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AN ELECTIVE JUDICIARY.

An unstained and competent judiciary is a blessing which no country can be without and prosper; and though we hope that we may never be without this blessing, it may not be amiss to cast a glance at the progress of the decline of the judicial status in another country, which, from its near proximity, and the intimate relations we must have with it, may exert some slight influence, and the less the better in legal matters, upon our affairs. It would certainly be bad enough if the Ministry of the day, whatever it might be, sacrificing the good of the country and the honor of the profession to the mere exigency of party politics, were to lose sight of the responsibility thrown upon them by their position, to select competent men as judges (which has occasionally been done and doubtless will be again), but a thousand times worse would be the curse of a judiciary elected by popular vote.

A writer in the *American Law Review* brings prominently and boldly before the public a state of things, which must be bad indeed, before an American would so speak of it. In speaking of the Erie Railroad "Row," which he remarks is the only fitting term for the scenes that occurred in the New York Courts, arising out of the operations of those contending for the control of that road, he says, "such an extraordinary perversion of the process of law; such an utter absence of respect for the bench; such contempt for the forms and courts of justice as was there exhibited, ought not to pass unnoticed." The writer speaks of this "extraordinary legal episode" as possibly indicative of the morals of the place and the times, but more particularly seems to ascribe the scenes "which disgraced the New York Courts in the spring of 1868" to the gradual, but inevitable, result of an elective judiciary. The writer of the article, whom we can well believe to be one who deeply feels the disgrace attaching to his profession by the conduct of those who ought to sustain its honor, after an able *exposè* of the case, thus concludes his indignant remarks—

"A little additional infamy, a little additional evidence of public contempt, is a small matter now to the judiciary of New York City. Other communities, where the judiciary have been more fortunate, may draw a useful lesson from their fate. The judiciary, like the executive and legislative branches of a government, can only in the long-run reflect, more or less nearly, the average moral and intellectual condition existing somewhere in a community. A community inherently corrupt will not in any event long preserve a pure judiciary. That branch of the public service however, more than either the legislative or the executive, can be made to represent the better, more intelligent, and more virtuous elements of the community: it can, by a proper machinery of selection, be kept on the highest possible level of intellectual and moral development. It can also, by other machinery, be reduced to the lowest level. The experience of this and other countries has thrown much light on this subject. Chancellor Kent once filled the chair now occupied by Mr. Justice Barnard. Since the days of the great chancellor, the ermine worn by him has been flung into the kennel, to be snatched at and trampled on by the rabble of the caucus and the bar-room. Behold the result! The machinery now in use in New York is wholly calculated to draw the material out of which to manufacture its judiciary from the worst instead of the best materials the community affords: it is calculated to degrade, not to elevate. That responsibility for appointment which should rest upon one man, is divided and lost among the many. Even if it were not, and even though a party caucus of professional politicians were as competent to select a judge as a responsible executive, yet who could aspire to great judicial eminence as the result of a popular election to a term of eight years on the New York bench? The system provides an inferior material, and then deprives it of its greatest incentive to improvement. Finally, who that respects himself, as a great judge should, and as all great judges ever have, could periodically tread the miry ways of city politics, to elevate himself to a bench which has become a recognized part of the spoils of political victory? The system has everywhere produced its fruits, as bitter as they are legitimate. A judiciary appointed by the executive, and holding its office during good behaviour, has given us such names as Marshall and Story and Kent and Gibson and Shaw and all that long, proud, legal record which those names recall of

the earlier and better days of American law: the judiciary elected by popular vote and for limited terms has ennobled our history with no names which posterity will not willingly let die, and has disgraced us with such proceedings as these just recorded."

Nor are the evils of the system only discernible in the New York Courts. Wherever it prevails the result is the same. In the State of Pennsylvania a different phase lately presented itself. A judge was bespattered with abuse by the leading papers opposed to his supposed political views, for the simple and only reason that he was supposed to be the candidate to some official position, which in fact he was not, without his detractors even taking the trouble apparently to ascertain if their supposition were correct.

We have not an elective judiciary, and may be glad of the fact—let it be the aim of those in authority to do *their* duty in appointing those who will, both personally and professionally, command the respect their position is entitled to, and then in the Courts of inferior as well as superior jurisdiction, there will be no fear that that respect will be wanting, or that the legacy happily left to us of an unstained and competent judiciary will be wanting.

CHAMBER APPLICATIONS IN THE COURT OF CHANCERY.

Among the bills introduced during the present session of the Legislature we notice one by Mr. Blake "to provide for the more satisfactory disposal of Chambers Applications in the Court of Chancery." It consists of four clauses and proposes to enact shortly that hereafter "the Judges Secretary shall have power to hear and dispose of all *ex parte* Chambers applications and of all other Chambers applications on which only one party appears, or which the parties consent to take before him;" that "every order made by the Judge's Secretary under the preceding clause shall have the same force and shall be subject to the like appeal as if made by a Judge in Chambers;" and that "the Judges of the Court or any two of them of whom the Chancellor shall be one, may make such orders as they shall deem expedient to effectuate the provisions of this Act, and may from time to time vary, add to, or repeal such orders."

The benefit of this enactment, or of one giving even more extended powers to the Judges' Secretary is unquestionable. At present the Secretary's power as a Chamber Judge is limited to hearing any applications which the parties may choose to bring before him, and then submitting the same with his opinion thereon to a Judge for his order; the order made being subject to be set aside or varied on an appeal in the first instance to a single Judge. The disadvantages of this mode of procedure consist in the almost inevitable delay caused by the Secretary conferring with a Judge upon the subject matter of the motion before an order can be made, and even if a Judge is at hand, which is not always the case, it is very unlikely that he can at once give his attention to business probably of less importance than that which he may then be engaged in. But it frequently happens that all the Judges are absent from town at the same time, and although such periods of absence are of limited duration, yet during that time Chamber business, so far as the disposal of any motion of other than minor importance is concerned, is practically at a stand still, and the advantage of having an officer such as the Judge's Secretary is to a certain extent neutralised.

In the next place, an appeal from an order made on a hearing before the Secretary must be made to a single Judge. It has been the usual practice—and undoubtedly the right practice—to bring on the appeal to be heard before the Judge with whom the Secretary conferred, otherwise we should have one Judge reviewing the decision of another. But if the Judge with whom the Secretary has to confer be absent, the appeal must lie vero until his return. Let us suppose however that the appeal has been heard and decided; the unsuccessful party if dissatisfied has still a right to rehear the order before three Judges and thus in the end he arrives, by a more circuitous and expensive route, at the same point which he would have gained more easily if the motion had been heard in the first instance by one of the Judges, or by some one possessing like powers. Mr. Blake's Act proposes to remedy these defects in the present system by conferring the Secretary the same power with respect to the applications specified as a Judge would have. We are not aware whether any alterations have been made in the bill as introduced, but it would have been advisable to have made some provision to prevent parties from taking advantage of the privilege given to

have applications disposed of by a Judge for the mere purpose of delay.

As regards the present incumbent of the former office the profession generally will we think be glad to leave with him the decision of their Chambers applications, and certainly none will regret a measure by which our already hard worked Chancery Judges would be relieved of a duty which must often encroach on their valuable time. The Act does not however deprive a party of his right to have his application heard before a Judge in the first instance if he so desires, while it shortens his road to an appeal to the three Judges in case he has brought on his motion before the Secretary and is dissatisfied with his decision.

The Act might perhaps go further and enact how the orders made by the Secretary should run (*i. e.* by inserting the name of a Judge or the Secretary in the margin,) and provide more explicitly for the manner of bringing on a motion before a Judge when a party desires that course; but no doubt the Judges can make provision for these and other matters of detail under the powers to make orders conferred by the third clause.

Altogether the Act is a good one, and we are pleased to see it introduced.

EXTRADITION.

We publish in another place the report of the decision, *The Queen* v. *Frank Reno and Charles Anderson.* This case, important in itself, has been impressed with additional interest and significance owing to the frightful end that has befallen these men, in common with the two brothers of Frank Reno. We read in the public papers these four men were murdered, for such is the only word that describes the act, in the gaol in which they were confined, in the State of Indiana, by a number of men calling themselves members of a "Vigilance Committee."

There is no reason to suppose, that we are aware of, that the authorities were in collusion with the men who committed this lawless act, except so far as they took no sufficient measures to protect their prisoners, though well aware of the existence of this "Vigilance Committee." The very thing that calls into existence bands of men who think it necessary to take the administration of criminal law into their own hands, is the incompetence or unwillingness of the authorities to carry out the laws they are appointed to maintain and administer.

It is no business of ours whether a neighbouring power permits, or, which is much the same thing, allows its citizens to hang suspected criminals before trial or after, except so far as it concerns our relations with that nation. The present case, unfortunately, concerns us in various ways, and not the least in this, that it will in a great measure cause a re-action in the feeling in favour of greater free trade in criminals, so to speak, between ourselves and the United States, which has been growing of late years. And it does concern us that persons extradited should receive a fair trial for the offence alleged upon this side of the line, otherwise there is no knowing to what improper and scandalous ends this treaty, so necessary for the well-being of both countries, might be prostituted, and how far the citizens of our country might be sacrificed to the occasional and unfortunately frequent lawlessness of our neighbours.

The act of the would-be conservers of the peace for the State of Indiana will of course be repudiated by the American government, and there we presume the matter will end. But the bloody stain upon the faith of that government will be no reason why we should not for the future do as we hitherto have done—obey the law of extradition as we find it. If a similar case were to arise to-morrow, with similar results to follow, our judges would be bound to and would without hesitation, though it might be with great reluctance, act without reference to the consequences; and the Governor General might possibly feel bound, in the exercise of his duty in carrying out the treaty, order the prisoners to be handed over to the United States authorities, to be dealt with according to the law of the land, or Judge Lynch, as circumstances, or the popularity or unpopularity of the crime or criminal might dictate. With reference to this part of the subject, we beg to call attention, to the words of the Chief Justice in the close of his judgment. These frightful excesses are also to be deplored, as they tend to beget a feeling of mistrust in the good faith of our neighbours, most destructive of good feeling, and likely to lead to the unfortunate result of limiting, instead of extending, the law affecting the interchange of criminals, as at present existing.

PRESENTATION TO JUDGE GOWAN.

It is with feelings of no ordinary pleasure that we record a very interesting ceremony that took place in Barrie, the County Town of Simcoe, immediately after the opening of the Courts on Tuesday, the 10th instant. We allude to the presentation to His Honor Judge Gowan of an address, by the united Bar and practitioners of the County, as a mark of their respect and esteem for his many eminent and kindly qualities. The address was beautifully engrossed on vellum, and was accompanied by a life-sized portrait in oil of the learned Judge. The words of the address speak for themselves:—

"*To His Honour* James Robert Gowan, *Judge of the County Court of the County of Simcoe.*

"Your Honour—The members of the Legal Profession in the County of Simcoe beg leave to congratulate you on the completion of your quarter of a century on the Bench, and render thanks to the Almighty disposer of events that you are still spared in the full strength and vigor of body and mind to continue, we earnestly hope for many years, to fill the office you have so long adorned.

"We feel that to your wise counsels and example are mainly due the existence of a Bar in this County, which will compare favourably with any in the Dominion, and that this result has been obtained without, in the smallest degree, fostering it at the expense of the public interests.

"As the head of the Legal Profession in the County, we have been gratified at hearing your name mentioned far and wide as occupying the foremost rank among County Judges, feeling that to earn such a position was alike honorable to yourself and creditable to the County and its Bar.

"We believe that to your firm and dignified administration of the Laws is mainly to be attributed the comparative freedom from crime, which we rejoice to know, distinguishes the County of Simcoe, and the respect for law and order which prevades all classes of our community.

"The profession have long felt that some public recognition of your extended and valuable services on the Bench, and your kindly spirit towards themselves, was due to you; and we now beg your acceptance, at our hands, of this life-sized painting of yourself, in your official chair and robes, as a mark of the respect and esteem in which you are held by us; and while making it, as we do, your own private property, we ask the favor that it may for a time be permitted to hang in the Court Room, so that all may have an opportunity of seeing it, and learning that the profession have paid tribute to your worth.

"Dated at Chambers, 8th December, A. D. 1868."

With the sentiments expressed in the above we most heartily concur, and congratulate the practitioners of the County of Simcoe that they have such an excellent Judge at their head, and that they know how to appreciate his worth.

We are the more pleased, as this gives us a legitimate opportunity of expressing our own sense of the very many obligations we are under to Judge Gowan for the valuable advice and assistance he has never failed to give us, when appealed to for the purpose, in the conduct of this Journal, advice especially valuable in that department with which he is so peculiarly conversant, and of which (we hope he will excuse our mentioning it,) we have largely availed ourselves. There are others, too, who will not easily forget the sound counsel and kind aid which, in numerous ways, has encouraged them to persevere to the attainment of a certain measure of success in their professional career.

The high stand Judge Gowan has always taken with reference to the dignity of the Bench, and his strict and regular administration of the law, has been remarked beyond the precincts of his own Courts, and would serve as an example for others to imitate. This address, moreover, of those who are best capable of forming an opinion of his merits, may be looked upon in a quarter where the aim would appear, from recent legislation, to be to lower rather than to elevate the tone of the Inferior Court Judiciary, as at least an incident to shew the possibility of destroying by rash changes much that has taken years of toil, endurance, self-control and judgment to build up.

But want of space, and not of inclination, prevents our speaking further on a subject of pleasure and interest to us. The learned Judge, in an impressive and eloquent manner, replied to the address, and concluded thus:—

"It was right that I should endeavor to discharge every duty faithfully and fearlessly: to create confidence in and to secure to suitors the full benefit of the several Courts over which I

preside, and to impress the public with the feeling of respect, never withheld from a Court of Justice, however limited its sphere, where order and decorum obtain.

"From the first I felt that this could be best done with the aid of an educated and honorable Bar, who would feel with me that we were all ministers of justice—all equally striving for the same great end. From the profession in this County I have always received the greatest aid in the discharge of my judicial duties, and it is to your cordial co-operation and support I am indebted for a measure of success that, unassisted and unsupported, I could scarcely have obtained.

"In gladly according to the Bar every privilege they could fairly claim: in fostering a right feeling in their intercourse with each other: in publicly combating prejudices against them, I have ever felt I was strictly within the line of duty; but I think you will acquit me of the weakness which fails to look for the inherent merits of a case in admiration for the skill and zeal of counsel.

It is most gratifying to me that you rightly possess the respect of the whole community, and I can with great truth say that honor, learning and ability, are characteristics of the legal profession in this district.

"At the age of twenty-five I entered with ardor on a work I liked, and though this judicial District was then, as now, the largest in Upper Canada, I felt equal to the labor, and I am able to say, through God's goodness to me, that during a period of nearly twenty-six years I have never been absent from the Superior Courts over which I preside, and, as to the Division Courts (except when on other duties at the instance of the Government) fifty days would cover all the occasions when a deputy acted for me. I have, I may be pardoned for saying, undergone labors and exposure of the most trying kind, as most of you know; but few are aware that those labors have left me with a seriously impaired constitution; yet I trust there is still in me some years of work, and nowhere could I be so happy in living and acting as amongst those whom I have known and valued so long.

"And now gentlemen need I say that I will preserve as a precious posssession the address with which you have honored me. Your valuable gift will long after I have passed away, show the first Judge of this District as he looked after a quarter of a century of work. I would that it could portray with equal fidelity how deeply he was touched by this generous mark of your regard: how much invigorated for fresh exertion to try to deserve all that your kindness has associated with his name."

After the rising of the Court, the members of the profession present, which included, we believe, every practitioner in the County, together with some of the County officials and others, were sumptuously entertained at the hospitable residence of the learned Judge.

The third edition of Mr. Taylor's Consolidated Chancery Orders has just been issued from the press, and is now for sale by the publisher, Mr. Adam. It will be gladly welcomed by practitioners, and the sale will be rapid.

