DIARY FOR JUNE.

1. Tue.. Paper Day, C. P. ; New Trial Day, Q. B.
2. Wed. New Trial Day, Common Pleas.
4. Fri... New Trial Day, Queen's Bench.
6. SUN. *2nd Sunday after Trinity.*
8. Tues. General Sessions and County Court Sittings n county (except York).
11. Fri... *St. Barnabas.*
13. SUN. *3rd Sunday after Trinity.*
16. Wed. Last day for service for County Court of York.
20. SUN. *4th Sunday after Trinity.* Accession of Queen Victoria, 1837.
26. Mon. Longest Day.
24. Thur. *St. John Baptist.*
26. Sat... Declare for County Court York.
27. SUN. *5th Sunday after Trinity.*
29. Tue.. *St. Peter.*
30. Wed. Half-yearly schedule returns to be made. Dep. Reg. in Chan. to make returns and pay over fees.

The Local Courts'
AND
MUNICIPAL GAZETTE.

JUNE, 1869.

DEATH OF MR. JUSTICE JOHN WILSON.

The hopes we expressed last month for the recovery of Mr. Wilson were not destined to be fulfiilled. After a temporary rally he sank rapidly, and expired on the morning of Thursday the 3rd June instant. The news, though not unexpected, cast a gloom over Osgoode Hall, where the news was received about one o'clock, whilst both the courts were sitting. Both Courts rose immediately, the Court of Common Pleas—his Court—adjourned until Saturday following, and the Court of Queen's Bench adjourned until the next day, the state of the public business preventing any further postponement of the numerous cases before it.

A short sketch of Mr. Wilson's career will be interesting to our readers.

Very full particulars are given in some of the papers in the Western District, of his early life, and the labours which eventually brought him to Toronto as one of the Judges of the Court of Common Pleas.

He was born at Paisley, in Scotland, in March, 1809, which would make him more than sixty years old at the time of his death, though he scarcely looked it, at least until lately. His father was a weaver by trade; and from him the subject of this sketch is said to have inherited the shrewd, vigorous mind characteristic of the man. He came to Canada in 1819 with his father, who settled near Perth.

His early life subsequent to this, until he became eminent in his profession is thus described in a London paper, from which we make the following extract:—

"Very early he engaged in farming, but not being strong enough for the work, had to give it up. From tilling the ground, he went, still very young, to school teaching, in which employment, while benefiting others, his own faculties were informed and cultivated. By and by he became anxious for a higher order of education, with a view to a profession, if fortune would second his laudably ambitious aims. He entered himself straightway as a pupil in the Perth Grammar School, then under the management of Mr. John Stewart, now a barrister in Stratford. Showing much aptness for learning and very marked capacity, the lad was recommended to study law, and he wisely accepted the advice. His next step was to enter the office of Mr. James Boulton, now a barrister in Toronto, but then practising in Perth. As an evidence of the confidence Mr. Boulton had in his apprentice, he at length entrusted him with the entire management of a branch office which was opened at Bytown, now known as Ottawa, the capital of the country. After some three years Mr. Boulton removed to Niagara, whither his clerk was invited to accompany his master, and there he completed his studies. In 1834, (in Easter Term, having been admitted as an Attorney on 5th November, 1834), Mr. Wilson was called to the Bar, and immediately proceeded to London to enter on an independent professional career. At that date London was a village containing 500 or 600 inhabitants, with only three lawyers —Mr Tenbroeck, and Stuart Jones, barrister, both of them dead years ago, and Mr. John Stewart, barrister, now clerk in the office of the Minister of Justice, at the seat of Government. In a very short time he acquired a large legal practice in what was then the London District, embracing within its extensive bounds what are now the counties of Elgin, Middlesex, Oxford, Huron, Grey, Bruce, Norfolk, Perth, and a portion of Brant. His old Grammar School master, Mr. Stewart, it is worth mentioning, ere long entered his office as a clerk, and completed his studies under his former pupil's supervision. And here it may be stated, quite as well as in any other connection, that the many students that passed through his office, from first to last, have a lively and pleasant recollection of the interest he took in them and

their progress. He who was willing to learn had in Mr. Wilson a competent guide and a warm hearted friend. Indeed, Mr. Wilson was prone to help and encourage young men, and his junior brethren were often indebted to him for valuable aid. Many a young man, not in the ranks of his profession, he assisted in a substantial manner, though he shunned all publicity in these and a thousand other generous deeds."

