against the

petitioners, and the prayer of their petition is granted, and the judgment set aside, and the action dismissed as far as regards them, with costs against the plaintiff.

Lunn & Cramp for petitioners.

Prevost & Co. for plaintiff contesting.

COURT OF REVIEW.

MONTREAL, July 9, 1879.

MACKAY, TORRANCE, JETTÉ, JJ.

[From S. C. Montreal.

MACDONALD v. MACKAY, and ROUTH, T.S.

Procedure—Déclinatory Exception—Art. 68 C. P.

The plaintiff having instituted an action against the defendant accompanied by a *saisie-arrêt en main tierce*, the defendant pleaded a declinatory exception, alleging that the action being purely personal (C. P. 34)), he was wrongly sued in Montreal, the right of action not having originated there, and the service not being made upon him personally there, and he not being domiciled there, but in New York. At the same time the defendant petitioned to quash the attachment by garnishment which had been issued in the cause.

The parties went to proof, and the Superior Court maintained the declinatory exception and dismissed the action.

The plaintiff inscribed in Review, contending especially that the defendant by contesting the *saisie*, had pleaded to the *fond*, without reserve, and had thereby abandoned his right to except to the jurisdiction.

The Court of Review reversed the judgment, and dismissed the exception, "seeing defendant's property, money, within this jurisdiction," (Art. 68 C. P.) as plaintiff had alleged.

Loranger, Loranger & Pelletier for plaintiff.

Abbott, Tait, Wotherspoon & Abbotts for defendant.

SUPERIOR COURT.

MONTREAL, Sept. 10, 1879.

HERITABLE SECURITIES & MORTGAGE INVESTMENT ASSOCIATION v. WRIGHT, & WRIGHT, oppt.

Venditioni exponas—Opposition—Motion to dismiss.

In this case the plaintiff *par distraction de frais* moved to dismiss the opposition *afin de distraire*, filed by the defendant, to the resale of some property for false bidding. The opposition, supported by affidavit, was based on the allegation that there was no order of a Judge for the *venditioni exponas* ordering the sheriff to proceed with the resale, and further, that the sale under the *fieri facias* had not been proceeded with. The plaintiffs said that the allegation that there was no order was manifestly incorrect, as it appeared that there was such order.

RAINVILLE, J., said an opposition could only be dismissed on motion when the grounds were evidently frivolous. In view of the allegations made in the present opposition, the motion would be rejected, leaving the parties to take the usual course of contestation.

J. L. Morris, for plaintiffs.

Coursol & Co., for opposant.

MONTREAL, Sept. 11, 1879.

NOWELL v. REEVES, and KILBY, intervenant.

Collusive Insolvency—Buying Claims for the purpose of issuing attachment.

MACKAY, J. Nowell has taken out a writ of attachment against Reeves, and Kilby intervenes, saying, "You, Nowell, have been concerting with Reeves to put him into insolvency." The law is against concerted bankruptcies. I see that Nowell never was creditor, for much, of this man Reeves. Being creditor for a small amount he saw that he could not put Reeves into bankruptcy, and being a good friend of Reeves, he bought a claim for $51 from one Gilmour for $2.50, and then got a note from Reeves so as to make up enough to put him into insolvency. Nowell himself has been examined, and is asked as to this purchase from Gilmour. Under the circumstances, I find that Kilby's petition in intervention is to be maintained: "The court finding itself unable to approve plaintiff's affidavit allegation of his not acting in collusion with the defendant, in face of what is proved by Gilmour and others, and the companionship of plaintiff and defendant proved by Gilmour, also plaintiff's contradiction in his examination, doth maintain the intervention, and the writ and process of plaintiff are quashed with costs to intervenant against plaintiff."

Keller & McCorkill for intervenant.

J. M. Glass for plaintiff.

BEATTIE, insolvent, RIDDELL, assignee, and BEATTIE, petitioner.

Insolvent Act—Reconveyance of estate to insolvent after deed of composition is executed.

Benjamin, for the insolvent, asked for an order to the assignee to re-convey the estate of the insolvent to him, seeing that a deed of composition and discharge had been executed by the required number and value of creditors. He relied upon the decision in Hatchette's case, (1 Legal News, 532; 22 L. C. Jurist, 245).

Hall, for Riddell, assignee, said the assignee had called a meeting of the creditors for Sept. 17th, to take into consideration the proposed composition and discharge. The deed had never come before the creditors yet, though it purported to be signed by the required proportion. In the Hatchette case, the deed had been submitted to a meeting of the creditors.

Bethune, Q. C., for the inspectors, said the only question in the Hatchette and Fabre cases was whether it was necessary for the deed to be confirmed by the court before the reconveyance. In each case the deed had been submitted to the creditors before the application for reconveyance.