SELECTIONS.

THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

It betokens a healthy sign of the public mind when institutions, high or low, lay or ecclesiastical, are brought to the bar of public opinion and judged according to their merits. In a free country nothing ought to be hidden from the gaze of the people. The only claim which, in modern times, an institution has to exist, is not that it is ancient and time-honoured, not even that it is harmless, but that it is the means of doing some positive good to the nation. And in order that it may be found out whether a given institution possesses the requisite qualification to be maintained, it should be laid bare before the public. We do not mean to assert that all institutions should be wantonly and recklessly, and at all times, made the subject of criticism. That would indeed be intolerable. Without doing the least good such criticism would only create disrespect in the minds of the people for institutions which, for the sake of the freedom of a country, must perforce be supported. It would alienate the well-affected from them, and thus materially interfere with, or even mar, their usefulness. But far different would be the effect of honestly examining into the operation of these institutions from time to time, and striking a balance between the good they have done and the evil they have consciously or unconsciously committed, or permitted to take place. By this means the efficiency of a system would be most successfully found out, and if there are any evils detected in it they would be speedily put a stop to. There is another and, if possible, a greater advantage which would result from such an examination. The system, instead of being shrouded in mystery, intelligible only to those who had made it the business of their lives to study it, and offering the greatest obstacles to the approach

of outsiders, would become more and more popular; and the more the benefits it conferred were understood and appreciated, the more it would rise in the estimation of the country, and the greater would be its chance of continued existence Bacon somewhere advises people to pause now and then in their avocations and carefully institute a mental examination of the work they have done. The same advice holds good with nations as with individuals. Self-examination, though rather scarce, is, when fairly conducted, an unmixed benefit, and the examination of national institutions, in a spirit of honest inquiry, cannot but be productive of unmixed good.

It is in this spirit of honest enquiry that we wish to draw the attention of our readers to the working of the Judicial Committee of the Privy Council. We are not about to say anything disrespectful of, or to reflect in an uncharitable way on, this august tribunal. Our object is only to see how this high court of appeal first originated, the purpose for which it originated, the way it has fulfilled its duties, and whether it cannot be improved so as to make it more efficient than it at present is. If the opinion we arrive at be adverse to the efficiency of the Committee, we must not be understood to question the propriety of its establishment, or to find fault with the foresight of the reformers who first brought it to life. Indeed, when we mention that the great and revered and venerable name of Brougham—the father of law reforms—is mixed up with the formation of the Committee, that the first suggestion for its establishment came from him, that he carried through Parliament the measure to which it owes its being, and that for a long time he presided at its sittings, it will be seen that every prospective care that could have been taken to make it work well was taken, and that the failure, if it has failed, must be owing to causes, which although they existed at this time of the formation, were not clearly discernible.

Previous to the passing of the Statute 2 and 3 Wm. IV. c. 92, there existed what used to be called the "Court of Delegates," established by 25 Henry VIII. c. 19, and continued by 8 Eliz. c. 5. The Act of Henry provided that for lack of justice at or in any of the Courts of the Archbishops of this realm, or in any of the king's dominions, it should be lawful to the parties aggrieved to appeal to the king's majesty in the king's Court of Chancery; and that upon every such appeal a commission should be granted under the Great Seal to such persons as should be named by the king's highness, his heirs or successors, to hear and definitely determine such appeals and the causes concerning the same; and that the judgment and sentence of the commissioners in and upon any such appeal should be good and effectual and definitive, and that no further appeals should be made from the said commissioners for the same. The Court of Delegates was also charged with the duty of hearing appeals from the decision of the "Admirals' Court," but its judgments not having been made final, and great inconvenience having resulted from the prosecution of further appeals, an act (8 Eliz. c. 5) was passed whereby it was provided that every such judgment and sentence as should be given and pronounced in any civil and marine cause upon appeal lawfully to be made therein to the Queen's Majesty in Her Highness's Court of Chancery by such commissioners or delegates as should be nominated and appointed by Her Majesty, her heirs and successors, by commission under her hand and seal, should be final, and that no further appeal should be made from the said judgment or sentence definitive, or from the said commissioners or delegates for or in the same, any law, usage or custom to the contrary notwithstanding.

The Court of Delegates, thus made supreme, continued to discharge the duties entrusted to it vigilantly and well, but a reaction soon came, and its proceedings gave rise to discontent. Nor could it have been well otherwise. In those dark days of monarchical tyranny, cases the most remotely connected with politics used to give rise to dissensions, compared to which the angry feelings created by the Eyre Prosecution would appear perfectly tame. The king—we are talking of our kings after Elizabeth—was in a continual dread of losing his prerogatives, and rather than lose one of these, he used to take all the means in his power to get a decision favourable to the side he espoused. Thus, the commissioners were chosen, not with regard so much to their learning in civil and ecclesiastical law, not with regard so much to their standing at the Bar, but their known and avowed opinions in politics. The consequence was,—and it was quite natural under the circumstances—that most incompetent men were often selected to perform duties difficult and delicate, and that their judgments, however much they may have commended themselves to the king, created anything but satisfaction in the minds of the people. So intense was this feeling that, in spite of the two Acts we have referred to, the king was obliged "out of his royal favour, &c., &c., upon petition to him in council made for that purpose," to grant "a commission under the present seal, authorising the commissioners therein named to review the judgments and decrees of the High Court of Delegates, so appointed as aforesaid." But even this second court was found in the course of time to be objectionable. As the ideas of the Revolution of 1688 took root, people began to speculate how it was that, although in his majesty's Court of Common Law and Equity judges were made independent of the Crown, the Court of Delegates was left in its dependent position. The more the times advanced, the more the latter court appeared to be an anomaly, but as with most of the abuses under our "free and glorious constitution" it escaped the eyes of the governing classes of that time, and nothing was done to

put it out of sight until some time afterwards.

In the year 1828, Lord, then Mr. Brougham, in a powerful speech in the House of Commons, pointed out among other evils in our judicial system those resulting from the imperfect constitution of the Court of Delegates, and in August 7, 1832, a statute (2 & 3 Wm. IV. cap. 92.) entituled "an Act for Transferring the powers of the High Court of Delegates both in Ecclesiastical and Maritime Causes to his Majesty in Council" was passed to remedy them. This statute repealed the Acts of Henry and Elizabeth, and enacted that from February 1, 1833, the powers of the High Court of Delegates should be exercised by the king in council; and that no commission of review should be therefore granted. At the time these powers were transferred to the "King in council," this body—for it consisted only of a portion of the Privy Council—formed a most important Court of Appeal. In the language of Lord Brougham, in the speech already quoted,* they discharged "as momentous duties as any of the judges in this country, having to determine not only upon questions of colonial law in plantation cases, but also to sit as judges in the last resort of all prize causes. The point," Mr. Brougham went on to say, "to which I more particularly address myself on this head, is that they hear and decide upon all our plantation appeals. They are thus made the supreme judges in the last resort, over every one of our foreign settlements, whether situated in those immense territories which you possess in the east, where you and a trading company rule together over not less than seventy millions of subjects—or established among those rich and populous islands in the Indian Ocean, and which form the great Eastern Archipelago—and have their stations in those lands, part lying within the tropics, partly stretching towards the Pole, peopled by various castes, differing widely in habits, still more widely in privileges, great in numbers, abounding in wealth, extremely unsettled in their notions of right, and excessively litigious, as all the children of the New World are supposed to be, both from their physical and political constitution. All this immense jurisdiction over the rights of property and person, over rights political and legal, and over all questions growing out of so vast and varied a province is exercised by the Privy Council unaided and alone." Appeals in prize causes used to be heard by "certain persons, members of the Privy Council, together with others, being judges and barons of his majesty's Courts of Record at Westminster," and the Indian and Colonial Appeals before a Committee of his majesty's Privy Council, who used to make a report to his majesty in council, whereupon the general judgment or determination used to given by his majesty.†

This extensive jurisdiction thus vested in the Privy Council was not, as may be supposed, very satisfactorily exercised. The Privy Council did not then, as now, consist of many great lawyers, and the few that there were had other duties to discharge and could not attend to the Council. Causes of any constitutional importance used doubtless to receive a great deal of attention, and were soon decided in favour of the "powers that be," but those involving points of law, either from India or the Colonies, moved on at a very slow pace indeed. It was at last found necessary to improve the machinery of the court, and with that view Lord Brougham carried through Parliament a measure which afterwards became the Statute 3 & 4 Wm. IV. c 41. This Act enacted "that the president for the time being of his majesty's Privy Council, the Lord High Chancellor of Great Britain for the time being, and such of the members of his majesty's Privy Council as shall from time to time hold any of the offices following—that is to say, the office of Lord Keeper or First Lord Commissioner of the Great Seal of Great Britain, Lord Chief Justice, or a Judge of the Court of King's Bench, Master of the Rolls, Vice-Chancellor of England, Lord Chief Justice, or Judge of the Court of Common Pleas, Lord Chief Baron or Baron of the Court of Exchequer, Judge of the Prerogative Court of the Lord Archbishop of Canterbury, Judge of the High Court of Admiralty, and Chief Judge of the Court of Bankruptcy,* and also all persons, members of his majesty's Privy Council, who shall have been presidents thereof, or held the office of Lord Chancellor of Great Britain, or shall have held any of the other offices hereinbefore mentioned, shall form a committee of his majesty's said Privy Council, and shall be styled the Judicial Committee of the Privy Council; provided, nevertheless, that it shall be lawful for his majesty from time to time, as, and when he shall think fit, by his sign manual, to appoint any two other persons, being Privy Councillors, to be members of the said Committee." Authority was given to the king to refer all matters he might think fit to the Judicial Committee, and to direct, by his Order in Council, that appeals from India and the Colonies should be heard by the Committee, and the Judicial Committee was provided with necessary powers to constitute it a regular Court of Justice. By Orders in Council, dated the 9th and 10th days of December, 1833, his majesty gave the necessary directions.

The first meeting of the Judicial Committee

* See Speeches of Henry Lord Brougham, Vol. II., p. 356, Edinburgh. A. and C. Black, 1838.

† See Preamble, 3 & 4 Wm. IV. c. 41

* To these have been added, by 5 Vict. c. 5 s. 24, the Vice-Chancellors appointed *in pursuance* of that Act; by the 14 & 15 Vict. c. 83, s. 15, the Judges of the Court of Appeal in Chancery, by 20 & 21 Vict. c. 77 & 115, the Judge of the Court of Probate. As to cases under the Church Discipline Act, 3 & 4 Vict. c. 86, s. 16 of that Statute enacts that Archbishops and Bishops, members of the Privy Council, should be members of the Judicial Committee, on all appeals under this Act. See McPherson's "Practice of the Judicial Committee. London. H. Sweet. 1860. We are indebted to Mr. McPherson's valuable book for the particulars of the statute cited above.

for the hearing of appeals took place on November 27, 1833, and the Committee continued to discharge its duties satisfactorily enough for some time. Sir Edward Hyde East, Chief Justice of Calcutta, and Sir Alexander Johnstone, Chief Justice of Ceylon, both retired judges, were summoned to attend, and, as Mr. Knapp says, attended the meetings of the Judicial Committee, upon all appeals from the East Indies, and most of the other appeals.*

It does not appear from Mr. Knapp's book who were the judges who usually composed the Committee. The names of Mr. Justice Parke and the Vice-Chancellor of England, frequently occur, but there can be no doubt that four Privy Councillors† at least attended the sittings of the Committee. The business of the Committee was conducted under this statute of William IV. for about ten years, and it was then found that further legislation was necessary to facilitate the hearing of the appeals. On July 28, 1843, an Act was accordingly passed (6 & 7 Vict. c. 38), whereby it was enacted that appeals, &c., brought before the Committee might be heard by not less than three members of the Privy Council. This was a very important change in the constitution of the members of the Committee, for by the Statute of William IV., four Councillors formed a quorum, and we must presume that the reason of the alteration was the difficulty that then existed in finding the requisite number of judges to form the court. This Act further enacted that:

"Subject to such rules and regulations as may from time to time be made by the said judicial committee, with theapproval of Her Majesty in Council, and save and in so much as the practice thereof may be varied by the said Acts of the reign of his majesty or by this Act, the said causes of appeal to Her Majesty in council shall be commenced, within the same times, and conducted in the same form and manner, and by the same persons and officers, as if appeals in the same causes had been made to the Queen in Chancery, the High Court of Admiralty in England, or the Lords Commissioners of Appeals in prize causes respectively."

On August 6, 1844, another act was passed to amend the Act of 3 & 4 Wm. c. 41, and to extend the jurisdiction and powers of the Committee. In 1851, a third Act was passed, to improve the administration of justice in the Judicial Committee, and a fourth Act, passed in 1853, completes the series of statutes relating to the Committee. The Act of 1851, enacts that the Judges of the Court of Appeal in Chancery, if Privy Councillors, shall be members of the Judicial Committee, and that no matter shall be heard by the latter, unless three members are present, exclusive of the Lord President. The Act of 1853 merely removes doubts as to the powers of the Registrar of the Privy Council to administer oaths, and provides for the performance of the duties of the Registrar in his absence.

Lord Brougham's chief object in establishing the Judicial Committee was to have judges in the Privy Council "who should be men of the largest legal and general information, accustomed to study other systems of law besides their own, and associated with lawyers who have practised or presided in Colonial Courts." He also "expected that the judges should be assisted by a Bar, limiting its practice for the most part to this Appeal Court; at any rate making it their principal object." And, most important of all, his idea was that "to counteract in some degree the delays necessarily arising from the distance of the courts below, and give ample time for patient inquiry into so dark and difficult matters, *the Court of Review should sit regularly and at all seasons.*"* Has the Committee realised Lord Brougham's object? Are Colonial judges and lawyers associated with the Committee? Is there a Bar "limiting its practice, for the most part, to this Appeal Court?" And, lastly, does the Committee—Brougham's Court of Review—sit regularly and at all seasons? Nay, constituted as the Committee is, is it possible for it to sit regularly and at all seasons "to counteract the delays, &c., &c.?" And, if not, what remedy had better be adopted to make it do so?

It will be observed that in the foregoing questions we have assumed that Brougham's ideal is the best possible ideal under the circumstances. We believe it is really so. A court of justice sitting regularly, and not by fits and starts; depending not upon migratory but stable judges, whose only duty should be to hear the cases coming before their own court, assisted by a Bar, the members of which should as a rule, confine their practice to the court, and conducting its business in a legal, proper, and decorous manner, appears to us to be the best court of justice that could be devised. And Brougham's court was nothing more or less than the court we have described. But to proceed.

It has been the good fortune of this Committee to be spoken highly of by very eminent authorities. Sir Roundell Palmer, speaking in the House of Commons on "The Administration of the Law," says:†

"Every one who knows how the business of the Judicial Committee of the Privy Council is administered will, I think, admit that the difficulties arising from having to deal with different laws have been by them most successfully grappled with, and that, upon the whole, a regard for substantial justice rather than mere technical accuracy has grown out of the fact that they have to administer justice in accordance with many different systems."

* 2 Knapp's Privy Council Reports, p. 4.

† In Mr. Edmund F. Moore's continuation of Knapp's Reports, the names of the Vice-Chancellor, Mr. Justice Bosanquet, Baron Parke, and the Chief Judge of the Court of Bankruptcy frequently occur.

* See Speech quoted at p. 301, and Mr. McPherson's preface, p. vi. The italics are ours.

† Hansard, Vol 185, pp. 842—864. This speech was afterwards published in pamphlet form by Messrs. Butterworth sheaded "Our Judicial System."

Mr. McPherson, no mean authority, in the same way says that :—

"The Committee comprises men of eminence in every department of legal study, it sits regularly at stated periods, and every case which is ready to be heard is sure of an early and patient hearing."

