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REPORT OF THE GENERAL COUNCIL OF THE BAR.

The official report of the General Council of the Bar of Lower Canada, recently published, contains some particulars of interest. The report was submitted by Mr. G. DOUTRE, the Secretary-Treasurer, at a meeting held at Quebec on the 28th of May. Some of the leading points noticed are as follows: The Act respecting the Bar which came into force on the 15th of August, 1866, has already produced results beneficial to the profession. After the Act was passed, the General Council and Councils of Sections adopted by-laws, which were printed under the direction of the Secretary-Treasurer, Mr. DOUTRE, and distributed among the members of the profession.

The next thing was to prepare the *tableau général* of advocates required by the new law. The Secretary-Treasurer was unable to obtain possession of the registers, and on going to Quebec in quest of them, was informed by the ex-Secretary that all the archives of the Bar up to 1864 had been destroyed by fire. The Government, however, was able to furnish a list of commissions granted from 1765 to 1849, and the various sections supplied the lists of admissions subsequent to 1849. A notice was issued requiring advocates whose diplomas had not been enregistered, to transmit them for enregistration forthwith. In reply to this notice 131 diplomas were received by the Secretary-Treasurer, but of course in consequence of the destruction of the registers, there was no means of ascertaining whether these 131 were all that had not been enregistered. The ex-Secretary, it appears, did not even put the General Council in possession of the register from 1864. Another obstacle that impeded the making of an accurate list was the difficulty of ascertaining what members of the profession had died, removed from the province, or ceased to practice. Under these circumstances, the list naturally contains the names of many who have either left the country, or have entered upon other pursuits, and it is requested that gentlemen examining the list will apprize the Secretary-Treasurer of such changes.

The Report proceeds to give a table of the number of admissions each year from the cession of Canada to the present day. The list is as follows:—before 1765, 10; in 1766, 4; 1767, 1; 1768, 1; 1771, 1; 1784, 1; 1785, 1; 1786, 1; 1787, 2; 1788, 1; 1789, 3; 1790, 1; 1791, 1; 1792, 1; 1794, 3; 1795, 1; 1796, 3; 1797, 3; 1798, 2; 1799, 4; 1800, 3; 1801, 5; 1802, 1; 1803, 5; 1804, 4; 1805, 2; 1806, 2; 1807, 4; 1808, 2; 1809, 3; 1810, 9; 1811, 8; 1812, 7; 1813, 3; 1814, 5; 1816, 5; 1817, 7; 1818, 6; 1819, 8; 1820, 5; 1821, 7; 1822, 19; 1823, 19; 1824, 15; 1825, 17; 1826, 12; 1827, 13; 1828, 20; 1829, 15; 1830, 19; 1831, 12; 1832, 16; 1833, 19; 1834, 13; 1835, 11; 1836, 17; 1837, 15; 1838, 14; 1839, 16; 1840, 18; 1841, 19; 1842, 18; 1843, 18; 1844, 19; 1845, 18; 1846, 21; 1847, 25; 1848, 32; 1849, 32; 1850, 29; 1851, 29; 1852, 21; 1853, 25; 1854, 20; 1855, 29; 1856, 15; 1857, 16; 1858, 22; 1859, 31; 1860, 32; 1861, 47; 1862, 55; 1863, 59; 1864, 52; 1865, 67; 1866, 47; 1867, 8; making a total of 1253.

The report points out the rapid increase from 1858 to 1865 and the decrease in 1866 and 1867, after the new law came into operation. "Les besoins de la population," says Mr. DOUTRE, in his report, "n'exigent pas un aussi grand nombre d'avocats. Comme le faisait remarquer un avocat français d'un grand mérite, M. DUPIN, les procès augmentent en raison même du nombre des avocats. Moins il y a d'avocats, moins il y aura de procès chicaniers et futiles qui ne naissent que par la nécessité de procurer de quoi vivre au surplus du nombre requis des avocats; moins il y a d'avocats plus il y a de désintéressement et d'honneur dans la profession; car alors les membres du Barreau peuvent suffir aux besoins de la population, et ils n'ont pas besoin d'accepter de ces procès qui déshonorent la profession en même temps qu'ils ruinent les familles.

"Si le Barreau veut être respecté, il doit être respectable. Il cesse de l'être dès qu'il cesse de se recruter exclusivement dans la

classe du mérite et de l'honnêteté. Il est vrai que le talent fait la réputation, mais la moralité seule la consolide et la perpétue. La magistrature qui doit être digne, honnête et impartiale s'alimente dans le Barreau. L'honneur de ce dernier rejaillit sur elle. Il est donc de l'intérêt de la communauté en général que le Barreau soit sévère sur le choix de ses membres. La loi de 1866, quoiqu'elle laisse quelque chose à désirer, offre d'excellents moyens de l'être; c'est à lui à les utiliser vigoureusement.

"Il n'y a pas qu'un sentiment de conservation et d'intérêt qui guide le barreau dans sa sévérité vis-à-vis des aspirants à l'étude et à la pratique de la profession, il y a aussi un sentiment honorable qui consiste à détourner une grand partie de la jeunesse du désir de se livrer à la pratique d'une profession qui ne lui offrira pas les moyens de subsistance, si elle est encombrée. Les cinq mois qui viennent de s'écouler ont démontré parfaitement ce que cette loi nous promettait pour l'avenir.

"Une autre partie importante de la loi mérite d'être remarquée. Les plaideurs qui ont à se plaindre de la conduite de leurs avocats peuvent obtenir plus facilement justice devant le conseil de section auquel ces avocats appartiennent. Sous l'ancien système il était impossible d'obtenir un jugement effectif contre un avocat malhonnête, car ce jugement rendu par le conseil de section ne pouvait avoir d'effet que s'il était ratifié par le Conseil Général qui n'existait alors que sur le papier. Aujourd'hui il n'en est plus de même, le Conseil de section est constitué en tribunal; il possède les mêmes priviléges que les cours de justice pour obliger les témoins à rendre leur témoignage, et son jugement, si on n'en interjette pas appel dans les 30 jours, a son plein et entier effet. Le Conseil Général est un tribunal d'appel, qui ne ratifie pas, comme par le passé, mais qui confirme ou infirme le jugement qui lui est soumis, non par le conseil de section mais par l'accusé. Les assemblées du Conseil Général sont faciles à convoquer. Il est important que les clients sachent qu'ils peuvent se fair rendre justice au Barreau, et faire punir les avocats qui ont trompé leur confiance. Cet accès facile à la justice du Barreau et la publicité des jugements rendront plus scrupuleux ceux qui croyaient que toutes les infractions à la discipline et à l'honneur du Barreau restaient impunies. C'est par ce moyen qu'il est possible de maintenir le Barreau dans une position de moralité et d'honnêteté qui impose le respect et la confiance de la communauté en général."

INCREASE OF SENTENCE.

Two burglars were recently convicted at Kingston Assizes. When their sentences had been pronounced, they suddenly, in a fit of fury, attacked the jailers, and, half a dozen policemen jumping into the dock, a terrible conflict ensued. The sentences were respectively eight and ten years' penal servitude; and, upon this exhibition of ferocity and violence, the judge ordered the convicts to be again placed at the bar, and enlarged their terms of servitude to twelve and fifteen years, respectively. Some question has arisen as to whether the judge was justified in pursuing this course. The *Law Times* declares that the subject does not admit of a doubt; that the regularity and legality of such a proceeding is thoroughly settled. It cites as authorities, *Reg.* v. *Fitzgerald*, 1 Salk. 401; *Inter the Inhabitants of St. Andrews, Holborn, and St. Clement Dames*, 2 Salk. 667; and *Rex* v. *Price*, 6 East, 328. A curious account of similar conduct on the part of a prisoner, and of its speedy punishment, is given in the following marginal note, by Chief Justice Treby, to Dyer's Reports:—

Richardson, C. J. de C. B., at Assizes at Salisbury, in summer 1631, fuit assault per Prisoner la condemne pur Felony; qui puis son condemnation ject un Brickbat a le dit Justice, que narrowly mist. Et pur ceo immediately fuit Indictment drawn pur Noy envers le Prisoner, et son dexter manus ampute et fixe al Gibbet sur que luy mesme immediately hange in presence de Court.

DEFICIENCY OF JUDGES IN ENGLISH COURTS.

The following from the *Times* of June 20, shows how greatly business is impeded by a tenacious adherence to the old judicial machinery, which is quite inadequate to the wants of the present day.

"This was the second of the first two days appointed for the sittings of the Court out of Term, and in the course of the day, as also yesterday and almost every day during the sittings *in banc*, discussions arose as to the difficulty the Court finds in so constituting itself as to enable itself to carry on the business. It will be observed that the Court, as stated by one of the judges to-day, holds these *post* terminal sittings primarily for the purpose of clearing the New Trial Paper, in order that cases in which new trials are granted may be sent down to trial at the assizes without delay. But when the Court sits as a kind of court of appeal on an application for new trial for misdirection, as it is either in the nature of an appeal from the presiding judge, or turns upon the facts with which he is best acquainted, it is not considered by the Bar satisfactory that a case should be heard by less than two judges in addition to the judge who tried the case; and this requires that there should be a court composed, at least, of three members. But, then, as the Lord Chief Justice is sitting at Nisi Prius—and another judge ought to be sitting to clear the enormous cause list—and another is wanted at Chambers, and one or more are wanted in the Courts of Error, Probate and Divorce (to say nothing of the Central Criminal Court), and there are only five judges in each court, there is, it will be seen, great difficulty in carrying on these sittings, and the courts have continually to put off or break off cases, in a manner exceedingly inconvenient to justice, simply because it is impossible for one judge to be in more than one place at a time, and it is also impossible to make five judges into seven or eight. Thus, in the course of the day, Mr. Justice Blackburn having gone to Chambers, and an important case standing next on the paper, which it was found could not come on to-day,—

Mr. Brett, counsel for the plaintiff, said there was an important new trial case which would occupy a great deal of time when it came to be discussed, and he should not think it satisfactory that it should be heard with only one judge besides the judge who tried it.

The Lord Chief Justice.—Certainly not.

Mr. Brett said that, as it stood for argument at the sittings next week, this must be the result, as the Lord Chief Justice and another judge would be at *Nisi Prius*, and a third at Chambers, or in a Court of Error. He should not object to its standing over till next Term.

Mr. E. James, counsel for the defendants, said he quite agreed in the suggestion of his learned friend.

Mr. Justice Mellor.—Unless we are somehow relieved of going to Chambers, only two judges can be found to sit, at least for half the day, and as one of these must be my brother Shee, who tried the case, there cannot be a satisfactory tribunal for the parties.