MACKAY, J. This is a petition by Beattie to have the assignee ordered to transfer the estate back to him, because he has got a deed of composition signed by a sufficient number and value of his creditors. The conclusions of the petition are that the judge do order the assignee forthwith to carry out the conditions of the deed, and reconvey the estate to petitioner. The assignee has appeared and says that he submits as it were to justice; but that this petition is premature, and that there is a procedure to be observed before the order can go. I find that the assignee is right, and that he would be acting wrongly if he were to reconvey the estate now. It is in vain to point to the cases of Hatchette and Fabre, as they were altogether different. The only question in those cases was whether the assignee was bound to wait for the confirmation of the deed by the Court before reconveying. Here the question is whether the insolvent, as soon as the deed is signed, can demand his estate from the assignee. He can not. The deed must be submitted to a meeting of the creditors—Sect. 49 of the Insolvent Act of 1875. No such meeting has been held in the present case. The petition is, therefore, dismissed with costs.

"Considering Beattie's petition, and that it is founded only on the deed of 27th August, and its allegations refer to it, and to nothing before it particularly; that this being so, after the execution of that deed (composition and discharge), Beattie had to have that deed submitted to a later meeting of creditors (Sect. 49 of Insolvent Act of 1875) called by the assignee, and with notices of and for it, in the Official Gazette and otherwise, as by Sect. 50 of Insolvent Act of 1875; no such meeting has been called or held in the present case, no such notice in the Official Gazette is put before the Court, and the assignee is seen to be resisting properly Beattie's demands and petition, and the petition is dismissed with costs."

L. N. Benjamin for petitioner.

Macmaster & Co. for assignee.

Bethune & Co. for the inspectors.

VAN ALSTYNE, Insolvent, GRAY, claimant, & STEWART, assignee, contesting.

Insolvency—Privilege—Day laborer.

Gray claimed by privilege $70 for wages earned (at the rate of $1.50 per day) within the three months immediately preceding the insolvency.

MACKAY, J. Gray is a blacksmith and day laborer, and claims a sum of money as if he was a clerk in the employ of the bankrupt. I find that he has no privilege. A man who proves no service or hiring, save from day to day, has no privilege.

"Considering that by law and under the circumstances of this case, Gray cannot have and maintain his claim of privilege, or otherwise than Stewart by his contestation admits, claim to privilege dismissed."

Hutchinson & Walker for claimant.

Abbott, Tait, Wotherspoon & Abbotts for assignee contesting.

DEFINITION OF "CALENDAR MONTH."

ENGLISH COURT OF APPEAL, JUNE, 1879.

MIGOTTI v. COLVILLE.

A sentence of one calendar month's imprisonment expires on the day preceding that day which corresponds numerically in the next succeeding month with

the day on which the sentence was passed. If there is no such corresponding day in the next month, then the sentence expires on the last day of that month.

Where a prisoner was sentenced to one calendar month's imprisonment on the 31st October, *held* (affirming the decision of Denman, J.), that the month expired on the 30th November.

Appeal from a decision of Denman, J., giving judgment for the defendant.

The action was to recover damages against the governor of Coldbath Fields Prison for alleged false imprisonment of the plaintiff. At the trial, before Denman, J., and a common jury, the following facts were proved in evidence or admitted:

The plaintiff was convicted by a Metropolitan police magistrate of two different assaults. The convictions took place at 11 A. M. on the 31st October, and the commitments were drawn up in accordance with the sentences passed. The plaintiff, for the first assault, was sentenced to be imprisoned for "one calendar month," and for the second assault "for fourteen days, to commence at the expiration of the imprisonment previously adjudged." The prisoner was accordingly taken into the custody of the defendant, who was the governor of Coldbath Fields Prison, during the afternoon of the 31st of October, and finally released at 9 A. M., on the 14th December, having asked to be released on the preceding day. Denman, J., on these facts, asked the jury to assess the damages (which they did at 20s.), and reserved for further consideration the question whether judgment ought to be entered for the plaintiff or defendant. After hearing the arguments of counsel on further consideration, the learned judge directed judgment to be entered for the defendant, with costs.

The plaintiff appealed.

The plaintiff in person contended that, as his imprisonment must be taken to have commenced at midnight on the 30th October, the calendar month expired on the 29th November, and that being so, that he ought to have been released on December 13. Otherwise, he said, he would have been imprisoned the whole of November, which was a calendar month, and one day in October, and also for the fourteen days. He submitted that the question of time was one of fact for the jury.