We unhesitatingly subscribe to the eulogium passed upon the Committee. The ability and patience of the judges will bear the most favorable comparison with those of any other set of judges in the world. But we cannot help remarking that the constitution of the Committee is radically defective. With the exception of two retired Chief Justices of the Calcutta Supreme Court, the Committee does not now possess a single colonial judge.—It hears appeals from the courts of Canada, where the French law prevails, from those of British Guiana and Ceylon, where the Dutch law is administered, from the courts of the Channel Islands, where a peculiar system of their own exists, and yet no judge, at least no retired judge, from any one of these courts is a member of or assessor to the Judicial Committee. With regard to the Indian judges, too, it is to be remarked that the Supreme Courts having no jurisdiction out of the presidency towns, they, although well versed in the law which obtains in the interior of the country, have not that intimate knowledge of the people themselves, which a long practice in other places than the presidency towns can alone impart, and which, we confess, appears to us to be necessary to ensure a due administration of justice. Then, again, as to the Admiralty Appeals. There is only one member of the Committee who is well acquainted from long practice with Admiralty law—we mean, the Judge of the Court of Admiralty. He does not naturally sit to hear appeals from his own court, and they are therefore heard and determined by judges who, however theoretically they may know the law, have had no practical knowledge of it.

We repeat that we do not intend to throw any aspersions upon the learned judges who usually compose the Judicial Committee. Their decisions have been very satisfactory; and they have, we may presume, at immense pains to themselves, endeavoured to arrive at correct conclusions. But, we ask, is it possible for the colonists to have much confidence in the Committee? It may be said that the number of appeals that come from the colonies satisfactorily shows that the answer to our question must be emphatically in the affirmative. It would be very agreeable to us individually to believe that such was the case, but we are painfully aware of the fact that, whether a Court of Appeal is competent or not, suitors rush into appeal and take their chance of a good wind blowing in their favour, without stopping to consider whether the Appellate Court is likely to lay down sound principles of law or not. It is enough for them that they have lost, and that there is a Court of Appeal for them to take their case to. To them all law that stands against them is bad law, and they leave no stone unturned, if they possess the means, to get it upset. However much it may offend the *amour propre* of the profession, we cannot help thinking that the majority of the suitors who come before the courts are of the same stamp as George Eliot's "Mr. Tulliver," one of the cardinal points of whose belief was that the lawyer Wakem and all his compatriots were descended from "Old Harry." But suppose that the present constitution of the Committee is satisfactory; suppose that, although none of the members ever practised in French law, they are competent authorities to reverse the decisions of judges who have studied it from their youth upwards; suppose that the judgments of the Committee give satisfaction to the colonies—suppose all this, the fact still remains that the greatest possible difficulty is experience to form a court. The Committee only sit three times a year, that is to say, once after Hilary Term, once after Trinity Term, and once after Michaelmas. Its sittings last about a month each time, and in this short space of time it has to decide cases from all parts of the globe. But how is it formed? Sir Roundell Palmer in the speech already quoted, says, (p. 856)—

"Nothing could be more excellent than the materials I have described, *provided of course, that they can be brought to bear with sufficient regularity, convenience and despatch.* We have men of great learning, great experience, and important position. *But its judicial force is not such as to secure adequately the regularity of the administration of the Court.*

Take the case of the retired judges, &c. &c. &c. You cannot expect that retired judges, however mentally able and willing, should long be physically able to give a constant attention to duties of this description. They have come to a time of life, when they either already do, or soon must, require the rest which they have fairly earned. You cannot rely on more than occassional and precarious assistance, as a general rule, from that source. Then with regard to your present judges. The Chief Justices, and Chief Baron, and the Admiralty and Probate Judges are so occupied in their own courts, that their attendance is generally impracticable. The Lord Chancellor and the ex-Chancellors are wanted in the House of Lords. With regard to the other judges of the Court of Chancery, the Master of the Rolls, and the Lords Justices, they have been accustomed to give a good deal of their time to that court (Judicial Committee). In Lord Langdale's time the Rolls Court used to be shut up for long periods together, while his Lordship attended the Judicial Committee. That does not so often occur now; but the Lords Justices have been often withdrawn from their own court to attend the Judicial Committee."

Indeed, it may now be said that the Judicial Committee is kept on foot by such of the judges of the Court of Chancery as are members of the Privy Council. During the sittings after Trinity Term, 1868, the Lords Justices

and the Master of the Rolls alternately helped to make a court; and one week, when neither of these judges could attend, the Committee had to suspend its sittings. Excellent, then, as the materials are of which the Judicial Committee is made, they are not properly economised; and the consequence is that the Court does not possess that stable character which is so necessary to ensure success in the administration of justice. Its sittings, coustitutionally irregular, are made still more so by the changing and unstable position of the judges, and the court has consequently given rise to a great deal of dissatisfaction both in this country and abroad.

As for there being a regular Bar, confining its practices entirely to the work which come before the Committee, it is quite out of the question. The Committee sits about three months or so a year, provided it can make a court, which, as we have seen, is no easy matter. The services of counsel are only required for these three months, and it is surely too much to expect that gentlemen would be satisfied with only the fees from three months work in court. Under these circumstances we have come to the conclusion that the principal aim for which Lord Brougham brought the Committee into existence has been defeated. With two exceptions there are no colonial judges members of the Committee; there is no regular Bar; the Committee does not sit regularly; and there is as much delay now in the determination of a case as ever there was before the Committee was established.

That a great deal of very serious inconvenience arises from this state of things we need hardly remark. The business of the Committee goes on so slowly that it is not at all uncommon to see a case standing for hearing for at least two sittings. Indian appeals especially seem to be peculiarly unfortunate. To be ripe for hearing they have to pass through a great many shoals and quicksands. In the first place, whether the suitors are rich or not, the agents in India seem to be so fond of having their clients' money in their hands that, unless hard pressed, they do not think of remitting funds to the solicitors here to carry on the appeals. Secondly, not a few of these appeals are held over the heads of the respondents, *in terrorem*, to induce them to come to an amicable settlement. When, however, all these dangers are passed, and they are set down for hearing, they go on unheeded for a long time. These appeals are now coming in in larger numbers than ever. Instead of four courts, there are now fifteen or sixteen courts in India from appeals which are brought before the Judicial Committee. Then there are the appeals from the various colonies, and to dispose of all this heavy business the suitors have to look to judges already overwhelmed with business in their own courts, and who have metaphorically speaking, no breathing time! Can anything be more anomalous than this? In this old country of ours we have a great many anomalies, but a more complete stumbling-block in the path of the "intelligent foreigner" than this Judicial Committee there does not exist. We expect our retired judges, without any further remuneration than their pension (and the pension is given for *past* services), to be retired judges only in name; and and in their old age, when they want rest, to learn new systems of law, and work as hard as a student reading for his examination! We expect our acting judges to interrupt the business of their own courts and to attend to duties which do not legitimately belong to them, and that for nothing all! An ex-cabinet minister when he gets a pension may retire from active life without being further troubled. An acting cabinet minister is expected to attend to the duties of his own department; but a retired judge must work on in a new field, and an acting judge must be prepared to be called away to new courts. True, through the self-denial of our judges, there has not yet arrived what we may call a regular dead-lock; true, the inconvenience to a great extent has been attendant upon the judges only; but for the due administration of justice the convenience of the judges must be, at least, as much consulted as that of the public; and it is nothing but the most suicidal and short-sighted policy "to work the willing horse to death."

It will be the dawn of the future 'golden ages' in this country whem the reforms in our "judicial system" advocated by Sir Roundell Palmer are adopted. To curtail the House of Lords of its appellate jurisdiction, and to make only one court of appeal for all cases are obviously the best possible changes that could be desired in our administration of the law. But we are afraid it will be long, very long, before they are brought about. The fact that Sir Roundell Palmer's celebrated speech was not delivered until, by the upsetting of the Russell-Gladstone ministry, he had ceased to be the Attorney-General of England, shows how difficult the task is. It is, however, worthy of him, and we trust that he will not rest till the changes are accomplished. In the meantime, and to prevent further mischief with reference to the working of the Judicial Committee, we think some reforms are absolutely necessary. These need not change the character of the Committee, for, if Lord Brougham's idea is carried out in its entirety, all that is needful will be done. There are lawyers in England from all parts of the British empire—lawyers who have held high judicial positions in India and the colonies. If it were made worth their while they might be associated with English lawyers, and thus form a paid court for the purpose of getting through the business of the Committee.

We have no hesitation in saying that, unless all the judges of the Committee are adequately remunerated, there is not the slightest chance of the Committee becoming a regular and a stable Court of Appeal. To pay the judges is of course a matter of £. s. d., but we believe

the fees from the courts in India, where stamps used in proceedings are included, yield a surplus revenue to the Government; and we do not see why this revenue should not be drawn upon for the purpose of paying for, or at least contributing to, the expenses of the Judicial Committee. A court consisting of three English lawyers, two Indian Judges, and two colonial judges, would inspire confidence everywhere, and if it sits regularly, as it cannot but do if the members have no other courts to attend to, it will be one of the best courts in the country. Our article has become longer than we thought it would be, and we have therefore been obliged to hurry over the latter portion of it. We trust, however, we have said enough to arouse the serious attention of the legislature to the subject. "Delays are always dangerous," and none the less so in lawsuits. The Judicial Committee, therefore, should be invested with sufficient power to cause as little delay in disposing of the appeals before them as possible; for, as Mr. Gladstone put it, "Justice delayed is justice denied."—*Law Magazine.*

JUDICIAL DEBATE.

One of the peculiarities in the English system worthy of the attention of the Judicature Commission, and likely to meet with consideration in their report, is the difference between the administration of common law and equity in the number of the Judges constituting a court. The late addition to the Bench in the common law courts makes this difference more striking at the present than at any former time. It is true that this sixth Judge in each of the Queen's Bench, Exchequer, and Common Pleas, has not been created for the purpose of the legal business of the court as carried on between Crown and subject, and between subject and subject, but rather to give a legal character to an investigation which, although professedly judicial, was fast degenerating into a Parliamentary repetition of the struggle at at the hustings. Still, the additional Judge will be available for the trial of causes, particularly when they are of a difficult character. While this is the case in the common law courts, five of the equity courts are presided over by a single Judge, with the privilage, rarely exercised, of obtaining the aid of an assessor from the other bench; and the sixth equity court has only two Judges, who, however, may sit apart to determine a large part of the matters within their jurisdiction. On the whole there is presented the noteworthy feature of contrast in our judicature, that notwithstanding the two classes of courts have in many respects a concurrent jurisdiction, the one class consists of three courts with six Judges each, the other class of five courts with one Judge each, and another with two Judges, or, as the class may be described for some purposes, of seven courts with a single Judge each.

To which mode of constituting a court will the commissioners give the preference? When three or four judgments from the same bench are concurrent, the benefit generally in settling the law will be admitted. But it is not all gain. A chief of vigorous intellect and powerful mind will sometimes unduly sway a puisne of greater learning than steadfastness. Sometimes again, a successful politician, when promoted over the heads of better men, is content to pick up his law from his younger brothers, and clothe it with his own eloquence. Not every judgment which bears a show of unanimity is thought out on a well-balanced comparison of opinions, and a gradual reasoning away of differences by a common ascertainment of principles. Love of ease, too, will play its part. So it happens that in some instances the ostensible agreement of three or four is of no more intrinsic value than the decision of one. Not always on the bench is it true that *l'union fait la force.*

The strength of a court of a plurality of members may lie in its division as much as in its accord. Where the Judges differ and each delivers his opinion, based on principle and authority, a point of law is secured the fullest and soundest discussion of which it is capable. True, it has been discussed in like manner on the floor of the court, and it may be objected that the suitor craves judgment; but there is this difference that the debate by counsel is advocacy, the argument by the judge is conviction. But what is the practical fruit? Not that of a kind always acceptable to the suitor, but very acceptable to those whose future fortunes depend on the ultimate result; very acceptable to the community, in respect of whom a settlement of the law is of more importance than delay or harass to the particular litigant. In other words, contrariety of opinion in the inferior court prepares the way for a solemn and final determination by the court of appeal. That is one great service rendered by a court of numerous judges.

But our courts of appeal themselves consist of numerous judges. The Chancery Court of Appeal has three, though they are not bound to sit together, and do so only in the more difficult cases. The Exchequer Chamber and the House of Lords are notably courts of numerous members. But it would be a great mistake to apply them indiscriminately the theory of advantage from conflict of opinion on the Bench. To the full appeal court in Chancery, and the Exchequer Chamber the theory may be applied, for there remains the House of Lords to give certitude to the law. But to the House of Lords itself the theory has no application at all. Fortunately in the highest court of appeal in another jurisdiction, the Judicial Committee of the Privy Council, the observances of that council do not admit of publication of any debate by the members. It is otherwise in the House of Lords; and if, in such a body, anything could add to the inexpediency of indulging in the expression of an-

tagonistic views in matters in question judicially before them, it would be the public impression that there might naturally be some latent sparks of rivalry between law lords.

It may be doubted whether in any case the maintenance of opposing opinions by the members of a court of the last resort is politic, in the interest of jurisprudence. No doubt it sometimes occurs that the expression of difference is excusable, as where a Judge concurs in a decision by the others, not on a ground taken by them, and disputes that ground. Thus, lately, Lord Chelmsford, in *Shaw* v. *Gould*, which was the subject of a recent notice in this journal, on the point whether the forty days residence of a person in Scotland, sufficient to give the Scotch courts jurisdiction over him in ordinary causes, should extend to divorce, held the affirmative, in opposition to Lords Cranworth and Westbury, who grounded their judgment on the negative, but Lord Chelmsford concurred in judgment with them, because he thought there was collusion. It might have been better if, finding a sufficient ground in collusion, he had declined to express an unnecessary opinion on the jurisdiction. But the case which strongly exemplifies the unadvisedness of judicial debate in the Lords is *Routledge* v. *Low*, 18 L. T. Rep. N. S. 874. It was surely a sufficient occupation for the Lords to decide the important point arising on the facts before them, namely, that an alien friend is entitled to copyright in the Queen's dominions, if, while he is resident, though only temporarily, in any part of them, he first publishes in the United Kingdom. The Lord Chancellor, however, proceeded, beyond the bounds of the case to the dictum that, in his opinion, the protection of copyright was given to every author who published in the United Kingdom, wheresoever that author might be resident, or of whatsoever state he might be the subject. The intention of the Act of the 5 & 6 Vict. c. 45, was to obtain a benefit for people of this country by the publication to them of works of learning, of utility, of amusement. The benefit was obtained, in the opinion of the Legislature, by offering a certain amount of protection to the author, thereby inducing him to publish his work. That was, or might be, a benefit to the author, but it was a benefit given not for the sake of the author of the work, but for the sake of those to whom the work was communicated. The aim of the Legislature was to increase the common stock of literature of the country, and if that stock could be increased by the publication for the first time here of a new and valuable work composed by an alien, who never had been in the country, the Lord Chancellor saw nothing in the wording of the Act which prevented, nothing in the policy of the Act which should prevent, and everything in the professed object of the Act, and in its wide and general provisions, which should entitle such a person to the protection of the Act in return and compensation for the addition he had made to the literature of the country. In like manner, Lord Westbury, observing that the word "authors" was used in the statute without limitation or restriction, contended that it must, therefore, include every person who should be an author, unless from the rest of the statute sufficient grounds could be found for giving the term a limited signification. It was proposed to construe the Act as if it had declared in terms that the protection it afforded should extend to such authors only who were natural born subjects or to foreigners who might be within the allegiance of the Queen on the day of publication. But there was no such enactment in express terms, and no part of the Act had been pointed out as requiring that such a construction should be adopted. The Act appeared to have been dictated by a wise and liberal spirit, and in the same spirit it should be interpreted, adhering of course to the settled rules of legal construction. The preamble was, in Lord Westbury's opinion, quite inconsistent with the conclusion that the protection given by the statute was intended to be confined to the works of British authors. On the contrary, it seemed to contain an invitation to men of learning in every country to make the United Kingdom the place of first publication of their works; and an extended term of copyright throughout the British dominions was the reward of their so doing. So interpreted and applied, the Act was auxiliary to the advancement of learning in this country. The real conditions of obtaining its advantages was the first publication by the author of his works in the United Kingdom. Nothing rendered necessary his bodily presence there at the time, and Lord Westbury found it impossible to discover any reason why it should be required, or what it could add to the merits of the first publication.