The Lord Chief Justice.—What is the present condition of the Bill relating to the Masters at Chambers? In ordinary times we can manage with the present machinery; but out of Term, with two judges at *Nisi Prius*, the demands upon us for the Exchequer Chamber, and the necessity of appointing sittings *in banc* out of Term, unless we are in some way relieved of the business at Chambers, public business in the courts must come to a deadlock.

It was then agreed that the case in question should be postponed till Michaelmas Term.

It may be mentioned that this very day the Court of Error in the Exchequer Chamber had to break off in the middle of a case and rise early, simply through deficiency of judges—two of the learned judges having to go to Chambers, where one from each court is required daily, so that only four were left to review a decision by an equal number of judges in the Court below. The condition of the Court of Exchequer Chamber, with regard to its constitution, is daily a subject of complaint and dissatisfaction, arising from the same cause—cases decided by four judges, and it may be in accordance with one or more decisions by four judges in other courts—*i. e.*, the decision of eight or ten or twelve judges being continually reviewed and reversed by five or six, perhaps by a majority of three out of five, or four out of six. And the condition either on the one hand of the New Trial Paper or Special Paper of the courts *in banc*,

and on the other hand of the cause lists in the different courts, shows an accumulation of business which certainly the Bar believe to be owing to the deficiency of judges, and which, whatever be the cause, and whatever may be the proper remedy, gives rise to an enormous amount of vexation, delay, and expense to the suitors, and often amounts to a denial of justice.

APPOINTMENTS.

Hon. Gédéon Ouimet, to be Attorney General of the Province of Quebec, (Gazetted 15th July, 1867).

Hon. George Irvine, to be Solicitor General of the Province of Quebec, (Gazetted 15th July, 1867.)

Edouard Joseph Langevin, Esq., to be Clerk of the Crown in Chancery, in and for the Dominion of Canada, (Gazetted 13th July, 1867.)

BANKRUPTCY—ASSIGNMENTS.—PROVINCES OF QUEBEC AND ONTARIO.

NAME OF INSOLVENT.	RESIDENCE.	ASSIGNEE.	RESIDENCE.	DATE OF NOTICE TO FILE CLAIMS.
Allen, Orrin Lawrence	Alexandria	John Whyte	Montreal	July 30th.
Anderson, Duncan		David Rose	Dummer	July 22nd.
Barnes, William		N. R. Britton	Milton	June 26th.
Bell, John	Township Blanshard	Thos. Miller	Stratford	July 23rd.
Bellefleur, J. O.	Laprairie	T. Sauvageau	Montreal	July 9th.
Bergeron, J. B.	Windsor	J. McCrae	Windsor	Aug. 2nd.
Brethen, Henry		W. S. Robinson	Napanee	July 30th.
Bull, David		Geo. D. Dickson	Belleville	June 18th.
Burnet, William		E. A. Macnachtan	Cobourg	July 24th.
Burroughs, William, jun		J. L. Terrill	Tp. Stanstead	June 25th.
Cadwell, Lewis A		S. C. Wood	Lindsay	July 13th.
Carruthers, Janet	Hamilton	W. F. Findlay	Hamilton	July 22nd.
Chamberlain, Maitland		W. S. Robinson	Napanee	Aug. 1st.
Champagne, Louis	Lanoraie	T. Sauvageau	Montreal	July 29th.
Chapman, Christopher	Magog	A. M. Smith	Sherbrooke	July 27th.
Chatterson, John		W. S. Robinson	Napanee	July 27th.
Cleveland & Son, J. H	St. André Avellin	John Whyte	Montreal	July 10th.
Collier, John C		Richard Monck	Chatham	July 10th.
Cornell, Owen	Township Townsend	A. J. Donly	Simcoe	July 23rd.
Cottingham, Samuel		S. C Wood	Lindsay	July 24th.
Cronkhite, Nathan	Mooretown	George Stevenson	Sarnia	July 25th.
Danks, Isaiah	Oil Springs	George Stevenson	Sarnia	July 9th.
Dean, James	Township Woodhouse	A. J. Donly	Simcoe	July 23rd
Deguise, C. C. Miller		I. Thibaudeau	Quebec	July 30th.
Donaldson, Charles	Township Grantham	W.A.Mittleberger	St. Catharines	July 20th.
Durocher, Olivier	Stanstead	A. M. Smith	Sherbrooke,	July 27th.
Empey, Philip S		Chas. Rattray	Cornwall	Aug. 8th.
Gordon, Thomas		W. H. Felton	Arthab'k'ville	Aug. 10th.
Guillot, Jas. C	Windsor	Philip S. Ross	Montreal	July 4th.
Holland, Anthony	Exeter	S. Pollock	Goderich	July 29th.
Hooper, Joseph	Port Hope	E. A. Macnachtan	Cobourg	July 15th.
Horsham, John		A. J. Donly	Simcoe	Aug. 5th.
Hudon, Isaïe	Montreal	T. S. Brown	Montreal	Aug. 22nd.
Hudson, Andrew		A. W. Smith	Brantford	July 16th.
Huffman, John L	Port Hope	E. A.Macnachtan	Cobourg	July 15th.
Jordan, Hollis	Eaton	A. M. Smith	Sherbrooke	July 10th.
Lamprey, Brooke		James Massie	Guelph	July 2nd.
Laycock, Nelson		A. W. Smith	Brantford	July 24th.
Leggatt & Reay	Montreal	A. B. Stewart	Montreal	Aug. 15th.
Lewis, Asa		J. L. Terrill	Tp. Stanstead	July 1st.
Lewis, Reuben Pike	Cornwall	John Whyte	Montreal	July 16th.
Long, Joseph	Township Blenheim	James McWhirter	Woodstock	July 23rd.
Lorimer, James	Montreal	A. B. Stewart	Montreal	July 9th.
Lundy, W. T	Brampton	John Lynch	Brampton	Aug. 15th.
McIntyre, John	Windsor	J. McCrae	Windsor	July 12th.
McKay, Hugh	Woodstock	Jas. McWhirter	Woodstock	July 31st.
McVittie, Alexander		Richard Monck	Chatham	July 10th.
Merritt, Daniel Harrison		W. Dow Michael	Oshawa	July 10th.
Mitchell, Wm. D., and Andrew G., individually and as firm of Wm. D. Mitchell & Bros.	Township Elma	Thos. Miller	Stratford	Aug. 20th.
Nesbitt, James	Township Toronto	John Lynch	Brampton	Aug. 23rd.
Ogilvie, James		A. W. Smith	Brantford	Aug, 5th.
Ouimet, Eusèbe	Montreal	A. B. Stewart	Montreal	Aug. 21st.
Panneton & Panneton	Sherbrooke	T. Sauvageau	Montreal	Aug. 7th.
Pariseau, Joseph and Stanislas, individually and as firm of Joseph Stanislas & Frère	St. Martin, Ile Jésus	L. J. Béliveau *et al*	Montreal	Aug. 2nd.
Pearce, Samuel	Mitchell	Thos. Miller	Stratford	Aug. 13th.
Pitcher, Charles P		W.A.Mittleberger	St. Catharines	July 16th.

BANKRUPTCY—ASSIGNMENTS.—*Continued.*

NAME OF INSOLVENT.	RESIDENCE.	ASSIGNEE.	RESIDENCE.	DATE OF NOTICE TO FILE CLAIMS.
Rae, Johnson		W.A.Mittleberger	St. Catharines	July 22nd.
Ross, Robert		Joseph Rogers	Barrie	Aug. 3rd.
Rousseau, Joseph	La Présentation	T. Sauvageau	Montreal	July 12th.
Scott, John Alexander	Stratford	Thos. Miller	Stratford	July 23rd.
Sipes, John		Alex. McGregor	Galt	Aug. 6th.
Sloan, James, and Jas. Anderson		Jas. McWhirter	Woodstock	July 20th.
Smith, James Harvey	Frelighsburg	John Whyte	Montreal	July 5th.
Sovereign, Frederick		A. J. Donly	Simcoe	Aug. 5th.
Spencer, Henry	Hamilton	J. J. Mason	Hamilton	Aug. 10th.
Sutherland, Donald		Thomas Clarkson	Toronto	Aug. 6th.
Terryberry, Jacob B		W.A.Mittleberger	St. Catharines	July 18th.
Terryberry, John Y		W.A.Mittleberger	St. Catharines	July 18th.
Truax, Chester A	Windsor	J. McCrae	Windsor	July 24th.
Vancamp, Lewis		John Henry	Oshawa	July 10th
Venner, Pierre		L. H. Gosselin	St. Jérôme, Mt	June 27th.
Wardle, Alfred		Thos. Churcher	London	July 26th.
Wessor, Benjamin		W.A.Mittleberger	St. Catharines	July 19th.
Wills, Jabez		W.A.Mittleberger	St. Catharines	July 27th.
Wright, W., & Co		A. Fraser	Quebec	July 10th.
YonKilovitz, Dame Alice		A B. Stewart	Montreal	July 16th.

PRIVY COUNCIL CASE.

Nov. 2, 1866.

Present :—Lord Westbury, Sir James William Colvile, and Sir Edward Vaughan Williams.

In the matter of Thomas James Wallace, an Attorney and Barrister.

[On appeal from the Supreme Court, Halifax, Nova Scotia.]

Contempt of Court—Order suspending Attorney and Barrister for contempt.

An order suspending an Attorney and Barrister of the Supreme Court of Nova Scotia from practising in that Court, for having addressed a letter to the Chief Justice, reflecting on the Judges and the administration of justice generally in the Court, discharged by the Judicial Committee, as it substituted a penalty and mode of punishment which was not the appropriate and fitting punishment for the offence.

The letter, though a contempt of Court and punishable by fine and imprisonment, having been written by a practitioner in his individual and private capacity as a suitor, in respect of a supposed grievance as a suitor, of an injury done to him as such suitor, and having no connection whatever with his professional character, or anything done by him professionally, either as an Attorney or Barrister, it was not competent for the Supreme Court to go further than award to the offence the customary punishment for contempt of Court; or to inflict a professional punishment of indefinite suspension for an act not done professionally, and which, *per se*, did not render the party committing it unfit to remain a practitioner of the Court.

This was an appeal from an Order of the Supreme Court at Halifax, Nova Scotia, suspending the Appellant from practising in that Court as an Attorney and Barrister, made under the following circumstances.