A. L. Smith, for defendant, was not called upon to argue.

BRAMWELL, L. J. I am of opinion that this judgment must be affirmed. As Denman, J., said, there is no doubt a plausible argument for the now plaintiff that, according to his opinion, he has been imprisoned during the whole of November and one day in October as constituting one calendar month. The difficulty really arises because the term "calendar month" is not applicable except as applied to particular months, and that it is inapplicable where the month begins in the middle of a particular calendar month. Then the month is made up of a portion of two calendar months, which may be of unequal lengths, and various consequences seem to follow. It is clear that the only sensible rule that can be laid down is this, that where the imprisonment begins on a day in one month, so many days of the next month must be taken, if there are enough days to do it, as will come up to the date of the day before that on which the imprisonment commenced. That is to say, that, if the day of imprisonment commenced on the 5th of the month, it must go on until the 4th of the next month; if on the 29th until the 28th. That is to say, you must take as many days out of the next month as had passed in the month when the imprisonment began before that imprisonment commenced. If that were not so, see what the consequences would be. The plaintiff says: "I was sent to prison on October 31st. Therefore, I ought to have been let out on November 29th. Otherwise I should have had one calendar month's imprisonment, and one day of another month." The effect of his argument is this, that whereas the imprisonment began on October 30th, it ought to end on the 29th November. So ought it if the imprisonment began on the 31st. There is no reason why that should be so. Suppose a man is sentenced to two calendar months' imprisonment, when does he come out? Certainly not until December 30th. Now, if one month ends on November 29th, how do you get the next month ending on the 30th? The only way to make sense of it is to apply the rule I have mentioned. It would never operate to the prejudice of the prisoner. If he was sent to prison in a long month he would get thirty-one days; if in a short one he would get thirty days. If he was sent to prison in February, so much the better for him. If he went to prison

on the 29th January, according to the rule expressed he would get out on the 28th February; so he would if he went to prison on the 30th January, or on the 31st, or on the 1st February He would then have the benefit of an imprisonment shortened by the numbers of days wanting to make up the days which had elapsed in the month in which he was imprisoned at the time of his imprisonment. As the plaintiff was sent to prison on October 31st, there were thirty days wanting from the next month, and, as a consequence, the month did not expire until the 30th. Then the fourteen days did not begin until the first, and the plaintiff therefore was duly kept in prison until the 14th. I think the judgment should be affirmed.

Brett, L. J. The expression of one calendar month is a legal and technical phrase to which we must give a legal and technical meaning. It does not, strictly speaking, mean any particular number of days, but one month according to the calendar. We must, therefore, look to the calendar in calculating it, and not count the days. Now, one month, according to the calendar, in my view, is one month from the day of the imprisonment until the corresponding numerical day of the next month less one. In some cases there is no corresponding numerical day in the next month, because it is a shorter month than the one in which the imprisonment begins. There the imprisonment is less than it otherwise would have been, and in favor of the prisoner it must end on the last day of the short month.

Cotton, L. J. I am of the same opinion. I think Denman, J., was right in dealing with this point as a matter of law. It was for the judge to say, on the meaning and construction of the sentence, what was "one calendar month." The plaintiff contends that he could not be imprisoned during the whole of one calendar month and one day of another month. The question then is, what is the meaning to be given to the term "one calendar month." I am of opinion, although difficulties and incongruities no doubt arise, that where there is a sentence of a calendar month's imprisonment not commencing on the first day of the month, you must consider it as expiring at twelve o'clock on the corresponding numerical day of the next month, and, if there are not enough days in the next month, in favor of the prisoner, the sentence will expire on the last day of the month. The consequence is that he never gets a longer imprisonment than the number of the days in the month in which he is to be imprisoned, and sometimes will get a less number of days' imprisonment than the number of days to be found in the calendar month for which he was imprisoned.

Appeal dismissed.

CURRENT EVENTS.

ENGLAND.

Criminal Returns of London.—The criminal returns for the year 1878 have just been published, giving the number of persons taken into custody during the year by the metropolitan police, and the results, with comparative statements, from 1831 to 1878 inclusive. It appears that 83,746 persons were taken into custody, and of these 57,038 were summarily convicted or held to bail, 23,167 were discharged by the magistrates, and 3,541 committed for trial. Of this last number, at the subsequent proceedings, 2,724 were convicted and sentenced, 703 were acquitted, and in 114 cases bills were not found, or the persons charged were not prosecuted. The total number of arrests for 1878 is far larger than in any year since 1831, the number of persons arrested in 1877 being 77,892, and in the year before 76,214. Of the 83,746 taken into custody last year 56,125 were males, and 27,624 females. Of these, 7,722 males and 4,999 females could neither read nor write; 46,085 males and 22,417 females could read and write imperfectly, or could read only; 2,220 males and 206 females could read and write well; while 95 males and 2 females were of superior instruction. By far the greatest number of offences come under the head of drink, for the return shows that 18,181 persons were taken into custody for being drunk and disorderly characters; while 16,227 were prosecuted for drunkenness. The return also gives the age, sex, crime and punishment of the offenders, with their trade or occupation.—*London Law Journal.*

UNITED STATES.

The Late Mr. John Proffatt.—Mr. Proffatt, the editor of "American Decisions," of which series eleven volumes have been issued, died July 22nd, 1879. Mr. Proffatt was by birth an Englishman.