This view of universal protection to books first published in the United Kingdom was contested by Lords Cranworth and Chelmsford. To Lord Cranworth there seemed to be reasons almost irresistible for thinking that the Act did not extend its benefits beyond persons resident in the Queen's dominions, whether aliens or natural born subjects, who, while resident, published their works in the United Kingdom. Lord Chelmsford doubted whether the opinion of the Lord Chancellor, which we have quoted, was well founded. If any stress was to be laid on the preamble of the statute it did not appear to him to differ very widely from that in the Statute of Anne. One of the objects proposed by the statute of Anne was to encourage "learned men to compose and write useful books." The object of the 5 & 6 Vict. was expressed to be "to afford greater encouragement to the production of literary works of lasting benefit to the world." If, therefore, the Statute of Anne did not confer the privilege of copyright upon an alien publisher residing abroad (which, after the case of *Jefferys* v. *Boosey*, it must be taken not to have done), Lord Chelmsford could not find

anything in the 5 & 6 Vict. which appeared to him to warrant the extension of its benefits to such a publisher.

Now this question whether the Copyright Act has for its object the benefit of the reading public in the Queen's dominions by securing first publication in the United Kingdom, irrespectively of the circumstances of the author, or whether the place of residence of the author at the time of the first publication is also to be regarded, is a very interesting subject of discussion when it does not arise in a cause, and a very weighty subject for decision when it does arise. But what possible advantage can there be in a premature debate on the point in a court of final resort? As respects that court itself the effect must be to prejudice judgment when the point shall actually arise, and be specially argued. It is not too much to say that at least the Lord Chancellor and Lord Westbury have, by the strong expression of their opinions before the House, disqualified themselves for the unbiassed hearing of such an argument. To inferior courts the lords should be a clear and shining light; but the result of the division on the Lord Chancellor's dictum in *Routledge* v. *Low* can only be to perplex and confuse all Chancery and Common Law judges. Directly the point of the author's residence at the time of first publication arises in a case where he is resident abroad comes before an inferior tribunal, the Court must say, "take it to the House of Lords, how can we give you any judgment that shall command your assent or respect when the court of final appeal is divided against itself in this matter?" The pernicious consequences which a very little reflection suggests as likely to follow debates on dicta among the law lords, sitting in their court, induces us to urge them to abandon such a course for the future. If any one of them is so little careful of results as to gratify an inclination for speculative law, let the responsibility rest with him, and let those who follow him hold their peace, and confine themselves to the law necessary to be settled for a decision of the case under adjudication. Otherwise a final appeal tribunal instead of fulfilling its high office of settling the law, becomes a dangerous fountain of settled doubt upon the law.—*The Law Times.*

THE LAWS OF EXTRADITION.

The select committee appointed to inquire into the state of our treaty relations with foreign Governments regarding extradition, with a view to the adoption of a more permanent and uniform policy on the subject, have agreed to the following report, which was issued recently:—"That it is desirable that greater facilities should be given than now exist for making arrangements with foreign States for the surrender to them of persons accused of the commission of crimes in the territory of such States respectively, and who have escaped to this country, and for the surrender by them to the Government of the United Kingdom of persons accused of crimes, who have escaped to their territories from this country. That the list of crimes which should form the subject of extradition between this country and foreign countries requires to be carefully considered, but might, with advantage to the public interests, be made more comprehensive than the list of crimes enumerated in the only three treaties of extradition now in force between the United Kingdom and other countries—namely, France, the United States, and Denmark. That a general Act of Parliament should be passed, enabling Her Majesty, by Order in Council, to declare that persons accused, upon proper and duly authenticated *primâ facie* evidence, of the commission of any of the crimes to be enumerated in such Act should be surrendered to any foreign Government, within whose jurisdiction such crime is alleged to have been committed, and with which arrangements have been made for the extradition of persons accused of crimes; provided that the evidence should with the exceptions mentioned in the 5 & 6 Vict. c. 75, s. 2, and the 29 & 30 Vict. c. 121, be such as would justify the committal of the offender for trial if the crime had been committed in England. That every arrangement should be required by the Act of Parliament that every such arrangement should expressly except from the liability to extradition such persons as are accused of crimes which are deemed, by the party to arrangement of whom the surrender is demanded, to be of a political charcter; provided that any person accused of a crime which is deemed, by the party to the arrangement of whom the surrender is demanded to constitute assassination, or an attempt to assassinate, shall not be included in this exception. That copies of every such arrangement, and of the Order in Council which embodies it, shall be laid before either House of Parliament, within six weeks of the issue of such order, if Parliament, be then sitting, or if it be not then sitting, then within six weeks of the next meeting of Parliament. That every such arrangement should contain an express stipulation that no person surrendered, shall be put on his trial, or detained within the state to which he is surrendered, for any crime committed previous to his surrender, other than that on account of which he has been surrendered, without having been previously restored, or having had an opportunity of returning to the territory of the state making the surrender. That it be one condition of such arrangements, on the part of the United Kingdom, with respect to any prisoner who shall be ordered by competent authority to be surrendered to any foreign government, that he be remanded to safe custody for a limited period—say fifteen days—before final surrender, and he be informed, by the authority making such order and remand, that it is competent for him to apply in the meantime for a writ of *habeas corpus*. That upon the hearing of the case on *habeas corpus* it shall

be open to the accused to question the *bona fides* of the demand for his extradition, upon the ground that his surrender has, in fact, been sought for political reasons. That all legal proceedings necessary for the surrender of an offender by the United Kingdom, on account of a crime committed in a foreign country, should originate in an application before the principal metropolitan police-court. That the Act the 29 & 30 Vict. c. 121, which expires this year, making certain provisions with respect to the admission of judicial or official documents, or copies thereof, in evidence against persons accused of crime, in accordance with the extradition treaties now in force, should be further temporarily continued."—*The Law Times.*

THE LATE MR. COMMISSIONER GOULBURN.

Baily's Magazine for the month has this passing notice in the obituary, "Mr. Commissioner Goulburn has also gone the way of all flesh, and we may remark that when in the Guards, and in the zenith of his glory, he had a long string of horses under the care of George Boast at Burton-on-the-Hill, of which if our memory serve us correctly, Milo, Romeo, and Grimaldi were the best. He was a most kind-hearted man, and had a host of friends." The writer's memory certainly does serve him wonderfully well, for, according to the *Calendars*, it is just sixty years since Grimaldi, Romeo & Co. were running! But it is not as a turfite that the learned serjeant will be best remembered as a sportsman. During the time that the famous John Corbet hunted Warwickshire, he was one of the leading members of the Hunt-Club at Stratford-on-Avon, and in a poem he wrote on a run with these hounds he thus introduces himself:—

In a mode rather different came Goulburn the Bard,
Who, a long time disdaining the cry of Hold hard!
Over hedges and ditches was thoughtlessly fanning,
Resolved at all hazards to follow Bob Canning;
To accomplish which end he kept on at a score
That his five-year-old nag felt a sensible bore;
So at Sworford, unable to climb up the hill,
At a nasty ox-stile stood obligingly still;
There left *him* in plight not a little distressing,
The breed of Arabians most fervently blessing!

Some two or three years after the *New Sporting Magazine* had been started, and when it was in full swing, a hotel-keeper at Leamington brought an action of libel against the publishers for something that had been said in the work about his house. Serjeant Goulburn as one of the then leaders of the Midland Circuit, was for the plaintiff, and Mr. Hill, afterwards Recorder of Birmingham, for the defendants. The line of the latter was to laugh the thing out of court, and in furtherance of this Mr Hill, with apparent carelessness or chance, took up a volume of the magazine from some others before him, with the remark that "I should not be surprised if these impertinent fellows had been saying something about my learned friend himself." And then, after turning over a few pages, he read the subjoined passage to the immense amusement of the judge, jury, and public, heightened by the protestations of the serjeant, who vainly attempted to interfere: "The Serjeant Goulburn of the present day, brother to the ex-minister of that name was a conspicuous character in Warwickshire, in Mr. Corbet's time. He is a better lawyer than he was a sportsman, but he was a valuable acquisition to the Stratford-on-Avon hunt. They were the days of his youth, and, nothing loth, he yielded to the allurements which England holds out to that delight-giving period. Like the great Lord Erskine, he had been a soldier and a sailor. He had race-horses and hunters, and so had others. But he had—what but few possess—*the talent to amuse beyond his fellows.* In short he was the charm of society wheresover he entered into it; for, although by nature a satirist, he sought but to amuse, and if pain was given the remedy was at hand by the same means by which the wound was inflicted. A poem written by him, called 'Epwell Hunt" descriptive of a run he saw with Mr. Corbet's hounds—somewhat in the style of the famous Billesdon Coplow song—was an admirable performance as a real picture of the passing scene, and, if I am not much mistaken, will outlive the best of his judicial orations." "No, no," said Mr. Hill, closing the volume, "not outlive them, but they will descend hand in hand to posterity together." This description was, of course, from the pen of Nimrod, who had also been a member of the Stratford Club.

It is said here that Mr. Goulburn was by nature a satirist; and, undoubtedly, beyond the judicial orations, the best thing he ever produced was a satirical poem called the Pursuits of Fashion, wherein "The Fine Man, or Buck of the First Set," is clearly sketched from Beau Brummell; while the author's own experiences must have been of considerable assistance in portraying "The Coffee House Cornet, or Buck of the Second Set," as well as in his study of "The Knowing Man, or Buck of the Turf." The work has long been out of print, and, indeed, was intended in the first instance only for private circulation, so that we may the more readily give a taste or two of its quality. Here is some very hard hitting anent the turf:

Or, make ye health and happiness your care?
Avoid Newmarket's soil, they grow not there.
When all your hopes, mayhap your future bread,
Depend upon a jockey's heart or head;
When merest chance, a bolt, a cross, or swerve,
Has power to place in torture every nerve;
When perspiration's drops bedew the cheek,
And scarce the mouth retains its power to speak;
When from the socket starts the anxious eye,
And every pulse beats high in agony.
Let those who thus have felt—let them confess,
Can health be then enjoyed? or happiness?
But you *may* win—what then, unthinking boy,
You shout, you halloa, and conceive it joy.
Such joy the footpad feels when quirk or flaw
Have saved him from the vengeance of the law.
Like yours, his present bliss is rendered vain,
By hopes of better plunder, greater gain;
Like you, resolving headlong to pursue
A something not attained, yet still in view.

This was written sixty years back, but it reads as fresh as if brought out only yesterday. Here is a companion picture of the then "newly established club at Borbury:"

A vast assemblage this, where boys from school
In jockey garb first came to play the fool—
Oxonian thickheads, eminently dense,
Who yearly met to prove their want of sense,
And give their steeds that whipcord—truant elves!—
Which wiser nature destined for themselves.
And now where every blockhead bends his back,
Like Puss resisting Pompey's rough attack,
To spur the sides of some ill-fated hack;
Where giant zanies, liliputian peers,
Some scarcely breeched and some advanced in years,
Militia bucks and cornets of dragoons
Like showman habited, or stage buffoons,
With wasted carcases their rips bestride,
And puff, perspire, and pant, and think they ride.

How admirable it all is! as we might go on quoting column on column, although scarcely with the good serjeant's leave, for later in life he took a very serious turn, and no doubt would have blotted out from memory the scenes he drew so well, and in which he himself had shone so brilliantly.—*Field.*

LEGAL LADIES.

We should very much like to know what the gentlemen who carry on the business of law publishers in Bell-yard and thereabouts would say—and we may add ourselves and our contemporaries—if they found a lady setting herself up in rivalry against them, and using all her energies to get the support of the Bench and the Bar. America affords us evidence that there is at least a possibility if not a probability of such a catastrophe.

With courtesy and every respect we have thus publicly to acknowledge the receipt of a circular from Myra Bradwell, which circular announces that "the undersigned, having long seen the want of a legal publication in the West, will, on, &c., issue the first number of a weekly paper, to be called the *Chicago Legal News.*"

"The *News*," we are further told, "will be issued on Saturday of each week, will contain four pages, 12 by 17 inches, of four columns each, and be devoted to legal information, general news, the publication of new and important decisions, and of other matters useful to the practising lawyer or man of business. It will give abstracts of the points decided in our local courts comment, freely but fairly upon the conduct of our judges, the members of the Bar, officers of court, members of Congress and our State Legislature in their administration of public affairs. The summary of events in each number will contain items of general news, a notice of recent law publications, changes in the rule or practice of our local courts, admissions to the Bar, marriages and deaths of its members. The undersigned has the promised aid of some of the best and ablest men of the Bench and Bar of Illinios, who will furnish original contributions upon the various legal subjects. A portion of each number will be exclusively devoted to legal notices and advertisments."

This is business-like and grammatical, but then follows this extraordinary sentence: "The *News* will be enlarged from time to time as the liberal patronage of the public will enable her to do." We do not desire to be hypercritical, but for the honour of the Profession even in Chicago we trust that Miss Bradwell will not be tempted to write her own articles.

We had written the above when we opened a slip of "Opinions of the press," which accompanies the prospectus, and to our amazement we find that the lady is not Miss but Mrs. Myra Bradwell, being no less a person than the wife of the Hon. J. B. Bradwell, Judge of the County Court of Cook County. The *Chicago Republican* calls her "the wife of our popular County Court Judge." The *Janesville Gazette* refers to her as "the talented wife of Judge Bradwell." The *Chicago Evening Journal* says: "To those who are not acquainted with Mrs. Bradwell, we should say she is a lady of ability and determination, and will carry through to the end whatever she may undertake. We most heartily wish her abundant encouragement and success."

We echo the sentiment, simply recommending this talented and enterprising lady to take a little pains in the construction of her sentences.

ONTARIO REPORTS.

COMMON LAW CHAMBERS.

(*Reported by* Henry O'Brien, Esq., *Barrister-at-Law, Reporter to the Court.*)

The Queen v. Frank Reno and Charles Anderson.

Extradition—Ashburton Treaty—31 Vic. cap. 94—Police Magistrates—28 Vic. cap. 20—Habeas Corpus—Return to.

The express car of a railway train on one of the roads in one of the United States of America was broken into and plundered by five or more men, two or three of whom fired at the conductor, who was endeavouring to stop them as they were moving off with the engine, &c. The conductor was at the time about eight feet from the person who fired the first shot, and the ball passed through his coat. This person was sworn to be a brother of the prisoner Reno. The express messenger swore to the identity of the prisoners, and as to the identity of the person who fired the first shot. The prisoners were arrested in Canada, at the instance of the express company, and demanded for extradition by the United States authorities. They were arrested and detained by two warrants of commitment, the second being intended to cover defects in the first. The prisoners offered evidence on their examination to prove an *alibi.* They were afterwards brought before the Chief Justice on a writ of *habeas corpus.*

Held, 1. That the words in the first warrant, "did feloniously shoot at, &c., with intent to kill and murder, &c.," are included in the words used in the Extradition Treaty and Act, which speaks of an "assault with an intent to commit murder," and therefore the warrant was not bad on that ground.

2. That a statement by the gaoler, as a return to a writ of *habeas corpus,* that no funds had been provided to pay the expense of bringing the prisoner before the judge, was in fact no return to the writ.