The appellant was admitted an Attorney and Barrister of the Supreme Court at Halifax, N. S., and practised therein up to the period of his suspension, as hereinafter mentioned; he also practised as an advocate and proctor in the Court of Probate of that Province. The appellant had been defendant in two suits (*Dunphy* v. *Wallace*, and *The City of Halifax* v. *Wallace*) depending in the Supreme Court, and he had also been plaintiff in another suit before the same Court, *Wallace* v. *Connolly*, and was likewise, from time to time, engaged on other matters before the Court in his capacity of Attorney and Barrister. In the suit of *Dunphy* v. *Wallace*, a decision was given by the Supreme Court adverse to the appellant, and leave to appeal therefrom to Her Majesty in Council was refused by the Court in a judgment delivered by the Chief Justice. As the appellant intended to petition Her Majesty in Council for leave to appeal from this refusal, the Chief Justice was requested by the appellant, with a view to such petition, to file the judgment delivered by him in that case. The Chief Justice thereupon filed a written judgment,

differing, as it was alleged by the appellant, materially from the judgment actually delivered in Court; proceeding upon grounds not mentioned in that judgment, and containing additional statements, which the appellant conceived were calculated to prejudice his intended application for leave to appeal.

In the course of the other suit, *Wallace* v. *Connolly*, a decision was likewise given adverse to the appellant. Such decision was pronounced by the Chief Justice after hearing both the parties upon affidavits in open Court, and after taking time to consider; but the Chief Justice, in his judgment, stated that he had received from a Mr. Smith, out of Court, information which differed from the statements made by the appellant in one of the affidavits; the appellant not having been present at the alleged interview with Mr. Smith.

Previously also to the month of January, 1865, the appellant had been informed that, in reference to other proceedings in which he was interested before the Supreme Court, observations prejudicial to him had been made to one of the parties by the Chief Justice out of Court, and that certain proceedings against him had been recommended by the Chief Justice in an interview with one of the parties; and in certain matters also in which the appellant was professionally engaged before him at Chambers, the Chief Justice had, as the appellant conceived, acted in a manner which he deemed unusual and oppressive, and which induced him, as he alleged, to avoid Chamber business before the Chief Justice.

On the 10th of January, 1863, an order was made by Mr. Sutherland, the Judge of the Court of Probate at Halifax, declaring that the appellant had been guilty of a contempt of the Court, and suspending him from practising therein as an advocate and proctor. The appellant appealed from the order of the Judge of Probate to the Supreme Court, conceiving that he was entitled to such appeal under the provisions of the Revised Statutes of *Nova Scotia*, c. 127, s. 77.

The appeal came on for hearing before the Supreme Court in the month of December, 1864, when judgment was given to the effect, that the appeal, having been taken under the Provincial Statute, and not by *certiorari*, was not judicially before the Court and could not be entertained. In the month of January, 1865, the appellant moved the Chief Justice, at Chambers, to allow an appeal from that decision to Her Majesty in Council. The Chief Justice refused leave to appeal from the decision of the Supreme Court against the order of suspension made by the Judge of the Court of Probate. The judgment of the Supreme Court, both upon the main question of the appeal from the order of suspension, and the application of the appellant for leave to appeal therefrom to Her Majesty in Council, was reduced to writing by the Chief Justice, and filed.

The appellant being desirous to petition Her Majesty in Council for leave to appeal from the last mentioned judgment of the Supreme Court, and being, as he stated, apprehensive that additions might be made to the written judgment, as he alleged was done in the case of *Dunphy* v. *Wallace*, as well as aggrieved at the course pursued by the Chief Justice in the cases of *Dunphy* v. *Wallace* and *Wallace* v. *Connolly*, and feeling injured by the observations and the recommendations of proceedings which it had been reported to him, as already stated, had been made with reference to him by the Chief Justice; on the 26th January, 1865, sent the following letter to the Chief Justice: "The Honourable Chief Justice, Sir,—I shall feel obliged by your filing the judgment given in Court, in my case with Mr. Sutherland, without any additions. I say without any additions, because in the case of *Dunphy* v. *Wallace*, I had much reason to complain of the decision there filed, as very material additions were made to it, and much said with a view, as I and others thought, of meeting me at England. I must, I think, decline sending to England the decision given on my petition for an appeal, in consequence of a statement made therein, to the effect that other modes were pointed out by the Court by which the matter might have been removed; but I remember only one way mentioned, that by *certiorari*, and this certainly is not modes. ....It was in that case I good-naturedly remarked, that the decision would likely be

different when it fell to my lot to be on the other side. And I venture to say, had my case with Mr. Sutherland been removed in the first instance by *certiorari*, a course, however, which never occurred to my counsel, I would have been met with a thousand objections, resulting in my defeat, as on the appeal.

"I may be wrong, but I can't help thinking that I am not fairly dealt with by the Court or Judges, and that the well-beaten track is often departed from for some bye-way to defeat me. Even in that little case of *Wallace* v. *Connolly*, the case was not decided upon the affidavits, but a person was spoken to out of doors, and the case decided upon what he said, not under oath, while the rule is, that a judge can't use even knowledge within his own mind, much less obtain it from others, but must decide upon the affidavits. Better tell me at once to bring no affidavits into Court; for if Mr. Smith, or any such person shall even state to me that there is a different impression of the facts on his mind, you must fail as a matter of course. I could also recall cases, where the decision was, I believe, largely influenced, if not wholly based, upon information received privately from the wife of one of the parties by the Judge. Is this justice? I think a Judge in England would be a little startled to hear that a Judge in Nova Scotia listened to, much less decided upon, information obtained in this way.

"I was on more than one occasion almost tempted to bring these things to the notice of the Legislature, but I overlooked them, as I trust you will overlook anything in this, should there be anything in it not strictly within allowable limits. Your very obedient servant, T. J. Wallace."

The appellant stated, in the affidavit he afterwards made, that in writing this letter he had no intention whatever to impugn the conduct of any of the Puisné Judges of the Supreme Court, and no intention whatever of offending or insulting either them or the Chief Justice, his only object being to state in temperate language the grievances of which he felt he had reason to complain; but fearing afterwards that the course, taken under some degree of irritation, might be considered irregular or offensive, he had availed himself of an opportunity of meeting the Chief Justice to disavow any intention to offend or insult him, and offered to him a full apology.

Notwithstanding such apology, however, a rule of the Supreme Court was, on the 18th of July, 1865, without any motion to that effect by Counsel, drawn up on reading the letter, adjudging it a contempt of Court, and calling upon the appellant to show cause why he should not be suspended from practice as an attorney and barrister until he should make a suitable apology in writing, to be read in open Court, for such his contempt.

On the 22nd of July, 1865, the appellant appeared in person, and being called upon by the Court, showed cause against the rule *nisi*, upon an affidavit in which he related the circumstances under which the letter was written, and the fact that he had made an apology to the Chief Justice.

On the 29th of July, 1865, the rule was made absolute by the Supreme Court to suspend the appellant from practice as an attorney and barrister of the Court, without fixing any period for such suspension, or annexing any condition thereto.

The Chief Justice, the other five Judges being present, delivered the following judgment of the Court:—"The judgment I am about to pronounce is to be taken as the judgment of the whole Court; and having been submitted to my brother Judges, and met their approval, it is to be received as the unanimous expression of our opinions. The Judge of Probate at Halifax, having passed an order on the 10th of January, 1863, declaring that Wallace had been guilty of a contempt, committed by him in the face of that Court, and suspending him from practice therein as advocate or proctor, Mr. Wallace appealed from that order to the Supreme Court, and the appeal was heard before us in December last, when we decided, for the reasons assigned in a written judgment now on file, that the appeal having been taken under the Provincial Statute, and not by *certiorari*, could not be entertained; that Mr. Wallace had mistaken his course, and that the contempt, therefore,

was not judicially before us. In January last, having taken charge of the business for that month, Mr. Wallace moved me at Chambers to allow an appeal from the above decision to Her Majesty in Her Privy Council. As a matter of this kind, whoever the mover might be, affected more or less the privileges of the Bar, I thought it advisable to consult such of my brethren as were in town, all the Judges, in fact, being here, except Mr. Justice Dodd, then in Cape Breton, and they concurred with me in thinking, as the main question of a contempt had not been considered, and as the case on that account was not ripe for an appeal, that the appeal ought not to be allowed. The reasons for that decision were expanded in the written judgment already referred to, which was filed on the 24th of January in Mr. Wallace's presence, the instant it was delivered. On the 26th of the same month, Mr. Wallace thought fit to send to me the letter which has led to these proceedings. In that letter he not only impugns, in very offensive terms, my decision of the 24th of January, which appeared on the face of it to have been concurred in by the other Judges, but he assails also the judgment of the whole Court on his appeal in December from the Court of Probate. He then makes a general charge against the Judges, in language too insulting to be repeated, and winds up with a criticism, in the same style, on some of the pettier matters which I had decided at Chambers. A letter of this character from a practitioner to a judge of an English Court is an outrage which probably was never perpetrated before, and which it was impossible to pass over in silence. Neither was it a fit matter to be dealt with by any one Judge, and therefore I contented myself with stating, in the presence of Mr. Wallace and of the Bar at the next Chamber day, that I had received a letter of this extraordinary kind, and that, on the first day of the ensuing Trinity term, Mr. Wallace would be called upon to answer it. While the utmost boldness and liberty of speech and action are fully and freely conceded to every member of the Bar, as belonging to his position, and as essential to the rights of his clients, no less than to his own, and none on this Bench would attempt or desire to restrain them, on the other hand, a gentlemanly conduct, and a decorous and respectful treatment of the Judges of the land, in all intercourse between them and the Bar, must necessarily be observed by the latter. If the Judges can be insulted by language or letter addressed to them, and such a contempt of their persons and authority committed with impunity, their weight and influence would be lost, and, failing to vindicate the dignity of their office thus outraged, they would forfeit, and deserve to forfeit, the public respect and confidence so necessary to their character and the due administration of justice. It was this feeling, and the necessity thus imposed on us by the letter of Mr. Wallace, rather than any personal consideration, which has compelled us to take steps against him. On the 18th instant his letter was accordingly verified and filed, and we passed a rule *nisi*. By the terms of this rule, the offence of which he was guilty and the consequences to which it would subject him were stated, and the mode by which he might atone for the one and avoid the other. To any well-regulated mind, the opportunity so afforded for consideration and apology would have been all that was required. If through ignorance, or want of judgment, or the absence of proper feeling, in a moment of irritation, from infirmity of temper, or any other cause short of a deliberate intention to insult, such a letter had been hastily penned, time and reflection would have enabled the delinquent to see his error, and to make such reparation for it as was in his power. Let us see what course Mr. Wallace has pursued. On the 22nd instant he appeared in person to show cause, and was heard patiently and at length upon several objections to our proceedings. He urged, among other things, that the Court had no authority to move in this matter, except at the instance of a barrister; that there was no evidence of the letter having come into my possession, or how it had gone out of the possession of the writer; that the letter could not be construed into a contempt; that if it were a contempt it would not vindicate a suspension; and on these and other grounds of a technical kind, he insisted that he ought not to be called