3. That the return must be produced and read before the judge previous to its being filed.

4. That it is not indispensable that the authority of the magistrate should be shown on the face of a warrant of commitment; and where the crime has been committed in a foreign country, and the committing magistrate has (as Mr. McMicken had in this case) jurisdiction in every

county in Ontario, the warrant is not bad, though dated at Toronto, the county mentioned in the margin being York, but directed to the constables, &c., of the county of Essex, and being signed by the police magistrate as such for the county of Essex.

5. That 28 Vic. c. 20, authorizing the Governor to appoint police magistrates relates to the administration of justice, and is within the powers of the Legislature of Ontario, and is still in force.
6. That under 31 Vic. cap. 94, the last Extradition Act, all that the committing magistrate or the court or a judge has to do is to determine whether the evidence of criminality would, according to the laws of Ontario, justify the apprehension and committal for trial of the accused if the crime had been committed therein, and that such decision, if adverse to the prisoner, does not conclude him, as the question of extradition itself or discharge exclusively rests with the Governor-General.
7. That under the circumstances of this case, there was sufficient *prima facie* evidence of the criminality of the prisoners to warrant a refusal to discharge them, and that there was evidence to go to a jury to lead to the conclusion that the intent of the prisoners was, at the time of the shooting, to commit murder.
8. That evidence offered to a magistrate by a prisoner, on an examination of this kind, by way of answer to a strong *prima facie* case, may perhaps properly be taken, but would not justify the magistrate in discharging the prisoner. And *quære*, whether it was not the intention of 31 Vic. to transfer to the Governor exclusively the consideration of all the evidence, that he might determine whether the prisoner should be delivered up. The magistrate cannot weigh conflicting evidence to try whether the prisoner is guilty of the crime charged.
9. The duty of the court or a judge on a *habias corpus* in such cases, is to determine on the legal sufficiency of the commitment, and to review the magistrate's decision as to there being sufficient evidence of criminality.

[Chambers, October 4, 1868.]

A writ of *habeas corpus ad subjiciendum*, under the statute of Car. II., was issued to the gaoler of the county of Essex.

The writ was issued and tested in vacation, returnable immediately before the Chief Justice of the Court of Queen's Bench, or of the Common Pleas, or any Judge of either of those Courts, presiding in Chambers at Toronto.

To this writ the gaoler made the following return:

"I, (&c) do hereby certify that I hold and detain the said Charles Anderson and Frank Reno, in the within writ named, under the warrant of commitment of Gilbert McMicken, Esq., police magistrate in and for the said county of Essex, and issued by him on the 14th day of September, 1868, and now annexed to the within writ, and under no other warrant or writ, and for no other cause or matter whatsoever; and I am ready to produce the bodies of the said Chas. Anderson and Frank Reno, as I am within commanded, but I am unable to convey them to the city of Toronto, as within commanded, because I have no means whereby to pay the expense of such conveyance; and having applied to the said prisoners and their counsel, they refuse to furnish me with such means; and having applied to the Treasurer of the said county of Essex, I am informed that there are no funds applicable to the said service; and therefore I most respectfully submit to this honorable Court that I am unable to obey the command of the said writ."

The writ, with this return attached to it, together with the original warrant therein mentioned, were sent by post to the Clerk of the Crown and Pleas of the Court of Queen's Bench at Toronto, who wrote on the back of the return, "Received and filed the 26th September, 1868," and signed his name thereto. It was then handed to the Clerk in Chambers.

After this, Mr. Justice John Wilson, sitting in Chambers, made an order, allowing all the foregoing papers to be withdrawn, and that the gaoler might make such a return as the papers in his possession warranted.

On Thursday, October 1st, the gaoler brought the two prisoners before the Chief Justice of Ontario, in Chambers at Osgoode Hall, and on his behalf the writ of *habeas corpus* was put in, with the foregoing return annexed, and another return as follows:

"I, (&c.,) do certify and return to our Sovereign Lady the Queen, that before the coming to me of the said writ, that is to say, on the 14th day of September, 1868, Charles Anderson and Frank Reno, in the said writ also named, were severally committed to my custody by virtue of a certain warrant of commitment, the tenor of which is as follows:—

"Province of Ontario, County of Essex, *to wit:*

"To all or any of the constables or other peace officers in the said county, at Sandwich, in the said County of Essex, and to the keeper of the Common Gaol of the County of Essex, at Sandwich, in the said County of Essex:

"Whereas Frank Reno and Charles Anderson, late of the town of Marshfield, in the County of Scott, and State of Indiana, one of the United States of America, were this day charged before me, Police Magistrate in and for the County of Essex, amongst other Counties, appointed under and by virtue of the Act of the Parliament of Canada, 28th Victoria, ch. 20, intituled 'An Act respecting Police Magistrates,' on the oath of Lee C. Weir and others, for that they, the said Frank Reno and Charles Anderson, on the 22nd day of May, 1868, within the jurisdiction of the United States of America, to wit, at the town of Marshfield, in the County of Scott, and State of Indiana, one of the United States of America, did feloniously shoot at Americus Whedon, with intent in so doing, him the said Americus Whedon, to feloniously, wilfully, and of their malice aforethought to kill and murder, and that in consequence of the said offence, the said Frank Reno and Charles Anderson have fled from the said State of Indiana, and are now residing in the town of Windsor, in the County of Essex aforesaid. And whereas such evidence as, according to the laws of this Province, would justify the apprehension and committal for trial of the said Frank Reno and Charles Anderson, if the crime of which they are accused had been committed in this Province, has been adduced before me:

"These are, therefore, to command you, the said constables or peace officers, or any of you, to take the said Frank Reno and Charles Anderson, and them safely convey to the common gaol at Sandwich, in the County of Essex aforesaid, and there deliver them to the keeper thereof, together with this precept.

"And I do hereby command you, the said keeper of the said Common Gaol, to receive the said Frank Reno and Charles Anderson into your custody in the said Common Gaol, and there safely to keep them, until they shall be thence delivered by a warrant under the hand and seal of His Excellency the Governor General, ordering the said Frank Reno and Charles An-

derson, committed as aforesaid, to be delivered to the person or persons authorized to receive the said Frank Reno and Charles Anderson, on behalf of the United States, or until discharged according to law.

"Given," &c., "this 14th September, at the town of Sandwich, in the county aforesaid.

[L. S.] "Signed, G. McMICKEN,
"*Police Magistrate for the County of Essex.*"

"And that afterwards, and whilst the said Frank Reno and Charles Anderson were respectively so in my custody, that is to say, on the twenty-eighth day of September, 1868, the said G. McMicken caused to be delivered to me a certain other warrant of commitment, the tenor of which is as follows:

"PROVINCE OF ONTARIO, COUNTY OF YORK' *to wit:*

"To all or any of the constables or other peace officers in the County of Essex and Province aforesaid, at Sandwich, in the said County of Essex, and to the keeper of the common gaol of the County of Essex, at Sandwich, in the said County of Essex:

"Whereas Frank Reno and Charles Anderson, late of the town of Marshfield, in the County of Scott and State of Indiana, one of the United States of America, were charged before me on the 14th day of September, 1868 being Police Magistrate in and for the said County of Essex, appointed under an Act of the Parliament of Canada, 28th Victoria, ch. 20, intituled 'An Act respecting Police Magistrates,' on the oath of Lee C. Weir and others, for that they, the said Frank Reno and Charles Anderson, on the 22nd day of May, in the year of our Lord one thousand eight hundred and sixty-eight, within the jurisdiction of the United States of America, to wit, at the town of Marshfield, in the County of Scott and State of Indiana, one of the said United States of America, did feloniously assault Americus Whedon, with intent, in so doing, him, the said Americus Whedon, feloniously, wilfully, and of their malice aforethought, to kill and murder; and that in consequence of the said offence, the said Frank Reno and Charles Anderson have fled from the said State of Indiana, and are now residing at the town of Windsor, in the County of Essex aforesaid.

"And whereas such evidence as, according to the law of this Province, would justify the apprehension and committal for trial of the said Frank Reno and Charles Anderson, if the crime of which they are accused had been committed in this Province, has been adduced before me:

"These are, therefore, to command you, the said Constables or Peace Officers, or any of you, to take the said Frank Reno and Charles Anderson, and them safely convey to the Common Gaol at Sandwich, in the County of Essex aforesaid, and there deliver them to the Keeper thereof, together with this precept.

"And I do hereby command you, the said Keeper of the said Common Gaol, to receive the said Frank Reno and Charles Anderson into your custody in the said Common Gaol, and there safely to keep them, until they shall be delivered by a warrant under the hand and seal of His Excellency the Governor General, ordering the said Frank Reno and Charles Anderson to be delivered to the person or persons authorized to receive the said Frank Reno and Charles Anderson, on behalf of the United States, or until discharged according to law.

"Given," &c., [concluding as the former warrant, but dated 28th September, 1868] "at the City of Toronto, in the County of York."

"And that they, the said Frank Reno and Charles Anderson, in the first warrant mentioned, are the same Frank Reno and Charles Anderson as in the second warrant mentioned.

"And these are the causes of detaining the said Frank Reno and Charles Anderson, whose bodies I have here ready, as by the said writ I am commanded."

The original warrant, a copy of which is the first of the two annexed to this second return, was annexed to the writ and the first return set out above.

A writ of *certiorari* was also issued, dated the 26th September, 1868, and directed to Gilbert McMicken, Esq., Police Magistrate, the committing Justice, by whose authority Charles Anderson and Frank Reno were confined, to certify and return forthwith "the evidence, depositions, and other proceedings had or taken, touching or concerning such confinement."

This writ was duly returned with "the evidence," &c., as required.

The information was laid against the two prisoners on the 19th August, 1868, stating that the informant, Lee C. Weir, had reason to believe, and did verily believe, that Frank Reno and Charles Anderson, on the 22nd May, 1868, at the town of Marshfield, in the County of Scott, in the State of Indiana, one of the United States of America, "did feloniously shoot at Americus Whedon, with intent in so doing, him, the said Americus Whedon, feloniously, wilfully and of their malice aforethought, to kill and murder," and in consequence of that offence had fled, and then were residing at the town of Windsor, in the County of Essex.

It appeared that upon this information the prisoners were brought before the Police Magistrate, and the depositions of Lee C. Weir, Americus Whedon, Thomas Griffin Harkins, George W. Fletcher and Samuel A. Jones, against the prisoners were taken.

It was sworn that, on the 22nd May last, an express train, made up of engine, tender, express car, baggage car, and two coaches, was run on the Jeffersonville, Madison and Indianapolis railway, in the State of Indiana, leaving Jeffersonville at 9½ p.m. The express car carried boxes of goods and packages of money, which latter were in a safe. The train, on reaching Marshfield water-station, stopped to take in water. There is a switch there. There is also an old abandoned saw-mill, about thirty yards from the water tank, and three or four houses within about two hundred yards, but not all inhabited. The train stopped there about eleven o'clock, and almost immediately several men (six or seven) were seen going to the express car. One disconnected the bell-rope, another uncoupled the baggage and express cars. Whedon, the conductor, shouted to them, and the man who disconnected the bell-rope fired at him, the ball passing through the conductor's coat, and the engine, with the express car, moved off, leaving

the other part of the train on the track. Two other shots were fired from the end of the express car, one by the man who pulled out the coupling pin, the other by the man who had fired the first shot. Some of these shots were from a revolver. The conductor was, as he thought, about eight feet distant when the first shot was fired, fifteen feet at the second, and thirty feet at the last. He fired three shots in return. He recognized the first man who fired as one Simeon Reno, a brother of the prisoner Frank, whom he pointed out at this examination. The family residence of the Renos was near the village of Seymour, which is about eighteen miles north of Marshfield. Shortly after the engine and the express car had moved off the door at the rear of the latter was burst open. Harkins, the express messenger, states that three men entered at once, and immediately afterwards he lost consciousness—the last he could remember was the flash of a pistol, or ball of fire, before his eyes. He gave no other explanation, and added that on the Sunday following (the 22nd of May was on Friday) he recovered consciousness. By other testimony it appears that both front and rear doors of the express car were burst open, and pieces of paper and broken packages were scattered round in the car. The conductor telegraphed to various places, and an engine was sent to him, with which he took on the residue of his train to Seymour, where he found the express car and the engine which had been taken away.

Harkins was found about 250 yards from where the engine and express car had been taken, lying between two trucks, "doubled up." He was insensible, and had a cut on the back of his head. From the place where he seemed to have first struck the ground he appeared to have slipped about ten feet. In the opinion of the conductor, the engine taken away must, at the place where Harkins was found, have been going at the rate of thirty miles an hour.

Harkins states that he did not know either of the three men who burst into the car, but that the two prisoners are two of them: that he recognized them in the Dominion Saloon at Windsor, and there pointed them out to Mr. Weir. On cross-examination he gave a description of the light on the car, viz.: a lamp placed about five feet high on the left hand side, entering from the rear, and behind him as he looked towards the men entering. He stated that he has since seen Simeon Reno, and had recognized him also.

McMichael and *O'Connor* for the prisoners, contended:

1. As to the matters of fact that there are inconsistencies, and strong improbabilities in the depositions (particularly in those of the express messenger), which render it unjust, or at least indiscreet to rely and act upon them; and that they are proved to be untrue by the mass of testimony adduced to prove, and which does prove an *alibi*.

2. As to the matters of law, they insisted that as there is no direct proof that either of these prisoners actually did shoot at the conductor, although they went in company with the man who did shoot, and with others to steal, there is no reason whatever for inferring that they went intending to commit murder: that the act of shooting at the conductor with intent to murder, being no part of the original design, and being a distinct felony according to our law, was an act for which only the actual agent or agents were responsible, and that there was no proof that the prisoners concurred in that act, or in the intent with which it is charged to have been done; that the intent may just as well have been to maim, disable, or do grevious bodily harm to the conductor as to murder him, and therefore would not sustain the charge stated in the committal, *i. e.*, shooting at, with intent to murder, which is the only intent contained in the treaty: that the first warrant does not contain a description of an offence as designated in the treaty, by the words, "Assault with intent to commit murder:" that the second return made by the gaoler was null, as he had made one return already to which the first commitment was annexed; that the second warrant of commitment was void, being made after the writ of *habeas corpus* was issued, and this first return had been made and had been received and marked filed by Mr. Dalton, the Clerk of the Crown and Pleas for the Court of Queen's Bench (the Court under whose seal the *habeas corpus* issued), to whom the gaoler had transmitted the writ and return by post: that this second warrant was also informal—the venue in the margin being in the County of York—and at the end, the commitment being stated to be "Given," &c,, at the City of Toronto, in the County of York," where, for all that is shewn, this Police Magistrate had no jurisdiction.

Draper, C. J.—The case for the prosecution may be thus condensed. The express car of a railway train which was passing through the county of Scott, in the State of Indiana, one of the United States of America, was broken into and plundered by a party of five or six and probably more men; two or three of whom fired at the conductor of the train, who endeavoured to stop them as they were moving off with the engine and this car. The first shot was fired when the conductor was about eight feet from the man who fired, and the ball passed through the conductor's coat near his body. The conductor knew the man who fired it, he being a brother of the prisoner Reno The two prisoners are positively sworn to by the express messenger as having broken into the express car, with a third, whom he afterwards saw in custody and identified, and who was the man that fired the first shot at the conductor.

It is better in the first place to dispose of the merely formal objections. First, as to the first (so-called) return. It is in truth no return, but contains matter of excuse only for not obeying the writ. The second section of the Habeas Corpus Act (31 Car. II.) provides how the charges for bringing up the body are to be paid or secured, and a return which amounts to no more than a statement that such charges were not provided for, and that therefore the writ was not executed, is useless and nugatory. Further, I apprehend that on a writ of *habeas corpus* returnable before a judge in Chambers, the return must have been brought to and read before him, before any officer of the Court could file it. I do not think that what was done in this case amounted to filing of the return. If it had, I should have had no difficulty in ordering it to be taken off the files in order that a proper return

might be made; and in some mode (not made the subject of enquiry or objected to), this has been done, for when the writ was first brought before me at Chambers, it had a full and formal return to it. Leonard Watson's case, 9 A. & E. 734, is an authority for amending a return to a *habeas corpus*, which would have abundantly sustained the application to amend had amendment been necessary. In my opinion there has only one return been made to this writ which I can notice or act upon, and that is the return stating two commitments of these prisoners, and this having been openly read has been duly filed.