upon. But Mr. Wallace entirely misapprehended his position. This was not a contempt for the non-payment of money, or for disobeying some order of the Court in the progress of a suit, but a contempt levelled at the Court itself, and which the Court has the authority and the right to adjudicate upon of its own motion, without invoking the aid of any barrister, upon the production of the obnoxious letter by the Judge to whom it was addressed. In *Lechmere Charlton's case* (2 My. and Cr. 316) Lord Cottenham, then Lord Chancellor, pursued the course we have adopted here. Letters having been addressed by Mr. Charlton, a barrister and member of Parliament, to one of the Masters of the Court of Chancery, and to the Lord Chancellor, of a highly objectionable kind, and reflecting upon the proceedings of the master in an inquiry then before him, his Lordship, after directing copies to be served upon the parties concerned (here there are no parties to be served), took notice thereof in open Court, and after declaring that the letter to the Master contained scandalous matter, and that the conduct of Mr. Charlton, in writing the two letters, was a contempt of the Court of Chancery, passed an order that he should show cause on a certain day, why he should not be committed to the Fleet prison for his contempt. Mr. Charlton having failed to show cause, the Chancellor, after remarking that every writing, letter, or publication, which has for its object to divert the course of justice, is a contempt of the Court, and that every insult offered to a Judge in the exercise of the duties of his office, is a contempt, concluded by ordering Mr. Charlton's committal. This was effected at a subsequent day, and the House of Commons having refused to interfere, and Mr. Charlton having made a suitable submission, and expressed his contrition for the offence he had committed, he was discharged, after having been in prison for three weeks. It will be seen, therefore, that we have guided ourselves by a precedent of high authority, while our right to substitute a suspension from practice for imprisonment is too clear to be disputed. It is proper also to add, that we have looked into the cases of *Smith* v. *The Justices of Sierra Leone* (3 Moore's P. C. Cases, 361; and 7 Moore's P. C. Cases, 174), *In re Downie and Arrindell* (3 Moore's P. C. Cases, 414), in the Privy Council, cited from 3rd and 7th of Moore's P. C. Cases, as well as several others to be found in 1st Knapp's Reps., and 1st and 8th Moore's P. C. Cases. In addition to the technical and other grounds we have thus disposed of, in the place of the apology, which, as I have said, this Court might reasonably have expected, and which any judicious adviser would certainly have recommended, Mr. Wallace produced an affidavit made by himself, which aggravates his offence, and is an accumulation of fresh insults. Had we thought fit, we would have been justified in refusing to receive this affidavit, or in interrupting him while reading it. As we had already pronounced his letter to be a contempt, it was not competent for him to attempt a justification, and he could show cause only by denying, if he could, or if possible, explaining away or extenuating his offence. But we preferred affording him a full hearing, and as no letter or affidavit of his could touch the reputation of this Bench, or any member of it, we allowed him to go on without interfering. This affidavit is the more inexcusable because in the nature of things it could not be answered. Parts of it are founded upon hearsay, which is not evidence, and in the most trifling matters is not admissible in this Court. Parts of it rest upon the mere assertion of Mr. Wallace, at variance with all our impressions and recollections, but in which he must pass of course uncontradicted. And much of it relates to recent transactions in the knowledge of one or other of the members of the Bar, or of the officers of the Court, and which are represented in a manner quite inconsistent with the facts, and with the papers on the file. We content ourselves with these general observations, for it is obvious that to descend into details, and stoop to a vindication of this Court, would be a complete surrender of its independence and its dignity. If Judges forget their duty, if they lay themselves open to imputation, and are amenable to censure, adequate remedies are provided by the law and constitution of the country. A single Judge at every step is subject to control. Every

charge he delivers to a jury, every order he signs at Chambers, every taxation of costs, every judicial action, and every refusal to act, may be appealed from to his brethren; and for the higher breaches of duty by one Judge, or by all the Judges, there are the means of constitutional redress. But this is the first time that Judges have been assailed in their own Court by a practitioner, when invited to atone for a contempt, putting on the files an affidavit which in every paragraph is a new offence. It is evident that no Court, having a just regard to its position, could permit such an affidavit to remain among its records, and, therefore, we direct this affidavit to be taken off the file. In conclusion, we have only to repeat that we would willingly have been excused from moving in this matter. We have not been actuated by personal resentment, nor by any apprehensions that Mr. Wallace's actions or censure in any shape could possibly excite. We have looked only to what was required for the due administration of the law, and while there has never been any difference of opinion or doubt among ourselves as to what was necessary and proper to be done, we have taken care that ample time should be afforded to the party to reflect upon his position, and avert the consequences he has drawn down upon himself. We have no alternative now but the performance of an imperative duty in directing the following rule to be filed."

The rule *nisi* was then made absolute in pursuance of the judgment, suspending the appellant from practice as an attorney and barrister in that Court.

The appellant applied to the Supreme Court for leave to appeal to Her Majesty in Council, when the following judgment of the Court, giving leave to appeal, was delivered by the Chief Justice, the other five Judges being present:— "Mr. Wallace having moved in person for leave to appeal to Her Majesty, in Her Privy Council, from the rule made on the 29th ult., suspending him from practice as an attorney and barrister of this Court, for a contempt thereof; we have referred to the order of Her Majesty in Council of the 20th of March, 1863, making provision for appeals to Her Majesty in Council from this Court; and from the terms in which that order is drawn, as well as from the cases decided in the Privy Council, we are of opinion, that the order in Council does not extend to such cases, and that it is incumbent on Mr. Wallace to apply to Her Majesty, in the first instance, to admit his appeal. But, inasmuch as Mr. Wallace has applied to us for such leave, complaining of the injury and delay to which our refusal would subject him, we have decided on giving him such leave, so far as we have power and authority so to do, not requiring from him any security for costs, but leaving him to act as he may be advised therein, or as Her Majesty may see fit to order."

The appellant brought the present appeal, but in consequence of the judges of the Supreme Court announcing that they would not appear, the appeal was heard *ex parte*.

Sir *Roundell Palmer*, Q.C., and Sir *T. D. Archibald*, for the appellant:—The order making the rule absolute suspending the appellant from practising as an attorney and barrister in the Supreme Court at Halifax, until he should have a suitable apology, is illegal as well as oppressive. The contempt, if any, committed by the appellant, in writing the letter of the 26th of January, 1865, to the Chief Justice, was not committed by him in his professional character as an attorney or barrister, nor was it a contempt committed in open Court. It was a private letter written by him in his character of a suitor, and is in no respect a public document; and if anything unguarded and disrespectful was contained in it, nevertheless the apology contained in the letter, begging the Chief Justice to overlook anything, if there should be anything in it not strictly within allowable limits, ought to have satisfied the Chief Justice; but the subsequent verbal apology made, as sworn to by the appellant, was an ample expiation of the supposed offence. This was not a case of professional misconduct, coming within the decision of this Court in *Bunny* v. *The Judges of New Zealand* (15 Moore's P. C. cases, 164), nor is it similar to *Lachmere Charlton's* case, relied upon by the Judges in the Court below, as the letter there, besides being intemperate and insulting, contained a

threat against an officer of the Court. We submit that there is an absolute denial of justice in this case, for the rule absolute allows the appellant no means of purging his contempt; but, without disbarring him, or striking him off the rolls of the Supreme Court as an attorney, improperly suspends him from practice, indefinitely, and during the pleasure of the Court. The practice is to fine for contempt of Court:—*The King* v. *Clement* (4 B. and Ald. 218); *In re Pater* (33 L. J. [N.S.] M. C. 142). The demand for a written apology to be read in open Court, which the rule *nisi* required, was unprecedented and unusual; the only instance of such a requirement was in *Carus Wilson's case* (7 Q. B. Rep. 984), which was under totally different circumstances, and was decided by the law of Jersey, and not the law of England and the practice of our Courts, which prevails in the Supreme Court at Halifax; that Court having the same powers as are exercised by the Courts of Chancery, Queen's Bench, Common Pleas, and Exchequer in England.

Lord Westbury:—The appellant in this case is an advocate and also an attorney, admitted to practice in the Supreme Court of Nova Scotia. It appears that he was also a suitor in that Court. In two or three cases in which he was such suitor he seems to have supposed that he had reason to complain of the conduct of the Judges of the Court, and he accordingly wrote a letter, addressed to the Chief Justice, reflecting on the Judges, and on the administration of justice generally in the Court; which undoubtedly was a letter of a most reprehensible kind. This letter was a contempt of Court which it was hardly possibly for the Court to omit taking cognizance of. It was an offence, however, committed by an individual in his capacity of a suitor in respect of his supposed rights as a suitor, and of an imaginary injury done to him as a suitor; and it had no connection whatever with his professional character, or anything done by him professionally, either as an advocate or an attorney. It was a contempt of Court committed by an individual in his personal character only. To offences of that kind there has been attached by law and by long practice, a definite kind of punishment, viz., fine and imprisonment. It must not, however, be supposed that a Court of justice has not the power to remove the officers of the Court if unfit to be entrusted with a professional status and character. If an advocate, for example, were found guilty of crime, there is no doubt that the Court would suspend him. If an attorney be found guilty of moral delinquency in his private character, there is no doubt that he may be struck off the roll. But in this particular case there is no *delictum* brought forward or assigned, except that which results from the fact of addressing an improper and contemptuous letter to the Chief Justice of the Court, in respect of something supposed to have been done unjustly to the writer in his private capacity as a suitor. We think, therefore, there was no necessity for the Judges to go further than to award to that offence the customary punishment for contempt of Court. We do not find anything which renders it expedient for the public interest, or right for the Court, to interfere with the *status* of the individual as a practitioner in that Court. In that respect, therefore, we think that the Judges departed from the course which ought to have been pursued, by adopting a different description of punishment from the ordinary punishment for offences of this nature. When an offence was committed which might have been adequately corrected by that punishment, and the offence was not one which subjected the individual committing it to anything like general infamy, or an imputation of bad character, so as to render his remaining in the Court as a practitioner improper, we think it was not competent to the Court to inflict upon him a professional punishment for an act which was not done professionally, and which act, *per se*, did not render him improper to remain as a practitioner of the Court. On this ground, therefore, we do not approve of the order. At the same time we desire it to be understood that we entirely concur with the Judges of the Court below in the estimate which they have formed of the gross impropriety of the conduct of the appellant. But we are still of opinion, that his conduct did not require and did not authorize a departure

from the ordinary mode and standard of punishment; and upon that ground, and that ground only, we shall advise Her Majesty to discharge the order, in respect of its having substituted a penalty and mode of punishment which was not the appropriate and fitting punishment for the case in question. Law Rep. 1 P.C. 283-296.

MONTHLY NOTES.

SUPERIOR COURT—May 9.

DARLING ET AL., *v.* LEWIS *es qual.*

Customs Act—Cash Discount.

MONK, J. This was an action against the defendant in his then capacity of Acting Collector of Customs at the Port of Montreal, claiming four boxes of hardware, detained by him for additional duty thereon; and in default of the goods being given up, asking that the defendant be condemned to pay the value thereof, with damages. These goods had been imported by the plaintiffs from the United States, and a question arose as to whether the plaintiffs were entitled to deduct ten per cent, which appeared on the face of the invoice, and which was alleged by them to be a trade discount, and therefore not subject to duty. The Customs appraisers maintaining this to be a cash discount, the point was referred to Messrs. Ferrier and Crathern, as arbitrators under the provision of the Statute. These gentlemen rendered an award to the effect that the actual cost and market value of the goods was the net amount stated in the invoice, no reference being made to the nature of the discount. The Acting Collector was not satisfied with this award, and still detained the goods, whereupon the plaintiffs instituted the present action. The plea was that this ten per cent was a cash discount, and could not be taken off; and further, that the award was illegal, and not such as the law required. The Court had to decide whether this was a trade or a cash discount, and, if a cash discount, whether the award was legal. In the first place, the presumption was that this was a cash discount. Further, the Court had in evidence the circular of the plaintiffs, in which it was stated that the ten per cent was for cash. So far from the pretension of the plaintiffs being sustained by the evidence, it was perfectly clear that the ten per cent was a cash discount. This preliminary question being settled, it remained to be determined whether the award was legal and final. The award stated that the market value was the net amount of the invoice, and this seemed to be in favour of the plaintiffs. In a note to the award reference was made to a letter addressed by the shippers to the plaintiffs, in which it was stated that the ten per cent was a cash discount, and that the plaintiffs never sold on credit. The defendant objected that this could not be received, unless the contents of the letter were sustained by proof, and his Honor was of opinion that the letter in question was utterly valueless as testimony, and he was bound to say that the award was not such as the law required. It must, therefore, be set aside, and the action dismissed with costs.

Cross & Lunn, for the Plaintiffs.

Pominville & Bétournay, for the Defendant.

HOPKINS *v.* THOMPSON.

Architect—Plans according to conditions.

MONK, J. This was an action brought by an architect to recover the value of his services in the preparation of plans for a church. It appeared that letters were addressed on behalf of the congregation to the plaintiff and three other architects, inviting them to submit plans for the proposed edifice. Certain restrictions were imposed; the cost was not to exceed $32,000. If the plan was rejected the competitor was to receive only $50. The letter to the plaintiff and the other architects was drawn up with a minuteness and precision calculated to put them on their guard to observe the conditions imposed. The plaintiff, among others, prepared plans in accordance with the terms imposed, but all the plans sent in were rejected, except those of Mr. Thomas, and it appeared that his plans were not in accordance with the conditions stated. When this fact became known to the other architects, they appeared to be much dissatisfied, and the plaintiff, one of their number, had instituted the present action for the *quantum meruit* of his services, refusing to accept the $50 offered. The question, then, for the Court to

determine was whether Mr. Hopkins was entitled to his *quantum meruit*, or only to the $50. It was contended in the plea that the congregation had reserved the right to reject the plans. The Court, however, had arrived at the conclusion that Mr. Hopkins was entitled to his *quantum meruit*. He was restricted to a certain price, and it was fully established that this restriction involved a great deal of extra labour and care. The defendants contracted with Mr. Hopkins that if he sent in plans which were satisfactory, he should have the work. He sent in plans accordingly, but the defendants accepted other plans which were not at all in conformity to the conditions. In doing this they violated the contract, and thus put an end to honest competition. If there was no competition, what remained? Why, the plaintiff must recover the value of his services, which were proved to be equal to one per cent, amounting to $320, for which he would have judgment, with costs.

H. Stuart, Q. C., for the Plaintiff.

S. Bethune, Q. C., for the Defendant.

BERTRAND *v.* BRAIS.

Pilot—Negligence.

MONK, J. This was an action of damages against a pilot, brought by the captain of a barge. The plaintiff had a barge loaded with eighty-four cords of wood at the Cedars, and he sent for the defendant and asked him whether he would agree to pilot him through the rapids. It was contended by the plaintiff, in the first instance, that Brais had come to him and offered his services, and that an express agreement was then entered into, that the defendant was to take the barge through the rapids for $4. As a matter of fact, the defendant did take charge of the barge on the 15th July. They left the Cedars about three o'clock in the afternoon, the weather being fine, and got well through the first rapid. Then the question arose as to going through another rapid. Brais did not follow the course he had taken on previous occasions, but attempted to take another channel, and the upshot was that the barge struck, the wood was thrown overboard, and the barge was considerably damaged. Now, the captain brought an action against the pilot for the value of the wood and for the cost of repairing the barge. The defendant said he never undertook to guarantee the plaintiff; and, in the next place, that the plaintiff refused to cast anchor when he told him. The first question the Court had to determine was, whether there was a contract—whether the pilot entered into a contract to pilot this barge through the rapids? It was contended that there was an implied contract to this effect, and for this reason, because on two occasions previously the defendant had piloted the plaintiff's boat down for the same sum. His Honor had come to the conclusion that there was an implied contract. Brais must be looked upon as a professional man, and held responsible for any neglect or want of skill. The duty of a pilot was to know his business well, and to exercise all possible diligence. First, as to the defendant's skill, the testimony was unanimous and conclusive. On the second point —whether he had exercised all the diligence that could be exercised—the Court had had a great deal of difficulty. The first feature to be noticed was that he did not go down the channel which he had gone down twice previously in safety. The case looked as if there had been a want of proper care, as if there had been negligence. The defendant was bound to exercise the utmost diligence. It was said the captain had absolved the pilot from the consequences, when he refused to anchor. Stated as a general principle, this was true; but we must look at the position of matters. The vessel at the time the order was given, was bounding over the rocks. There would have been great danger in casting anchor. His Honor was clearly of opinion that the order to cast anchor came too late, and that no captain, with the responsibility on him of the life of his crew and of himself, and the safety of his cargo, would have been justified in obeying such an order at such a juncture. The pilot must be held responsible, but in what amount? The plaintiff claimed the value of the repairs, and of the wood. This was too much. The evidence showed that he was in too great a hurry in throwing out the wood. He might have saved it. The pilot would not be held liable for the cargo, but he must pay

for the damage to the vessel, which would be assessed at $120, with costs of the action brought.

Dorion & Dorion, for the Plaintiff.

Cartier, Pominville & Bétournay, for the Defendant.

SUPERIOR COURT—March 30.

STEVENSON *et al. v.* MCOWAN.

Right of Capias concurrently with an assignment.

MONK, J. This was an application on the part of the defendant to be discharged from imprisonment under a *capias*. He was arrested on the 25th October last. He had been carrying on business in partnership with one Drummond, as shoe merchants. They took stock in April, 1866, by which it appeared that they had a large surplus over all their liabilities. They took stock again on the 9th September; made large purchases in October, and on the 25th of that month, after a desperate struggle, they found it necessary to suspend. They called a meeting of their creditors on the 25th. Drummond appeared at the meeting. It turned out that their liabilities had been gradually increasing, although there was no evidence of extraordinary losses. On 25th October, their liabilities amounted to $25,170, and their stock to about $10,000. At the meeting of the creditors Drummond could not give any satisfactory account of their affairs, and he declined to make an assignment till he had conferred with his partner, McOwan, who was his cousin, and appeared to have been most active in the management of the business. They did not seem to have had much money on beginning business. Drummond put in $2000, and McOwan $1000, which Drummond said he never saw anything of. After the meeting the plaintiffs thought it prudent to have McOwan arrested. The arrest was apparently made almost simultaneously with the deed of assignment which bore date the 25th October. The *capias* was was based on affidavit, and a motion was made before Mr. Justice Berthelot to quash the *capias* on the ground that the affidavit was insufficient. The Judge was of opinion that the affidavit was fully sufficient in law; and although the allegations respecting the defendant's secretion of his property were chiefly matter of inference, yet upon the whole, the facts stated in the affidavit were of such a character, that no judge could quash the *capias* on the ground of insufficiency of allegation in the affidavit. The reasons assigned in the affidavit were mainly as follows: That McOwan had previously secreted his estate, debts and effects; that although a number of his creditors attended the meeting, yet McOwan had failed to attend, and kept out of the way. His partner, Mr. Drummond, attended, and failed to give any statements, that he represented the assets of their firm to be only $10,000, and their liabilities at over $27,000, although in the month of April preceding, the firm of John McOwan & Co., represented themselves to be worth over $14,000 of a surplus. That neither of the partners had shown what had become of their assets, although thereto requested, and they had refused to make any assignment for the benefit of their creditors. The affidavit was probably made before the assignment was completed. These allegations were substantially sustained and proved by the evidence. Upon this state of affairs, two questions arose: 1st. After a man has made an assignment of his estate, or simultaneously with the making of an assignment, can he be arrested for secreting his property previous to that time? It was argued for the defendant that the Insolvent Act of 1864 did away with the *capias* when once an assignment had been made. On the other side it was contended that there was no enactment expressly doing away with the remedy by *capias*, and in the absence of an express enactment, it still existed. It was stated that Mr. Justice Berthelot had decided that when once an assignment has been made, there is no right to *capias*. His Honour had consulted with his colleague and found that what he said was, that he did not see much use in the *capias* after the debtor had made an assignment, but he went no further than that. He (Mr. Justice Monk) thought the *capias* had not been done away with, more especially in a case like the present where

the secretion took place previous to the assignment. He was clearly of opinion that inasmuch as there was no express abolition of this remedy by the Insolvent Law, it still existed concurrently with the particular procedure under that law. The next question was, was there any evidence of fraud or secretion to justify the *capias*? The affidavit stated no particular acts of fraud or secretion; it merely alleged the gradual diminution of the assets and increase of liabilities. This alone would perhaps hardly justify the Court in deciding that there had been fraudulent secretion; but there was something more in evidence. After Mr. Brown, the assignee, had come into possession of the estate under the assignment, he was informed by parties who were thoroughly familiar with the facts, that there was a considerable amount of property, and this property had actually been removed from the defendant's store previous to the assignment. Mr. Brown acted on this information, and found at the house of one Holmes, in St. Joseph street, a large quantity of goods which should have been at the store, and put into the hands of the assignee. His Honour had no hesitation in saying that this was an act of secretion. The whole circumstances were such as to leave no doubt that there was systematic fraud, and that there must have been considerable abstractions of property. The case was clearly made out, and therefore the petition for discharge must be refused with costs.