As to the form of the second warrant the objection was not taken by the prisoners' counsel, but after hearing the case argued at length, I examined the papers and noticed the matter, and subsequently called the attention of the prisoners' counsel to it.

Hawkin's Pleas of the Crown, Bk. 2, ch. 13, sec. 22, says that a warrant ought to set forth the day and year wherein it is made, and (sec. 23) that it is safe, but perhaps not necessary in the body of the warrant to shew the place where it is made, yet "it seems necessary to set forth the county in the margin at least, if it be not set forth in the body."

In strictness it is not indispensable that the authority of the magistrate should be shown on the face of the warrant, for the omission may be supplied by averment and parol evidence: 2 Hale 122. In Hawk. P. C. bk. 2 ch. 16, sec. 13, it is laid down that a commitment must be in writing, under the hand and seal of the person by whom it is made, expressing his office or authority, and the time and place at which it is made, and must be directed to the gaoler or keeper of the prison. In this warrant, the Police Magistrate, in the recital states his authority thus: "being Police Magistrate in and for the said County of Essex, appointed under 28 Vict., ch. 20." The committal is adressed to the constables as well as to the gaoler of the County of Essex, and the committal is to the gaol of that county. It further appears that Mr. McMicken, the Police Magistrate, held then—and still holds—his commissions under the Great Seal of the Province, issued under the statute of that Province (28 Vict. chap. 20), appointing him to be a Police Magistrate, and to be and act as such Police Magistrate in all the counties and unions of Counties in Upper Canada, including the County of the City of Toronto. It must also be borne in mind that the offence charged against the prisoners does not fall within the established rule and practice that every offence against our law must be inquired of, tried and determined, within the county, &c., wherein it was committed. This offence was, as is charged as having been committed in a foreign country, and the authority to take any proceedings with respect to it is founded on the treaty of Washington (August, 1842) and on the statute of the Dominion of Canada, 31 Vict. ch. 94. Under this statute and the Statute of 28 Vict., and his commissions, there can be no doubt that Mr. McMicken had authority in every county in Ontario to exercise jurisdiction over cases of this kind.

The pressure of other business (as I was the only Judge in town) compelled me to defer giving judgment until yesterday evening, when I was a little startled to hear for the first time an objection raised by the prisoner's counsel, that the Act 28 Vict. ch. 20 had expired, and with it the authority of the Police Magistrates; and as there was then no time to examine into the enactments bearing on the point, the case stood over until this morning.

I have no doubt now that there is nothing whatever in the question raised.

The statute of Canada (28 Vict. ch. 20) authorizes the Governor to appoint fit and proper persons to act as Police Magistrates within any one or more counties in Upper Canada. Section 3 defines their powers, and they clearly relate to the administration of Justice.

This statute received the Royal Assent on the 18th March, 1865, and was to continue in force for two years, and thence until the end of the next ensuing session of Parliament.

On the 29th March, 1867, the Act erecting the Dominion of Canada was passed, and it was brought into operation (by proclamation) on the 1st July following. Among the powers which this statute assigns exclusively to the respective Legislatures of the Provinces is the administration of Justice therein.

By section 65, all powers, authorities and functions, which before and at the Union were vested in or exercisable by the respective Governors or Lieutenant Governors of Upper Canada, Lower Canada or Canada, shall, so far as the same are capable of being exercised after the Union, in relation to the Government of Ontario and Quebec respectively, be vested in, or may be exercised by, the Lieutenant-Governors of Ontario and Quebec respectively, &c. See also section 66.

By section 137, the words "and from thence to the end of the then next ensuing session of the Legislature, or words to that effect, used in any temporary Act of the Province of Canada, not expired before the Union, shall be construed to extend to and apply to the next session of the Parliament of Canada, if the subject matter of the Act is within the powers of the same, as defined by this Act, or to the next sessions of the Legislatures of Ontario and Quebec respectively, if the subject matter of the Act is within the powers of the same, as defined by the Act."

By 31 Vict. ch 17 the Legislature of Ontario continued this statute until the first day of January, 1869.

I have no difficulty in holding that the statute 28 Vict. relates to the administration of Justice, and is within the powers of the Legislature of Ontario; and if I were not free from doubt I could not, while not clear in an opposite conclusion, refuse to adopt the evident construction which the Legislature of this Province have put on section 137 in relation to this particular statute, by continuing it, as already stated.

I do not think the Statute of Canada, 31 Vic. ch. 83, at all affects this conclusion.

Coming to the remaining question of law arising on the facts of this case, it must be observed that the proceeding against the prisoners is founded on the Statute of Canada, 31 Vic. ch. 94. The recital of that act states the treaty of 9th August, 1842, between Her Majesty and the United States of America, providing for the mutual delivery of all persons, who, being charged

with the crime of murder, or assault with intent to commit murder, or piracy (and some other offences), should seek an asylum, or should be found within either territory, "provided that this should only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged should be found, would justify his apprehension and commitment for trial, if the crime or offence had been there committed." Under the first section, the magistrate in this case had clear authority to initiate proceedings against the prisoners, and upon their apprehension on a warrant issued by him, to examine upon oath any person or persons touching the truth of such charge, and upon such evidence as, according to the law of this Province (Ontario), would justify their apprehension and committal for trial if they had committed the crime charged therein, to issue a warrant for their commitment to the proper gaol, which in the present case is the gaol of the county of Essex.

The statute gives no authority, except to commit for the purposes specified in the act. If the evidence does not justify this step the accused must be discharged—there can be no bail required as a condition of discharge.

There is some language of Lord Tenterden in the case of *Rex* v. *Gourlay*, 7 B. & C. 669, not inapplicable to such a case. I may quote it *verbatim*: "The commitment authorized by the Act of Parliament is very peculiar. It is not a commitment for safe custody, in order that the party may afterwards be brought to trial within our jurisdiction; nor is it a commitment in execution." It is a commitment for safe custody only until the Governor, on a requisition made by the United States, shall, by his warrant, order the persons committed to be delivered to the person authorized by the United States to receive them, to be tried for the crime charged; or the Governor may order their discharge, as a copy of all the testimony taken before the committing magistrate is to be transmitted for his (the Governor's) information. This provision was not contained in the two former statutes. The question of extradition or discharge is therefore vested exclusively in the Governor General, whose decision may possibly be influenced by considerations which a court could not entertain; and, as appears to me, all that the committing magistrate—or the judge or court before whom the accused is brought upon *habeas corpus*—has to do, is to determine whether the evidence of criminality would, according to the laws of this Province, justify the apprehension and committal for trial of the accused, if the crime charged had been committed (or alleged to have been committed) therein.

Following this as the rule, there appears to me no doubt that there was evidence to sustain a charge of assault with intent to commit murder. But it is objected that this is not the charge laid in the first information, which, on the contrary, is in these words: that the prisoners "did feloniously shoot at Americus Whedon, with intent in so doing, him, the said Americus Whedon, feloniously, wilfully and of their malice aforethought to kill and murder." It certainly would have been the more prudent course to have followed the precise description of the offence given by the statute; but if the charge, as laid in the information, involves an assault with intent to commit murder, and the evidence sustains the charge of assault with that intent, and after the evidence taken the accused are committed on a charge following the very words of the treaty and statute, I think it would be discreditable to the administration of the law if the verbal variance between the information and the statute were allowed to prevail. That shooting at a man with intent to murder him involves an assault, cannot be denied. An assault with intent to murder may be proved in various ways, when by an act of violence it is the intention of the assailant to murder. Here, the particular mode in which it was endeavoured to execute that intent—a mode which includes an assault is expressed—it limits the charge to one particular mode of assaulting, but it is not the less a charge of assault with the felonious intent; and unless the precise words of the statute must be followed, it expresses the same charge which the statute expresses. If the words of the statute were exactly followed, the charge would be well laid; but the converse is not true, viz, that the charge is insufficiently made unless the very words are followed I think, therefore, that the first warrant might be upheld.

As to the second warrant, there is no such difficulty, but it is objected that the facts proved are as much evidence of other felonious intent as of the intent to murder, and therefore the intent to murder is left uncertain on the evidence, and so there is not sufficient evidence of the offence of an assault with intent to murder. The question of intent is for the jury. I apprehend that if on such evidence before one of our Courts a jury found a prisoner guilty of an assault with intent to murder, it could not be denied that the evidence fully warranted the finding. If so, this objection fails.

It has also been urged, and very strongly, that the evidence shews that the intent of the parties in the first instance was to steal—not to murder: that the shooting at, with intent to murder the conductor, was no part of the original intent: that a new intention to commit a different felony—though coupled with an act to commit it—can only be fastened on those who actually shared in both the new intent and the act, and that the evidence does not establish this against the prisoners. After carefully examining the evidence, I am not prepared to say that it may not and ought not to satisfy a jury that these two prisoners and Simon Reno were all three together when the shots were fired, and that two of the prisoners, possibly each of them, shot at the conductor. They were, according to Harkin's deposition, the three who entered the express car almost directly after the shots were fired. There were others of the party at the same time on the engine, managing it. I do not perceive the bearing of the case of *Rex.* v. *Cruse* 8 C. & P. 541; 2 Mod. C. C. R. 53. It establishes that the jury must be satisfied that the prisoners must have had in their minds, at the time of the shooting, an intent to murder. I think there is evidence to go to a jury to lead to that conclusion, as I think, if the conductor had been killed, there was evidence against them all of murder.

As to the effect to be given to the evidence put in on behalf of the prisoners before the com-

mitting Magistrate, I consider, for the purposes of this case, that it was properly received. Some portion of it was given by persons on whose character and respectability the prisoners' counsel appeared to place little reliance, and there was some important evidence by way of rebuttal. But that such evidence, when offered by way of answer to a strong *prima facie* case, would have justified the Magistrate in discharging the prisoners, I cannot for a moment admit. Indeed I have not been free from doubt whether it was not the intention of the Legislature by the last Act (31 Vict.) to transfer to the Governor General exclusively the consideration of all the evidence, that he may determine whether the accused should be delivered up. If there is not sufficient evidence of criminality the Magistrate ought not to commit; if there is, I think he ought, notwithstanding there is evidence sufficient, if true, to sustain an *alibi*. On *habeas corpus*, the Court or a Judge would determine upon the legal sufficiency of the commitment to hold the accused in confinement, and would further review the Magistrate's decision as to there being sufficient evidence of criminality. As at present advised, I think they would leave any other considerations presented by the evidence brought forward by the accused to the Governor. I do not venture to say there would be no exception to this course. But it is very easy to point out the danger that contrasting conflictin gevidence—considering the credibility of witnesses and similar matters—might lead to. It would for many purposes be assuming the functions of a jury, and trying the whole merits of a case upon an enquiry instituted only to ascertain if there is such evidence of criminality as would justify the apprehension and committal—not the conviction—of the accused. The treaty would be waste paper if a Magistrate, appointed to conduct only a preliminary investigation, should, after hearing sufficient evidence of criminality, take upon himself to decide that the incriminating evidence was worthless, or was displaced, because witnesses on the prisoner's behalf swore to a state of facts inconsistent with the incriminating evidence—for example, as in the present case, swearing to an *alibi*. If the Magistrate discharges the accused because he thinks their witnesses are entitled to more credit than those for the prosecution, he goes not only beyond the letter, but also, as I think, beyond the true meaning of the Act, which only confers authority on him to enquire whether the evidence of criminality is, according to the laws in force here, sufficient to sustain the charge. If he discharges because the evidence *pro* and *con*. is equally strong, and he cannot tell which side is telling the truth, he is, in my humble judgment, equally in error, because he is assuming the functions of the tribunal to which belongs the trial of the prisoner's guilt, instead of limiting himself to the question directed by the statute.

I have heard an intimation that a contrary course has been adopted in a case in this Province—that after positive testimony had been given to establish the offence charged, a witness for the accused was admitted, who swore that he, the parties accused and the witness who swore positively against them, had confederated to get possession of the money, not by an act of robbery with violence, but by the willing connivance of the person in charge of it, and who was the principal witness against the accused: in effect, that he was a *particeps criminis* in embezzling or stealing the money, which was not, therefore, obtained by robbery, and therefore the crime actually committed did not come within the treaty, and that this conclusion was arrived at, and the accused was discharged. The facts may not have been accurately stated to me, but, assuming such a case, I could not have brought myself to such a conclusion. I do not enquire what effect such evidence would or ought to have before a tribunal sitting to try the accused on a charge of robbery; but I repeat what has often been said, that we must assume that courts in other countries will be governed by the same general principles of justice which prevail in our courts; that they will give the proper weight to the evidence for the defence, as our courts would give, and that to them should be left—so far as the merits are concerned at least—the trial of those questions which would be tried in similar cases by our own tribunals. The object of the treaty is to subject parties, against whom a charge coming within the statute is sustained by sufficient evidence of criminality, to be put upon trial before the proper tribunal. It would be defeated if, on making the preliminary enquiry, the case on both sides were heard, and, in effect, so far as the execution of the treaty is concerned, were disposed of.

I decline to discharge these prisoners.

1. Because I am of opinion, that the committing magistrate had lawful authority to deal with the case.

2. Because I think there was sufficient evidence of criminality.

3. Because I think there was a sufficient warrant of commitment.

4. Because my refusal to discharge does not conclude the prisoners, for the statute confers upon a higher functionary the power to grant or to withhold the warrant for extradition.

Order accordingly.

Dean v. Thompson.

Time for taking next step after disposal of summons.

1. When a summons for leave to plead several matters has been disposed of after the time for pleading has expired, the defendant must plead instanter, otherwise the plaintiff may on the same day sign judgment for want of a plea.
2. The rule is otherwise when the summons is for security for costs, in which case the defendant has the whole of the day to plead.

[Chambers, Oct. 14, 1868.]

The defendant, on the 17th September, obtained an order for eight days further time to plead, agreeing to take short notice of trial. On the 25th September, the last day for pleading, defendant made an application for leave to plead several pleas, and on the same day he obtained a summons for security for costs, asking in it for a stay of proceedings. Both summonses were returnable on the 26th at ten o'clock. On the return of the summonses cause was shown, and shortly after ten o'clock the order for leave to plead several pleas was granted, and the application for security for costs refused. It did not appear whether the pleas were filed, but copies of those

allowed were served at a quarter to four p.m. of that day. In the meantime judgment was signed at twenty-nine minutes to eleven, or thereabouts.

The defendant then obtained a summons calling on the plaintiff to shew cause why the judgment signed for want of a plea to the plaintiff's declaration herein, and the execution issued thereon, and proceedings subsequent to said judgment should not be set aside with costs for irregularity, in that the said judgment was signed too soon, as the defendant had the whole of the day in which his summons for security for costs and for leave to plead several matters were disposed of in which to file his pleas; or why the said judgment should not be set aside on the merits, and in the meantime all proceedings were stayed.

The following cases were cited in support of the summons:—*Abernethy* v. *Patton*, 6 Scott 586; *Wells* v. *Secret*, 2 Dowl. 447; *Beazley* v. *Bailey*, 16 M. & W. 58; *Spenceley* v. *Shouls*, 5 Dowl. 582, and other cases referred to in Ch. Arch. (1856) 245, 1602, 1605.

English, for plaintiff, referred to Ch. Arch. 9th Ed. 214, 1503; *Bebb* v. *Wales*, 5 Dowl. 458; *Glen* v. *Lewis*, 20 L. J. Ex. 71, 81; *Hughes* v. *Walden*, 5 B. & C. 770.