Cross & Lunn, for the Plaintiff.

John Popham, for the Defendant.

LEGAL STATUS OF THE CHURCH OF ENGLAND IN THE COLONIES.

As this subject is one of general interest to all denominations, we give the following report of the speech of Mr. S. BETHUNE, at the last meeting of the Church Society.

The CHAIRMAN having announced that an address would next be delivered by Strachan Bethune, Esq., Q.C., Chancellor of the Diocese of Montreal, on "The progress, present state, "and prospects of the Colonial Church, with "special reference to the Church in Canada,"

Mr. BETHUNE rose, and after some introductory observations respecting the difficulty of treating so comprehensive a theme within the limits of a brief address, proceeded to say:—The first Colonial Bishopric created was that of Nova Scotia, and that not very far back, namely, in the year 1787. At the beginning of the present century the Colonial Church could only boast, throughout the whole world, of two Bishoprics. At the end of the first quarter of the present century, they could only claim four; at the end of the second quarter, in 1850, this number had been increased to twenty-one, and at this day they claimed to have forty-two. If success were to be measured by numbers, it would be imagined that the Church must have been extremely successful; but unfortunately you are aware that notwithstanding all the efforts to plant the Church throughout the Colonies, difficulties have arisen of late years which have thrown a cloud over that Colonial Church. I allude of course to the decisions of the Privy Council in the now famous cases of Long and Colenso. In the first of these cases, which may be considered as the leading one, the Judicial Committee decided that letters patent issued by the Crown, after the establishment of a constitutional Government in a colony, are ineffectual to create any ecclesiastical jurisdiction. From the decision in this case and the one of Colenso which followed, it was generally considered that, as it was held that the Metropolitan Bishop of Capetown had no jurisdiction under the letters patent appointing him such, because of the want of ecclesiastical jurisdiction in the Crown in the colony of the Cape of Good Hope, so also, for the same cause, the letters patent appointing Colenso to be Bishop of Natal equally failed to confer ecclesiastical jurisdiction upon that functionary. And yet, in the recent case of Colenso against the Trustees or Treasurers of the Colonial Bishoprics fund, for the recovery of his salary as Bishop of Natal, and which had been withheld from him on the ground that his appointment under letters patent conferred no territorial jurisdiction whatever, Lord Romilly decided, that notwithstanding anything that had been determined by the Privy Council, Colenso was *de facto* Bishop of

Natal, and for that reason entitled to recover the amount of his salary. In Canada, however, the position of the Church was, happily, very different. The first Colonial Bishopric, as I have already said, was that of Nova Scotia, from which we had started in this country. Originally the Church in Canada was so insignificant that it was served from the Bishopric of Nova Scotia and formed part of its Diocese. This continued till 1793 when the Bishop of Quebec was consecrated; in 1839 the Bishopric of Toronto was added by taking off a part of the Diocese of Quebec, and in 1850 our own Diocese was created by letters patent. Our position was different from that of most of the other Colonies. In the Act of 1791, in which provision was made for the better government of the Province, reference was specially made to the patent of the Bishop of Nova Scotia, and all his rights and privileges were specially reserved to him and to his successors. Then we pass on to the Diocese of Quebec, created in 1793, succeeding in direct line to the Diocese of Nova Scotia, and succeeding to all the powers of the Bishop of Nova Scotia, and then to the patents of the Bishops of Quebec, Toronto and Montreal. With respect to the patents of the three bishops last named, it is enough to say that their patents have been repeatedly referred to and recognized in Provincial Acts of Parliament, and have to all intents and purposes been amply confirmed by actual and positive Provincial legislation. The next step in the progress of the Church in Canada was the passing of the act in 1857 which authorized the bishops, clergy and laity in this Province to assemble in Synod. The Diocesan Synods were immediately organized, and very soon after the Bishop of Huron was elected under the provisions of that act. The act being a new one, and all of us in this country and in England being accustomed to the issue of patents, the Bishop of Huron went to England, and there received the confirmation of his appointment by Royal letters patent, and was consecrated in the usual form. Not many years after, a separate diocese was created—that of Ontario; and the Bishop of Ontario having been elected by the Synod of the Diocese of Toronto, out of which the new diocese was formed, doubts had begun to be entertained in England, and instead of a patent being issued, a simple mandate from the Queen was sent out to the Metropolitan Bishop of Canada, directing him to proceed to the consecration of the Bishop of Ontario. In this there was a complete deviation from the old practice. Not only was the Bishop of Ontario consecrated in this country by our own Metropolitan, and on a simple mandate from the Queen, but the oath he took on that occasion was obedience to the Metropolitan of Canada and not to the Archbishop of Canterbury. In the same way, when the vacancy occurred in Quebec, his Lordship now presiding was consecrated Bishop under simple mandate for the Crown, taking the same canonical oath that the Bishop of Ontario had previously taken. Recently, another election, that of Coadjutor Bishop of Toronto, had taken place in this country. The appointment was forwarded to Her Majesty for confirmation. The document reached England while the Metropolitan was there, and attention having again been drawn to the subject, Lord Carnarvon said, that having consulted the law officers of the Crown, her Majesty was advised that her jurisdiction in these matters in Canada had entirely ceased, and that the Metropolitan of Canada might proceed to the consecration of the Bishop of Niagara without further authority. Accordingly, the Metropolitan had issued an order to the Bishop of Toronto to proceed without delay (and with the assistance of two or more bishops) to the consecration of the Bishop of Niagara. It will thus be seen, from the brief narrative I have given of the progress and present state of the Church in Canada, that the Canadian branch of the Church of England is now completely and forever emancipated from all State jurisdiction or control whatsoever; and is left free and unfettered in the management of its own affairs, including the appointment and deprivation from office of even its highest dignitaries. In its present condition, therefore, the Church in Canada has been made to resemble what the Church at large was in the very earliest ages of Christianity—a church, in all respects, acting by its own inherent power,

and in no way dependent on any extraneous or foreign authority. Such a position was indeed a proud one for Canada to occupy, for it undoubtedly placed her foremost in rank and independence of all the branches of our Anglican communion, next after that of our great sister branch in the United States of America. That the Church in Canada is destined, ere long, to play a very prominent part in the great efforts now being made to secure increased unity and uniformity throughout the whole Christian Church, I entertain a very strong conviction, and I am confirmed in this view by the effect already produced in England by the presentation of the address of our Provincial Synod to the Convocations of Canterbury and York, in which address occurs this remarkable suggestion: "Let all the members of our Anglican Communion throughout the world have a share in the deliberations for her welfare, and be permitted to have a representation in one general council of her members gathered from every land." Cheering as the prospects of our own particular branch of the Church undoubtedly are, I am free to admit that the disjointed condition of the other Colonial branches does not present so fair a picture, nor indicate so bright a hope of ultimate success. But when we reflect on the terrible struggles of the American branch of the Church of England during the progress of that gigantic revolution which wrested from Great Britain her old thirteen colonies, and for a considerable time after its consummation,—when we bear in mind that until the year 1784, when Bishop Seabury was consecrated to be their first Bishop, they were wholly without a pastoral head, and were indeed well nigh prostrate and overwhelmed,—and when, from such comparatively recent beginnings, we see a Church of the dimensions and influence of that which is now so firmly established in the United States, we cannot but confidently hope that God, in His all wise Providence, will speedily deliver our Colonial brethren from their present sad and deplorable condition. And, for my own part, I cannot but think that the Church will ere long prove itself entitled to that character of stability so eloquently expressed by the immortal Burke:

"Her fortifications, her walls and her bastions are constructed of other materials than of stubble and of straw. They are built of the strong and staple matter—of the Gospel of liberty. She has securities not shaken in any single battlement, in any single pinnacle."

But, it has been said, that as we are now separated from the controlling power of the Church in England, we have ceased to belong to that Church. This proposition I entirely dissent from. All that has been done is to separate us from the jurisdiction or control of the Crown as the supreme head of the Church of England. Suppose, then, that for any cause a like separation should occur in England itself, would any one seriously contend that the Church was less the Church of England than it was before? Undoubtedly not. Why, then, should only a branch of the same church, with Bishops having regular succession from the Bishops of the Church in England, using the same Liturgy, acknowledging the same ordinances, professing the same faith and doctrine, and maintaining the same discipline, be less an integral portion of the Church of England? For myself, I cannot see in what the distinction claimed for can consist, and I therefore maintain—and I trust shall always have reason to maintain—that we are verily and indeed an integral portion of the dear old Church of England. In bringing these remarks to a close, I cannot better do so than in the eloquent language of one of the ablest of the American Church historians, when alluding to the separation that took place at the time of the revolution:

"No violent disruption of the sacred bond took place. The daughter glided from the mother's side because in the allotment of Providence she had been led to maturity and independence, but the spiritual reunion, the union of faith, of worship, and of discipline was undestroyed; and God grant that it may prove indestructible." [Hear, hear, and cheers.]

—Mr. Justice CARON, one of the Codification Commissioners, having resumed his seat as a judge of the Court of Queen's Bench, Mr. Justice MONDELET has returned to the Bench of the Superior Court at Montreal.

THE U. S. JUDICIARY.

(*Continued from page* 24.)

This judiciary, therefore, on which we have relied, is not, in its best state, beyond danger. It is capable of great misuse, even under the cloak of subordination and submission to principle. Honestly and conscientiously administered, it is conservative in its influence, an asylum for the oppressed citizen, a refuge to which the injured and alarmed may fly with confidence. It may be laughed at for its old-fashioned adherence to the books, for its ties to feudal absurdities, for its weakness for precedents, for its want of a progressive and venturous spirit; but it has the confidence of every citizen. Angry passions submit to its judgments, and fear and despair never enter within its doors. In all the jangling and discord of weak and ill-contrived machinery of government, this is the balance-wheel which adjusts and harmonizes what, but for it, would be wholly unmanageable.

Put this power into unprincipled hands, and what shall we have? The balance-wheel will become a contrivance for accelerating the ruin of the system. At first under a cloak of submission to legal theory, then without any cloak at all, private revenge, personal outrage, corrupt contrivances, will have full sway. The bench will be the tool of a party; but even this, bad as it can be, will not be the worst. Party ties are strong, but the lure of gain is stronger. To the unprincipled politician no sympathy or affinity avails against the hunger for corrupt acquisition. Those who fight and wrangle at the polls with a fierceness which seems as if it never could admit of reconciliation, are natural conspirators to cheat and defraud. Legislative rings are most formidable when they are combinations of both parties. The unscrupulous judge will become the bully of dangerous organizations, the tool in power, ever ready and reckless with process to suit the emergency. The warrant and attachment will become as formidable to our liberties as they could be in the hands of the veriest tyrant; and property and morality will have to fly, or come in with violence, and right the state by revolution.

Though, while one state has been following another in making the judiciary elective, the change has been the cause of a most serious anxiety to impartial and reflective minds; though it is a system necessarily fraught with danger, and sooner or later the results just pictured must, perhaps, happen, it is a very interesting subject for reflection by what causes these results have been so fortunately postponed. Certain it is that the downward tendency of this department has by no means kept pace with that of the others. While legislatures have become, as a rule, corrupt, the bench has been measurably decent and respectable. The stream of justice has run with comparative purity. Reports of new cases may, perhaps, not be of such ripe authority as those of the old; political questions may have disturbed judicial harmony; patronage may have demoralized official tone and influence, and what the English attorneys style "hugging the judges" may not have been sufficiently discouraged; nepotism may have passed the limits of good taste and judgment; prejudices, tempers, weaknesses, or eccentricities may have been permitted to appear so decidedly that the lawyer has been tempted to adroitness in picking his judge for his case; but in the main we have been fortunate. The evils of the elective system have certainly never yet equalled our fears.

What are the causes of this peculiar safety of the judiciary? Does the elevation of the lawyer to this high and prominent position lift him above human infirmities and temptations? Does he acquire a nature different from that which he had in the busy walks of his profession? Certainly not. He has, perhaps, obtained the place by that personal exertion which is now the rule with all candidates for office. He may have had his gloves off, and his feet in the mire, and been down with the lowest of the low, where election frauds are plotted, and the roughs are hired to carry them through. He is affected by all the afterbirths of such work. He feels the bondage of a debt to the vile, and dreads the worse than curses which reward the ungrateful politician. He knows the power of the dangerous classes who come before him,—the fierceness of their unscrupulous antagonism,—how long their vengeance waits,—how every session of his

court may be pregnant with effect upon that day when he is to ask for a re-election. If he has strength to resist, it is not from want of perception, it is not from force of character, it is not from indifference to results.

From whatever cause it may arise there is a popular reverence for the bench, which pervades all classes, and will survive much political degradation. The practice of the law is an "art and mystery," and those who are engaged in it get the benefit of a respect for the machinery they use, if not for themselves. An absurd result of this very respect is the taunt so often flung in our faces that the lawyer is in league with the devil. It is the layman's bitter admission of his own ignorance and inferiority. With that communion with the wisdom of ages which these well-known books afford; with that power to put in motion process which cannot be resisted; with the unknown significance of those motions granted or denied, on which such important results seem to turn; with that singular cordiality between the brethren at the bar, who in the next moment are battling *à l'outrance*; with that immediate deference to decision which in other places would lead to suspicion of indifference or treachery; with a thousand things that he sees and hears, the client has none of the ordinary relations of intelligence. A lawsuit is a game in which he is deeply interested, but which he does not understand. No wonder that he has a respect, much of which is fear, for such a system; and at the head of that system is the judge, lifted above all others, protecting the dignity of his calling, moderating excitements, strong behind his power of punishment, with the last word in every matter, and that word final for the time.

The reverence of years thus acquired is not so easily overthrown. It is endangered by our habits and manners; its gloss has been tarnished by our elective system; by that familiarity between candidate and constituent, which only the politician understands; by the very asking for office, and using the common means of getting it; but it still exists in the mind of the citizen. A singularly strong proof of this is presented by the fact, that, in the midst of the most violent contests, when all around him party lines are drawn with the utmost strictness, and proscription is inflexible, an honest judge is often re-elected by acclamation. It is the living up to this appreciation of the community that tends to support the judge, and give him power to resist evil influences. In the mere calculation of majorities, if he chooses to descend to that,—the balancing of political hazards in view of the time when he is next to come before the people, he cannot be ignorant that, though in candidates for other offices, vice and even crime are often recommendations, to him the greatest danger of all is to throw himself out of the region of decency.

But he has other aids in his struggles against temptation, or rather his office has other protections against disgrace. The training of the bar is a strong conservative influence. It is less so than it was under the more thorough and laborious course which was prescribed in that country from which we took our common law; but even here, superficial as it is, it has strong power to shape and mould the character. From the time when he first opened the pages of Blackstone, at the commencement of his clerkship, to the time when this step of his ambition is reached, his mind has been filled with dreams of rivalling men who rose by honorable exertion; heroes of the bar of incorruptible lives; men lifted mainly by their own brethren; men who passed through all professional ordeals, first in integrity as well as power, and who came to the bench ripe in everything that could win esteem. Maxims of high tone, legends of professional pride and dignity, stories of battles for professional right, and manly struggles for professional pre-eminence, hours with associates of the same dreams and the same aims, a legal atmosphere, legal instincts, these work together in the lawyer's training. If what is received falls upon proper ground, if it grows with wholesome growth, it is easy to see how it may lift the learner to a new standard, and imbue him with principles from which he cannot break away. The well-trained lawyer receives a moral momentum in a course from which he cannot be turned without violence to a thousand ties and associations.

To one who has been rewarded by its best

honors, lifted to its highest place, the scorn of the bar must be intolerable. Its members were once more united than they are now. By want of association they have lost power and influence. But as it is, no one who has ever been of it can stand up against its contempt. The desire to retain its esteem is no mean support to the judge. The most of its members are brave and manly, far above mean sycophancy to the dispenser of patronage, and though patient and forbearing, slow to action and willing to forgive, they are ready and able, when the crisis comes, to speak with an emphasis which cannot be treated lightly. If an erring judge is capable of disregarding such a rebuke; if neither the training to which he has submitted, the pride of his science, or the respect of his brethren, can influence him for good, he is vile indeed; a fitting tool for the enemies of all law and decency.

To secure the safety of the judiciary, therefore, the candidate for the bench must be imbued with the learning of the bar, with its spirit of fraternity and subordination, with its legends and instincts, its confidence in its own organization, the desire which each member has for the respect of all the rest; and such a candidate is to be found only among those who lead in learning and integrity.

Heretofore the judges have, by a sort of common consent, been chosen from among practising lawyers. It might have been otherwise, however. Even in those localities in which it is required that candidates for the bench shall be taken from the bar, it would be easy for designing politicians to evade the rule. Our communities are full of men who have been admitted to practice, but who have been driven from it, or drawn away by other pursuits, and have lost all professional tone and all professional acquirement. From among these, candidates might be sought by those who desire a corrupt and subservient judiciary, and we should lose all those grounds of reliance which have just been enumerated.

But from a singular deference to the common sense of the community it has been generally conceded, if not by expression, by action, that this office is to be treated differently from others. In the midst of the most exciting political struggles, in which, for all other purposes, the lowest agencies have been at work, the bench has been rescued from contamination by being left in the hands, mainly, of the bar. The politician has drawn off, in a measure, from this field, and surrendered it to the profession most directly concerned and interested; and it is to the credit of that profession that in exercising this duty, it has been lifted in the main, far above the considerations that involve themselves with all other portions of the political struggle.

However we may turn, then, with disgust from other fields of political contest, let us not surrender our rights here. Our interest and our duty unite to require vigilance in these elections. With the bench as degraded as the legislature, what are the privileges and honors of the bar worth? When the day shall come in which the client in selecting his lawyer shall do so because he is the son of a judge, or helped a judge into office, or is his friend, favorite, or tool; when learning shall be as nothing before unscrupulous influence; when the highest skill shall be shown in picking the judge for the case, and moulding him by adroit manipulation; when learning shall go down before trick and cunning, and honor and integrity shall be at a discount; when the judge shall drink with the politician, and spend his nights with the gambler and debauchee; when libraries shall become useless, and our three years' training a waste of time; when roughs shall take out licenses to practise, and jostle and threaten us with impunity in the very halls of justice, who that has any pride or decency will practise himself or rear his child to the bar? All these things may be near if we shrink from the struggle, or forget, among the cares and emoluments of practice, the dangers to which we are exposed.

But there is another motive which should operate with each one of us. For ages this profession of ours has been sacredly guarded and preserved. Through all perils it has been borne along bravely, firmly, successfully. High maxims have sustained its character and its privileges. Instances of dishonor have been so few as to serve only as a wholesome contrast. Shall we neglect the trust commit-

ted to us? Shall we, from fear or despair, falter in a duty so manifest? Shall we hand the profession down to our children disgraced and degraded?

To avoid such a result we should be more united. Some stronger bond should bind us to one another for purposes of influence and protection. An association of lawyers, properly organized, would be a power in the community of no mean importance, and always a power for good. No apostle of reform, no lover of his profession, no one who is anxious for his country's honor and permanence, can have a better mission than this, to unite the bar, and give it its deserved weight in the community.

DIGEST OF LAW COMMISSION.

FIRST REPORT OF THE COMMISSIONERS.

To the Queen's most Excellent Majesty.

We, your Majesty's Commissioners appointed "to enquire into the expediency of a Digest of the law, and the best means of accomplishing that object, and of otherwise exhibiting in a compendious and accessible form the law as embodied in Judicial Decisions," humbly submit to your Majesty this our first report.

I.—By the term Law, as used in your Majesty's Commission, we understand the Law of England, comprising the whole Civil Law, in whatever Courts administered, the Criminal Law, the Law relating to the Constitution, Jurisdiction, and Procedure of Courts (including the Law of Evidence), and Constitutional Law.

In each of these divisions are comprised Laws derived from three distinct sources:

1. The first source is the Common Law, which consists of customs and principles, handed down from remote times, and accepted from age to age, as furnishing rules of legal right.

2. The second source is the Statute Law, which derives its authority from the Legislature.

3. The third source is the Law embodied in, and to a great extent created by Judicial Decisions and Dicta. These, indeed, as far as they have relation to the Common Law and Statute Law, are not so much a source of law, as authoritative expositions of it; but, with respect to doctrines of Equity and rules of procedure and evidence, they may often be regarded as an original source of Law.

That serious evils arise from the extent and variety of the materials, from which the existing law has to be ascertained, must be obvious from the following considerations:—

The records of the Common Law are in general destitute of method, and exhibit the Law only in a fragmentary form.