Morrison, J.—I regret that I must make the summons absolute, as the impression made on my mind upon an examination of the case is, that the summons obtained for staying proceedings until security for costs was given was taken out for the purpose of delaying the plaintiff and throwing the case over the last Belleville Assizes. If the only summons pending was the one for leave to plead several matters, and the time for pleading had expired when the Judge had disposed of the application, the plaintiff's judgment would, I take it, have been regular, unless the time for pleading had been enlarged. (See *Glen* v. *Lewis*, 8 Ex. 132.) But the case is different with respect to the application for security for costs and staying the proceedings. It is quite clear that upon the return of that summons the plaintiff's proceedings were stayed, and, as held by Lord Tenterden in *Hughes* v. *Walden*, 5 B. & C. 770, and which is the leading case, the defendant had, as a reasonable time, the whole of the day on which the rule was disposed of to take his next proceeding. In *Mengens* v. *Perry*, 15 M. & W. 537, which was a case of a summons for particulars of plaintiff's demand, the decision in the case of *Hughes* v. *Walden* was followed as the rule and practice, and both of these cases were adhered to in *Evans* v. *Senior*, 4 Ex. 818. Here the judgment was signed on the day the applications were disposed of, and upon the strength of these authorities I must hold that the judgment was signed too soon.

It was pressed very strongly by Mr. English and supported by the affidavit of the plaintiff's attorney, that the application for security for costs was not a *bona fide* one, but an abuse of the right to make such an application, and to throw the plaintiff over the assize, and that in such case the summons would not operate as a stay, as said in Chitty's Arch., 1595, 9th ed. I have not before me either the grounds upon which that summons was obtained or how disposed of. If the plaintiff desires it, I shall, as in the case of *Bebb* v. *Wales*, 5 Dowl. 458, refer it to the Master to report whether or no the summons was taken out *bona fide*, and if not, the summons will be made absolute upon payment of costs. If the plaintiff's counsel does not take that course the summons will be absolute, but without costs.

Purdy v. Rowlands.

Irregularity—Style of case.

Writ of summons in Queen's Bench, *T. H. B. Purdy* v. *Rowlands*. Declaration by mistake in Common Pleas, *J. F. H. Purdy* v. *Rowlands*. Motion to set aside declaration for irregularity is properly made on affidavits entitled as in latter cause.

[Chambers, October 16, 1868.]

A writ of summons was sued out in the Court of Common Pleas, from the office of a Deputy Clerk of the Crown at the suit of T. H. B. Purdy, to which the defendant appeared. The declaration filed and served was by mistake entitled in the Queen's Bench, and at the suit of John T. H. Purdy, and mis-recited the date of the issue of the writ, whereupon the defendant obtained a summons entitled in the same manner as the declaration, calling on the plaintiff to shew cause why the declaration filed herein, the copy and service thereof, or some or one of them, should not be set aside for irregularity, with costs, on the grounds:—

1. That no writ of summons was ever issued, or if issued, served in this action, to ground the said declaration.

2. That this action was not commenced by writ of summons, as required by the statute on that behalf, the first proceeding of any kind taken herein being the filing of the said declaration.

And why, in the meantime, all further proceedings should not be stayed.

O'Brien shewed cause, and objected that the motion was made, and that the affidavits filed in support of it were entitled in the wrong cause, there being, according to the contention of defendant, no suit in court as that entitled in the Queen's Bench, and that if the declaration is anything it is an irregular declaration in the suit in which defendant appeared, viz., in the Common Pleas.

Osler, contra, referred to *Ross et al.* v. *Cool et al.*, 9 U. C. C. P. 94.

Draper, C. J., held that the motion was properly made, and made the summons absolute.

Order accordingly.

CHANCERY CHAMBERS.

(Reported by J. W. Fletcher, Esq., *Barrister-at-Law.)*

Eastman v. Eastman.

Practice—Re-taxation of costs.

[Chambers, 26th Sept., 1868.]

Henderson moved for an order to re-tax the bill of costs of plaintiff, or rather that the taxation should be opened, and that he should be allowed to attend before the Master. He stated in support of the motion, that he did not impeach the regularity of the proceedings upon the taxation, but

sought a re-taxation of said costs on the ground that through inadvertence no person attended upon the taxation in the interests of his clients. The taxation appeared regular, and no particular items of the bill, as taxed, were objected to, but he thought on a re-taxation he could succeed in having the bill further taxed down. The application was supported by an affidavit, showing the facts.

Donovan, contra This motion is irregular. An application of this nature must be by way of petition, and not on notice of motion. The application, even if technically proper, cannot succeed, as no merits are shown. No particular items of the bill are pointed out as exorbitant or erroneous—no improper conduct is alleged.

Re Catlin, 18 Beav. 598, was cited.

The Judges' Secretary.—I must refuse this motion. No improper items being pointed out in the bill, as taxed, I can grant no relief.

Archibald v. Hunter.

Practice—Amending bill of complaint after expiry of 28 days from filing of answer.

[Chambers, 2nd Oct., 1868.]

In this suit the defendants had filed their answer; the plaintiffs had taken out and served order to produce, but only two of the defendants had filed their affidavits on production. More than twenty-eight days had elapsed since the filing of the last answer; the plaintiff was not, therefore, entitled to an order of course to amend.

S. H. Blake, on behalf of the plaintiff, moved, on notice, for an order giving the plaintiff liberty to amend the bill in certain particulars, or as he might be advised. He read the order to produce, with admission of service thereof, and produced a certificate of the state of the cause, showing that the defendant Fairweather had not filed his affidavit on production. He contended that the plaintiff could not safely amend without production by all the defendants, and that as they had not all produced, the plaintiff was entitled to the order asked. He submitted that order 81 did not apply in this case. The plaintiff was compelled to make this application through the default of the defendants. He put in an affidavit showing that it was desired to amend the bill, and that this could not prudently be done until all the defendants had produced. Under the general orders the court had power to make the order he asked, and he submitted the order in its terms should be as wide as possible.

Chadwick, contra, contended that the plaintiff had not shown diligence in compelling production by the defendants, and that he was therefore not entitled to the order asked. The plaintiff might have moved to commit Fairweather for non-production, and have made him produce before the twenty-eight days had expired. He cited *Crawley* v. *Poole*, 1 W. & M. 66.

The Judges' Secretary.—I think the plaintiff should have leave to amend his bill generally. It is sworn that he could not amend until after the defendants had complied with the order to produce, and although two of them filed their affidavits in April, the third, appearing by the same solicitor, did not file his until September. The wording of the order as to allowing amendments after the expiry of twenty-eight days from the filing of the answer, does not, I think, stand in the way of my giving the plaintiff such an order. The power of the court to extend the time for doing any act is expressly saved by the general orders, and I am only putting the plaintiff in the position he would have been in had the defendants all obeyed the order within the proper time. The costs should be costs in the cause. I do not give them to the defendants, as their default has rendered the application necessary, and I do not give them to the plaintiff, as he did not take active steps to enforce the production.

Read v. Smith.

Practice—Allowance of Error and Appeal Bond.

[Chambers, 5th Oct., 1868.]

In this suit the defendant, Smith, had filed his petition of appeal to the Court of Error and Appeal, and had filed the usual bond, and now moved for its allowance.

Fletcher, contra, contended that under order 28 of the Error and Appeal orders, this motion was unnecessary. The practice in Chancery was to serve a notice of filing the bond upon the solicitor of the opposite party, and if the bond be not moved against by the respondent within fourteen days from the service of such notice, it stands allowed without any motion.

The Judges' Secretary dismissed the motion with costs.

Smith v. Henderson.

Practice—Carriage of decree.

[Chambers, Oct. 14, 1868.]

McGregor, on behalf of the defendant, moved for the carriage of the decree on the ground that the plaintiff had not taken the decree into the Master's office, although more than fourteen days had elapsed since the said decree had been passed and entered.

Fletcher, for the plaintiff, admitted the fact that the decree had not been taken into the Master's office within the fourteen days, but contended that under order 211 of the General Orders this motion was unnecessary. Under that order the defendant, without leave of the court or notice to the plaintiff, might assume the carriage of the decree. It was formerly necessary, under order 42, sec. 1, of the recently repealed orders, to apply, on notice, in Chambers, for the carriage of a decree, but the new order had made a change in the practice in this respect.

The Judges' Secretary.—I think under General Order 211 that this motion is unnecessary. The motion must, therefore, be dismissed with costs.

ENGLISH REPORTS.

CROWN CASES RESERVED.

Reg. v. John Marsden.

Wounding constable with intent to resist lawful apprehension Fresh pursuit—Evidence.

A police-constable, having interfered to stop an altercation near the house where the prisoner lodged between the prisoner and another man, was struck by the prisoner and they had a struggle. The constable then went for assistance, and after an hour returned with W. and two other constables to the house—within which the prisoner had retired, all then being quiet. The prisoner having refused to open the door, one of the constables fetched a serjeant of police, and he and one of the constables having gone to the back door, W. and the two others forced open the front door, and in apprehending the prisoner, who had a bill-hook in his hand, and threatened to kill the first man who came up, W. was wounded by the prisoner, who struck him on the head with the hook.

Held, that the apprehension, after the lapse of an hour, was unlawful, the first transaction having then come to an end; and therefore that a conviction for wounding W. with intent to resist his lawful apprehension must be quashed.

[16 W R., 711, April, 1868.]

Case reserved by Smith, J.:—

The prisoner was tried and convicted before me at the spring assizes, 1868, at Warwick, on an indictment which charged him with feloniously wounding George Wesson, a police constable, with intent to resist his lawful apprehension.

The facts were that the prisoner lodged at his father's house in Lower Town street, Nottingham. About twelve o'clock on the night of Saturday, the 29th February, the prisoner, suspecting a man called Wormald was listening at the windows of the house, came into the street and used threatening language to him. Raison, a police constable, came up and interfered to put a stop to the altercation, and the prisoner then turned upon him and struck him with his fist, and there was a struggle between them. Raison, the police constable, then went away for assistance and remained absent for an hour. In the interval he changed his plain clothes for his uniform, and he returned to the house with three other constables, Wesson, Ash, and Harabin. The prisoner had then retired into the house and all was quiet. The door of the house was closed and fastened. Raison asked the prisoner to open the door and he refused. The constables tried the door several times, and after an interval of ten minutes or quarter of an hour finding they could not get into the house, they determined to send for a serjeant of police. One of them went to the police station distant about half a mile then, and after another interval of fifteen or twenty minutes returned with Serjeant Hind. The serjeant and Harabin went to the back door; Raison, Wesson, and Ash remained by the front door. These three constables again demanded admission, and were refused, and they then forced open the front outer door and entered the house. The constables saw the prisoner stand on the top of the stairs with a bill-hook in his hand. Raison asked the prisoner to come down. He refused and threatened to kill the first man who came up. Wesson then said, "Here's at him," and the three constables Wesson, Raison, and Ash ran up stairs to lay hold of him.

The prisoner then struck Wesson with the hook upon the head and wounded him—a struggle ensued in which Raison was also wounded by the prisoner with the hook. The prisoner was overpowered and taken into custody, having himself received severe wounds on the head from the constables in the struggle.

It was contended for the prisoner that the apprehension was not lawful—the assault was over—there was no further assault or affray to be apprehended, and no such fresh pursuit as would justify the constables in breaking into the house or apprehending the prisoner (see *R.* v. *Gardener*, 1 M. C. C. 390; *R.* v. *Walker*, 2 W. R. 416, Dearsley's C. C. 358).

I reserved these points for the consideration of the Court for Crown Cases Reserved. I did not pass sentence, and detained the prisoner in custody. If the apprehension was not lawful it is to be taken that there was no excess in this resistance offered by the prisoner.

No counsel appeared on either side.

Kelly, C.B.—In this case a police officer having heard an altercation between the prisoner and another man, interfered to stop it, when a struggle took place between the officer and the prisoner, and the latter struck the officer a blow with his fist. The officer then went away to seek for assistance, and at the end of an hour returned with some other officers and broke into the house within which the prisoner had in the meantime taken refuge. In the course of the struggle which then took place he received the wound for which the prisoner was indicted. Under these circumstances the question is whether this indictment for feloniously wounding with intent to resist the prisoner's lawful apprehension can be maintained. That depends upon whether this was a lawful apprehension, and that upon the question whether the struggle upon the stairs was a continuance of the first transaction, when no doubt the prisoner might have been lawfully apprehended. But between the two times an hour had elapsed, and it is therefore impossible to say that the second struggle was a continuance of the same transaction, or that this was such a fresh pursuit as to justify the acts of the constables. All the first matter having come to an end we are of opinion, independently of authority, that this conviction must be quashed. If, however, we had any doubt, the case of *R.* v. *Walker* (*supra*) is conclusive.

Smith, J., concurred. His opinion at the trial was in favour of the view taken by the prisoner's counsel; but, on account of the importance of the question, he reserved the case.

Conviction quashed.

COMMON PLEAS.

Bell v. Aitken and Others.

Practice—Costs of Country Attorney where trial in town.

The costs of the country attorney's attendance at a trial in town will not usually be allowed on taxation as between party and party, but the Master has a discretion to allow them in exceptional cases.

[16 W. R. 704, May, 1868.]

This was a patent case of considerable importance and difficulty. The plaintiff laid the venue in London; the defendant and his attorney resided at Stockport.

The defendant's country attorney attended at the trial in town, and (the defendant having

succeeded in the action) claimed to be allowed, on taxation, his costs of such attendance.

The Master, however, refused to allow these costs, on the ground that it was the invariable practice not to allow the costs of the attendance of the country attorney at a trial in town.

Thesiger having obtained a rule calling on the plaintiff to show cause why the master should not review his taxation,

Watkin Williams now showed cause against it.

Bovill, C. J.—I am of opinion that this rule must be made absolute. It is important that cases of this kind should be strictly watched, and that two attorneys should not be charged for where one is sufficient. In ordinary cases it is not necessary for the country attorney to attend.

Here the master has declined to exercise his discretion in the matter, considering he was bound by the general rule. That rule is a very proper one, and only to be departed from in exceptional cases. But in this case the presence and advice of the country attorney was important. The plaintiff has chosen to lay the venue in London, and it would be hard if the defendant were deprived of the assistance of his attorney or compelled to pay his costs. I think it right that the master should enquire into the matter.

Byles, J.—The general rule is a very salutary one. All we say is that the master should exercise his discretion in a case like the present.

Rule absolute.

CHANCERY.

Lord Brougham v. Cauvin.

Suit to recover possession of documents—Summons for production and inspection.

Where a depositee of documents claimed to retain them by way of lien for work done upon them by him for the depositor.

Held, that the depositor was entitled to the common order for production and inspection of the same documents in a suit to recover possession of them.

[16 W. R. 688, May, 1868.]

This was the usual summons for production of documents, adjourned into court.

The plaintiff having determined to take steps for the publication of an autobiography entered into negotiations with the view of securing the assistance of the defendant in collecting, selecting, and arranging the materials for the proposed work. Mr. William Brougham, who acted for the plaintiff in the matter, made a verbal arrangement with the defendant in reference thereto, but nothing was said as to the amount of remuneration which the latter was to receive for his services. However, he undertook the work and commenced in the early part of 1867. The plaintiff had in his possession many very valuable papers, letters, and other documents, stated to amount to many thousands in number, relating to the various events of his public life, and the chief business of the defendant was to collect, arrange, select, and make extracts from these various documents with a view to the preparation of the proposed work.

The defendant was put into possession of these documents, and continued to work upon them almost down to the present time.

The plaintiff being recently desirous of recovering possession of them applied to have them handed back to him, but the defendant refused to do so except upon payment, by way of remuneration, of a sum which the plaintiff considered exorbitant, and claimed to retain the papers by way of lien for the amount of his demand.

The plaintiff thereupon filed the bill in the present suit by which he prayed that the papers in question might be decreed to be handed back to him upon payment by him of sum such by way of remuneration as the Court should think reasonable.

The plaintiff applied by summons in chambers in the usual way for production and inspection of the documents in question in the suit, and as the application was opposed by the defendant it was on the suggestion of the chief clerk adjourned into court.

Jessel Q. C. (*O. Morgan* with him), after stating the facts, was stopped by the Court.

Baggallay, Q. C., and *W. W. Cooper*, for the defendant, contended that this was not the usual application for production of documents. It was not required for the purpose of discovery, for the only decree to which the plaintff could be entitled was one directing inquiries, and inspection was not required for that purpose. The result of granting the application would be that the plaintiff might take a note of the results of the defendant's work, and thus derive the benefit of his labour, and then take his bill off the file.

Lord Romilly, M.R.—This is, in my opinion, a most unreasonable offer. The bill is filed to get back certain papers which have been entrusted to the defendant to enable him to perform a work for the plaintiff. The depositee is entitled to retain them till he has been paid for work and labour undertaken for the depositor.

Two cases may be supposed. First, that he has done nothing to them. In that case is not the plaintiff to be entitled to show at the hearing that no work has been done? In the second case if work has been done is he not entitled to see what is the amount and nature of such work?

Everybody knows that a person who has a lien does not lose it by inspection. But a suggestion has been made that the plaintiff may get the benefit of the defendant's work and then abandon the suit. But in that case he would have to pay the costs of the suit and be liable to an action at law by the defendant. I never heard of a more unreasonable opposition to the order, but as the chief clerk appears to have approved of the adjournment into court I shall give no costs.

In re F—— (A Solicitor).
In re 6 & 7 Vic. c. 73.

Solicitor and client—6 & 7 Vict. c. 73, s. 37.

Taxation ordered upon an application made after the expiration of twelve months after delivery of the bill, on the ground of the continuance of the relation of solicitor and client subsequently to the delivery of the bill.

[M. R. 16 W. R. 749.]

A summons for the taxation of seven bills of costs, three of which had been delivered more than twelve months before the summons was taken out. Down to the 18th of December, 1867, Mr. F. was the solicitor of the applicants, who were executors and trustees of a will, and acted as such solicitor in a suit for the administration of the testator's estate, in which the applicants

were defendants. Mr. F. also received and paid moneys on account of the testator's estate, and there was an account current between him and the applicants in respect of such receipts and payments. The decree in the suit, made on the 29th of June, 1867, directed the usual accounts to be taken against the applicants. Mr. F. carried in his bills under the decree, which had been delivered by him at the following periods, namely, two on the 7th of December, 1866, one on the 31st of January, 1867, four and a cash account on the 31st of January, 1868. In the cash account Mr. F. discharged himself by setting off the amount of his bills against the moneys which had come to his hands on account of the applicants. The chief clerk having refused to allow the bills unless moderated the present summons was taken out. It was admitted that the overcharges were not excessive, but the ground of the application was, that if the bills were not referred for taxation the applicants would have to bear personally the difference between the amount which the chief clerk was disposed to allow on the bills and the sum total of the bills as delivered. *Jessel*, Q. C., and *Martineau*, in support of the summons, relied on the continuance of the relation of solicitor and client as a special circumstance to exempt the three former bills from the operation of the twelve months rule. The existence of this relation rendered it incumbent on the solicitor to inform his client of what the result would be if he failed to apply for taxation before the expiration of the twelve months. They referred to the dictum of Knight Bruce, L.J., in *Re Nicholson*, 7 W. R. 774, 3 DeG. F. & Jo. 100.

Baggallay, Q. C., and *Waller*, for Mr. F., referred to *Re Strother*, 5 W. R. 797, 3 K. & J. 518.

Lord Romilly, M.R.—I think that the continuance of the relation of solicitor and client after the delivery of the bill is a special circumstance within the meaning of the Act. Let these bills be referred to the taxing master accordingly.

UNITED STATES REPORTS.

SUPREME COURT OF PENNSYLVANIA.

Alleghany Savings Bank v. Meyer & Bro.

Attachment of debts.

A garnishee in an execution attachment is not liable for interest on the money in his hands, due the defendant therein, while the action is pending.

Where the garnishee, a bank, in its answer by the cashier, sets out an account with defendant, showing a balance in his favor at time of service of attachment, but states further, that a check of a third party on another bank credited among the deposits has been protested for non-payment and remains in its hands unpaid—which leaves defendant indebted to the bank—the whole answer should be taken in connexion, and judgment should not be against the garnishee on its answer.

A garnishee's answer is not to be construed with the same strictness as a defendant's affidavit of defence. Judgment will not be entered against him thereon, unless he expressly or impliedly admits his indebtedness to or his possession of assets belonging to the judgment debtor, and the admission ought to be of such a character as to leave no doubt in regard to its nature and extent.

Error to Common Pleas of Alleghany County.

The opinion of the court was delivered at Pittsburgh, Nov 16, 1868, by

Williams, J.—The Alleghany Savings Bank, plaintiff in error, was summoned as garnishee of John Kerwin in an attachment execution issued on a judgment against him at the suit of Joseph Meyer & Bro., the defendants in error. The writ was executed May 27th, 1867, and the bank having answered the interrogatories filed by the plaintiffs in the attachment execution, the court below, on the 3rd of January, 1868, ordered that judgment be entered against the bank for the sum of $1,855.30, with interest from the 27th May, 1867, to wit: $1,921.58, to be levied of the debt due by the bank to John Kerwin. The entry of this judgment is assigned for error.

Were the plaintiffs in the attachment execution entitled to a judgment against the bank on its answer to their interrogatories?

The bank, if indebted to Kerwin, was not liable for interest on the amount of its indebtedness between the day of the service of the writ and the entry of the judgment. This point was expressly ruled in *Irwin* v. *The Pittsburgh and Connellsville Railroad Co.*, 7 Wr 488; and it was there held that a garnishee in an attachment execution is not liable for interest on the money in his hands due the defendant thereon, while the action is pending. So far, therefore, as the judgment in this case includes interest on the principal sum, for which it was entered, it is clearly erroneous. But this is not the main question raised by the assignment of error.

Was there such an admission of indebtedness to Kerwin by the bank as to warrant the entry of a judgment for the principal sum included therein?

It is true that the account annexed to the answer shows that, on the 27th of May, 1867, the date of the service of the attachment execution, there was a balance against the bank in favor of Kerwin amounting to $1,855.30. But this amount must be taken in connection with the cashier's answer. In his answer to the third interrogatory he says:

"There was a balance of $762 10 in his (Kerwin's) favor on the 25th day of May, 1867: and, on the 27th day of May, 1867, he deposited money and checks of other persons, on different banks, amounting to $6 421.20, and immediately drew a check in favor of A. Crane for $5,328 00, which was paid; and which left a balance to his credit when the attachment was served of $1.855 30."

If the answer had stopped here the judgment, so far as it is for this balance, would have been clearly right. But the answer proceeds as follows:

"In the deposit of $6,421.20 was a check of Hugh Richardson, on the Union National Bank of Pittsburgh, for $2,500, payable to John Kerwin or bearer, which was protested for nonpayment, and which remains in our possession unpaid to-day, which leaves John Kerwin indebted to this bank $644 70, until Richardson's check is paid."

Now, taking the whole answer together, and giving it a reasonable construction, does it admit or show an indebtedness by the bank to Kerwin of $1,855 30, the principal sum for which judgment was entered? On the contrary, does it not allege an indebtedness of Kerwin to the bank of $644 70 in consequence of the nonpayment of Richardson's check? But it is contended that because Richardson's check is cre-

dited in the account as cash, the presumption is that it was taken and received by the bank as cash. But is not this presumption met and rebutted by the answer? If Richardson's check was taken and received as cash, the fact that it was protested for non-payment, and still remains in the possession of the bank unpaid, would not leave Kerwin indebted to the bank in the sum of $644.70, as alleged in the answer; and in this respect the answer would not be true. There may have been an agreement between the bank and Kerwin that all checks deposited by him and credited in his account as cash, if not paid on presentation, should be made good by him; or he may have indorsed Richardson's check; and, in either event, its protest for non-payment on presentation, and its remaining in the possession of the bank, unpaid, at the date of the answer, would leave Kerwin indebted to the bank as stated by the cashier. As his answer was drawn up without the advice or assistance of counsel, he may have unwittingly omitted to state the facts upon which Kerwin's liability for the check, and the bank's right to set it off against the balance appearing in his favor depend. If Richardson's check was received absolutely as cash, without indorsement by Kerwin, and without any agreement on his part to make it good, if not paid on presentation, the cashier could hardly have supposed that its non-payment would render him liable therefor, and entitle the bank to charge him therewith. A garnishee's answer is not to be construed with the same strictness as a defendant's affidavit of defence. A defendant, under our affidavit system, is bound to set forth every fact material and necessary to his defence; and every fact, not distinctly and positively averred, is presumed not to exist. The affidavit must show *prima facie* that the defendant has a good defence to the action, otherwise judgment will be entered against him. But a garnishee is not bound to set forth "specifically and at length the nature and character of his defence" to the attachment. He is only required to answer the interrogatories that may be submitted to him. And judgment will not be entered against him on his answer, unless he expressly or impliedly admits his indebtedness to, or his possession of assets belonging to the judgment debtor; and the admission ought to be of such a character as to leave no doubt in regard to its nature and extent.

We are of the opinion that the answer in this case does not contain such a clear and distinct admission of indebtedness by the bank to Kerwin as would warrant the entry of a judgment against it for the balance appearing in his favor on the face of the account, and the judgment of the court below must, therefore, be reversed

Judgment reversed and procedendo awarded.

We were rather startled by reading in a recent number of a leading English law periodical that "*Lord Commissioner* Richards, *Q. C.*, has been appointed Chief Justice of the Queen's Bench in Ontario." We presume the writer intended to refer to Mr. Richards, late Chief Justice of the Common Pleas. We should have supposed it quite impossible for our "big brother" to have made a mistake even in a trifle like this.

GENERAL CORRESPONDENCE.

Can an Attorney collect a bill for professional business done in a Division Court?

To the Editors of the Canada Law Journal.

Gentlemen,—This seems at first sight, as asking a strange question of you, or any legal minds. One would suppose that the common sense of the thing—that the self-evident right of a lawyer to collect for work done in any court, or in any capacity professionally—under a responsibility as he is for his acts—would be so plain that none (much less a judge in a court) would question it. I had the misfortune, may I say? to have this question come up before a County Judge in an out county, near Toronto, lately, in trying to collect bills in two of his Division Courts, and of having the rule laid down, that he could not give me, as an attorney, the proved items of my bills, which in any other court would have been allowed. This happened in two different courts in two different suits. In both instances I produced to him and proved, at considerable expense and trouble, *written* retainers, *employing me to do the business charged as an* attorney, and agreeing to pay for it. Yet I was told that attornies have no right to collect bills in Division Courts for business done therein. It struck me as strange that any man, especially a person placed in the responsible position of a judge, could have a mind so constituted, as not to be able to see that he was not only trampling on a well-known principle of law, *but much more on every principle of* natural *equity.* Any one who knows what equity is, knows that no client has a right to employ a man as a lawyer to do work, which he could not do—to do what is strictly professional business, such as writing a lawyer's letter, attending to examine judgments, papers, affidavits, and drawing affidavits of a special kind, and giving special directions how to serve and the time to serve—and after the work is done turn round and say, "You did the work but not in a court of record, and you shall get no pay!" Any one sitting as a judge, who ought to know what law is, ought to know that the common law of England distinguishes between professional work, skilled work, and mere manual labor. The artist is not paid, the doctor is not paid, the lawyer is not paid, nor the skilled artizan, as a mere

laborer is. Why? because in all such cases the person doing the work is supposed, is legally bound, to bring to his work, *professional, skilled knowledge*, under legal responsibilities.

So any man employing a lawyer *as such* in a Division Court, is bound to pay him for his work as such. A case just decided by ex- Chief Justice Draper in Chambers goes the extent of saying the bill of costs of attorneys for any business done by them as such may be taxed,—see *In re O'Donohoe and Warmoll*, 4 Prac. Rep. 266. I recollect a case distinctly that was argued some ten years ago before the late Chief Justice Robinson sitting in full court, in which counsel propounded the doctrine, that a lawyer could not charge for business *attendances, affidavits*, &c., made or written in the Division Courts, and that learned man at once said, "I cannot assent to that doctrine. I think that any one employing a lawyer to do business in such courts impliedly undertakes to pay him his reasonable charges." This point was not directly in issue, and only came up incidentally, but I noted it at the time. Now suppose a man comes to a lawyer and says, "Mr. A., I have been sued in the Division Court, and had a snap judgment given against me. I wish you to examine it, set it aside, get me a new trial, and advise me on it." The lawyer does as requested, makes a dozen attendances and examinations, draws notices and affidavits, argues matters before a judge, &c., and then makes out his bill and sues it, but is told by a judge, "Sir I cannot give you your bill," and turns the attorney out of court, in one case with $1, and in the other with one-third of his bill. That was my case. But it puzzled me to see how, or on what principle, I got in one case $1 (it cost me about $8 to get it), and in the other $6 (just my travelling expenses and a little over), to a country town. The judge had (upon his way of reasoning) no right to give even this small pittance—it would have been a mercy to say I will give nothing, and make each party pay his own costs!

I think it is high time a little more thought should be exercised in the selection of County Judges. Now I happen to know that many of our older County Court Judges do not act as the judge here alluded to. They take a more rational view of law and equity. I assert with confidence that the law will not turn a lawyer out of court, where he has done work *as such* in any Court in Canada upon the retainer of a client.

Why should not a reasonable fee be allowed a lawyer for drawing affidavits, writing letters, notices, &c., as well as for drawing deeds? Why should not a lawyer have a fee of 25 cts. or 50 cts. for making attendances for hours together to see books and argue cases before a judge? Why should he not be paid for his time as a professional man? Do doctors not construct a tariff? Does not the architect charge his $4 or $10 a day?

Is the lawyer not liable for his ignorance and neglect? If so, why is he not entitled to collect for any professional work? I am sure I have only to state the case to show the legality and reasonableness of my view.

An Attorney.

Toronto, 8th Dec., 1868.

Anecdote of the late Lord Chancellor.—There is in the House of Commons a certain noble lord whose name it will be better not to mention, but who has somewhat recently appeared in the, to him, new character of a law maker. This noble lord met at a dinner party, a few weeks ago, a certain great "city man," whose transactions in stock amount yearly to a fabulous sum. The young legislator began to talk in the City man's hearing of Cabinet secrets, and to do so with a very great assumption of knowledge on the subject. "Talk of Cabinet secrets," at last cried Mr. Consol, "there is one secret—the secret of a Cabinet Minister, too—that I should uncommonly like to know. It would be worth 5000*l.* to me if I knew what judgment Lord Chelmsford will give to-morrow in the case of Bloxham and the Metropolitan Railway.' "Five, thousand pounds!" cried his aristocratic neighbour, who is as poor as any lord need wish to be, "do you mean to say you would give 5000*l.* to any one who could tell you what old Chelmsford's judgment will be?" "Yes; indeed I should," said the other. "Then, by Jove, I'll find out and tell you." "Do so," said the City man, with a laugh, as he went on with his soup. That very night, when the tired merchant in his Bayswater palace was wooing gentle sleep, quite forgetful of his conversation with this young sprig of the nobility, he was roused by a summons at his bedroom door. His servant on being admitted told him that Lord——'s valet was below with a message for him. "Show him up," said Mr. Consol, in wonder as to what it all meant. Enter the valet, who speaks as follows:—"Beg your pardon for disturbing you, sir, but my lord sent me with a note to Lord Chelmsford's, and said I was to bring the answer to you. I took the note, sir, and Lord Chelmsford told me to say there was no answer!" The story is a strange one, but it is true nevertheless.—*Leeds Mercury.*

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