The Statute Law is of great bulk. In the quarto edition in ordinary use, known as Ruffhead's, with its continuations, there are forty-five volumes, although (particularly in the earlier period) a large quantity of matter is wholly omitted, or given in an abbreviated form, as having ceased to be in force. The contents of these volumes form one mass, without any systematic arrangement, the Acts being placed in merely chronological order, according to the date of enactment, in many cases the same Act containing provisions on heterogeneous subjects. A very large portion of what now stands printed at length has been repealed, or has expired, or otherwise ceased to be in force. There is no thorough severance of effective from non-effective enactments, nor does there exist in a complete form any authoritative index, or other guide, by the aid of which they may be distinguished. Much, too, contributes to swell the Statute Book, which is of a special or local character, and cannot be regarded as belonging to the general Law of England.

The Judicial Decisions and Dicta are dispersed through upwards of 1300 volumes, comprising, as we estimate, nearly 100,000 cases, exclusive of about 150 volumes of Irish Reports, which deal to a great extent with Law common to England and Ireland. A large proportion of these cases are of no real value as sources or expositions of Law at the present day. Many of them are obsolete; many have been made useless by subsequent statutes, by amendment of the Law, repeal of the statutes on which the cases were decided, or otherwise; some have been reversed on appeal or overruled in principle; some are

inconsistent with or contradictory to others; many are limited to particular facts, or special states of circumstances furnishing no general rule; and many do no more than put a meaning on mere singularities of expression in instruments (as wills, agreements, or local Acts of Parliament), or exhibit the application in particular instances of established rules of construction. A considerable number of the cases are reported many times over in different publications, and there often exist (especially in earlier times) partial reports of the same case at different stages, involving much repetition. But all this matter remains incumbering the Books of Reports. The cases are not arranged on any system: and their number receives large yearly accessions, also necessarily destitute of order; so that the volumes constitute (to use the language of one of your Majesty's Commissioners) "what can hardly be described, but may be denominated a great chaos of judicial legislation."*

At present the practitioner, in order to form an opinion on any point of Law not of ordinary occurrence, is usually obliged to search out what rules of the Common Law, what Statutes, and what Judicial Decisions bear upon the subject, and to endeavor to ascertain their combined effect. If, as frequently happens, the cases are numerous, this process is long and difficult; yet it must be performed by each practitioner, for himself, when the question arises; and in some cases, after an interval of time, it may have even to be repeated by the same person. Without treatises, which collect and comment on the Law relating to particular subjects, it is difficult to conceive how the work of the Legal profession and the administration of Justice, which greatly depends on it, could be carried on; but, however excellent such separate treatises may be, they do not give the aid and guidance that would be afforded by a complete exposition of the Law in a uniform shape.

A digest, correctly framed, and revised from time to time, would go far to remedy the evils we have pointed out. It would bring the mass of the Law within a moderate compass, and it would give order and method to the constituent parts.

For a Digest (in the sense in which we understand the term to be used in your Majesty's Commission, and in which we use it in this Report) would be a condensed summary of the Law as it exists, arranged in systematic order, under appropriate titles and subdivisions, and divided into distinct articles or propositions, which would be supported by references to the sources of Law whence they were severally derived, and might be illustrated by citations of the principal instances in which the rules stated had been discussed or applied.

Such a Digest would, in our judgment, be highly beneficial.

It would be of especial value in the making, the administration, and the study of the Law.

When a necessity arises for legislation on any subject, one of the principal difficulties, which those who are responsible for the framing of the measure have to encounter, is to ascertain what is the existing law in all its bearings. The systematic exposition, in the Digest, of the Law on the subject, would enable the members of the Legislature generally, and not merely those who belong to the Legal profession, to understand better the effect o the legislation proposed. And there would be this further benefit—that new laws, when made, would, on periodical revisions of the Digest, find their proper places in the system, and would not have to be sought for, as at present in scattered enactments.

The Digest would be of great use to every person engaged in the administration of the Law. All those whose duties require them to decide legal questions in circumstances in which they have not access to large libraries or other ample sources of information, would find in the Digest a ready and certain guide. Counsel advising would be spared much pains in searching for the Law in indexes, reports, and text books; and Judges would be greatly assisted as well in hearing cases as in preparing judgment.

The Digest would be most advantageous in

* Speech of the Lord Chancellor (Lord Westbury) on the Revision of the Law. House of Lords, 12th June, 1863. Stevens and Norton. Page 8.

the study of the Law; for it would put forth legal principles in a form in which they would be readily appreciated, contrasted, and committed to mind, and thus substitute the study of a system for the desultory contemplation of special subjects.

It is not unreasonable to expect that this condensation and methodical arrangement of legal principles would have a salutary effect upon the Law itself. It would give the ready means of considering, in connection with one another, branches of the Law which involve similar principles, though their subject matters may widely differ. It would thus bring to light analogies and differences, and by inducing a more constant reference to general principles, in place of isolated decisions, have a tendency to beget the highest attributes of any legal system—simplicity and uniformity.

The persons charged with the framing of the Digest might be also intrusted with the duty of pointing out, from time to time, the conflicts, anomalies, and doubts, which in the course of their labors would appear. Thus the process of constructing the Digest would be conducive to valuable amendments of the Law. These amendments would be embodied in the Digest in their proper places.

Moreover, such a Digest will be the best preparation for a Code, if at any future time codification of the Law should be resolved on.

But great as are the advantages to which we have referred as likely to flow from the formation of a Digest of Law, the argument for it may, we think, be rested even on the higher ground of national duty. Your Majesty's subjects, in their relation towards each other, are expected to conform to the laws of the State, and are not held excused on the plea of ignorance of the Law, from the consequences of any wrongful act. It is in these laws that they must seek the provisions made for their liberty, for their privileges, for the protection of their persons and property, for their social well-being. It is, as we conceive, a duty of the State to take care that these laws shall, so far as is practicable, be exhibited in a form plain, compendious, and accessible, and calculated to bring home actual knowledge of the Law to the greatest possible number of persons. The performance of this duty—a duty which other countries in ancient and modern times have held themselves bound to recognise and discharge—has, in this country, yet to be attempted.

On these grounds we report to your Majesty our opinion that a Digest of Law is expedient.

II.—Having arrived at this conclusion, we proceed to the consideration of the further inquiry which your Majesty has been pleased to intrust to us—namely, the best means of accomplishing a Digest of the Law.

It may be proper here to advert to what has recently been done in the State of New York. The laws of that State (as in other States also of the Union) rest generally, for their basis, on those of this country as they existed when the States declared their independence. Cases decided in our Courts before that time are still regularly cited before American tribunals, as they are in Westminster Hall; and, indeed, the Reports of our Courts, up to the present day, are largely cited and relied on in argument in American Courts. The work which has been lately accomplished by the Commissioners for framing Codes for the State of New York is, in form, a series of Codes, laying down prospectively what the Law is to be, two of which Codes have already received the sanction of the Legislature. But, as a preparatory step to the formation of these Codes, a complete collection—or what, after great examination, the Commissioners believed to be a complete collection—under appropriate heads, of the Law on each subject, was formed by gentlemen employed for the purpose under the Commissioners.*

We do not desire to conceal that the task of forming such a Digest as we contemplate would necessarily require a considerable expenditure of time and money, though we are strongly of opinion that the benefits that would result from it would amply compensate for any such expenditure.

We think it clear that a work of this nature

* Mr. David Dudley Field, to whose exertions the State of New York is mainly indebted for this important work, was so good as to attend one of our meetings, and to give us full information respecting the course which had been pursued.

(regard being had especially to the importance of its carrying with it the greatest weight) could not be accomplished by private enterprise, and that it must be executed by public authority and at the national expense.

With respect to the means of accomplishing it, we have considered various plans. Any plan must, we think, involve the appointment of a Commissioner or Body for executing or superintending the execution of the work. It is obvious that, whatever arrangement is adopted, a certain number of functionaries must be employed, at a high remuneration, in the capacity of commissioners, assistant commissioners, or secretaries, and that there must be a considerable expenditure on the services of members of the Legal profession, employed from time to time in the preparation of the materials to be ultimately moulded into form by or under the immediate supervision of the Commission or responsible Body.

We are anxious to avoid any recommendation that would involve the necessity of immediate outlay on a large scale; and we therefore recommend that a portion of the Digest, sufficient in extent to be a fair specimen of the whole, should be in the first instance prepared, before your Majesty's Government is committed to an expenditure which will be considerable, and which, when once begun, must continue for several years, if it is to be at all efficacious.

We are not authorized, by the terms of your Majesty's commission, to undertake the execution or direction of such a work, but we are of opinion that it might be conveniently executed under our superintendence.

If this should be your Majesty's pleasure, we humbly submit that the necessary power should be conferred on us to enable us to carry this recommendation into effect, and that means should be furnished to us of employing adequate professional assistance for this purpose.

In the progress of the work thus done, light will be thrown on the question of the best organization of the Body to be constituted for the completion of the Digest. A fair estimate will be formed of the time that will be required for the whole. Difficulties, not now foreseen in detail, will doubtless be encountered, and the best way to overcome them will be ascertained. The solution of questions which have already occurred to us will be attained, or at any rate promoted. Some of these questions are the following: What is the best mode of dealing with Statute Law in the Digest? How should conflicting rules of Law (if any), and doubts that have been authoritatively raised respecting particular cases or doctrines of Law, be treated? And what provision should be made on the important point of the nature and extent of the authority which the Digest should have in the Courts, and how that authority can best be conferred on it?

We propose, in this our First Report, to limit ourselves to the conclusions and recommendations we have now stated. The consideration of other questions arising from the terms of your Majesty's Commission, and a fuller treatment of some of the subjects here adverted to, we reserve for subsequent Reports.

All which is humbly submitted to your Majesty's gracious consideration.

Dated this 13th day of May, 1867.

CRANWORTH.
WESTBURY.
CAIRNS.
JAMES PLAISTED WILDE.
ROBERT LOWE.
W. P. WOOD.
GEORGE BOWYER.
ROUNDELL PALMER.
JOHN GEORGE SHAW LEFEVRE.
T. ERSKINE MAY.
W. T. S. DANIEL.
HENRY THRING.
FRANCIS S. REILLY.

—*Weekly Notes.*

—The recovery by Mr. Rufus Lord of $1,400,000 of bonds stolen in 1865 was effected through a New York banking-house, which received them from Baring Brothers, of London, who had them from a London lawyer, a sort of Mr. Jaggers, who forced the guilty one, who was his client, to give them up.