In politics he was a Reformer, and received his appointment as judge from that party. He was twice elected to the Assembly for the city of London, and once for the St. Clair division in the Legislative Council.

In 1856 he was made a Queen's Counsel at the same time as his townsman Mr. Becher. In the vacation after Easter Term, he was appointed to the judgeship rendered vacant by the changes consequent on the retirement of Chief Justice McLean from the Queen's Bench, Mr. Wilson taking the seat occupied in the preceding term by Mr. Morrison.

A powerful advocate everywhere, before the juries in that part of Canada where he was best known, he was without an equal. His success in this respect was largely increased by his personal popularity. He had a generous, honest, manly heart, ever ready to assist the needy, and at the same time the champion of those he considered oppressed. Above all things he loved fair play, and anything in the shape of meanness, oppresson or rascality, he abhored; few who knew him will not have noticed, whether in private life, at the Bar, or on the Bench, these prominent features of his character.

The most successful advocates do not necessarily make the best judges. The cast of mind so essential in the one has a tendency to prevent eminence in the other. This is so obvious and has been so often exemplified that it has become common to prophesy that a good jury lawyer will be a failure when placed on the Bench. In some of the attributes common to both Mr. Wilson excelled, though it cannot be said that in the latter position he was as great a success as in the former. Though not as a lawyer as deeply read, or as careful of, or well versed in case law as some of his brethren on the bench he had, to a remarkable extent, a shrewd strong common sense and intuitive perception of right and wrong, which seemed to steer him clear of the rocks that would have shipwrecked the reputation of even a more learned man, not possessed of the attributes we have attempted to describe. As might be expected, these characteristics combined with a ready wit, much decision of character, an intimate knowledge of human nature, and a clear insight into the motives of action, made him particularly useful as a *Nisi Prius* judge. As a Chamber judge on the other hand, though no complaints were ever heard that his decisions were not an equitable adjustment of the rights of parties, it has been said by some that occasionally difficulties arose from want of a more strict adherence to those rules of practice which, after all, are so necessary to keep the machinery of justice in harmonious working order.

In the West, where Mr. Wilson was best known, he was most liked, and as his popularity was based on respect for his good qualities, it was lasting, and followed him from the neighbourhood where he had lived so long to the more extended sphere of his labours on the Bench.

THE APPOINTMENT OF MR. GALT.

The vacancy caused by the death of Mr. Justice John Wilson, has been filled by the appointment of Mr. Thomas Galt, Q. C.

We congratulate the learned counsel upon his promotion to a position which has always been, so far as the postion itself is concerned, (and long may it so continue), an object of laudable ambition to the bar of Ontario. A sound lawyer, a man of unswerving integrity and stainless honor, with every instinct that of a gentleman, his appointment will be acceptable to the profession, nor will the public have reason to regret it.

We publish in another place a letter from a correspondent as to the new rules promulgated by the judges. He puts his case plausibly, but we must say we do not agree with him. Space does not permit our expressing our views at length in this number, but we shall endeavour to do so next month.

Mr. O'Brien has published an unpretending edition of the late Division Courts Act, with notes, which the profession may find useful, as it collects all the cases in our Courts as to attachment of debts.

MAGISTRATES, MUNICIPAL, INSOLVENCY, & SCHOOL LAW.

NOTES OF NEW DECISIONS AND LEADING CASES.

TAX SALE—ADVERTISEMENT.—Where a tax sale was advertised in the *Canada Gazette* for thirteen successive weeks before sale, but such thirteen weeks did not amount to three calendar months from the date of the first publication, it was held that the irregularity did not invalidate the sale.—*Connor* v. *Douglas*, 15 U. C. Chan. R. 456.

SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

NOTES OF NEW DECISIONS AND LEADING CASES.

CORPORATION.—A bill will lie by a member of the Corporation of the Church Society of the Diocese of Toronto, on behalf of himself and all other members of the Society, to correct and prevent alleged breaches of trust by the Corporation; and to such a bill the Attorney-General is not a necessary party.—*Boulton* v. *The Church Society of the Diocese of Toronto*, 15 Chan. R. 456

POSSESSION NOT NOTICE UNDER REGISTRY ACT OF 1868.—Where a father and son lived together on certain land of the father, and continued to do so after a conveyance by the father to the son, it was *held* that the son's possession after the conveyance did not affect a subsequent purchaser from the father.

Possession is not such notice as, under the late Registry Act, postpones a registered deed to the prior unregistered title of the party in such possession.—*Sherboneau* v. *Jeffs*, 15 Chan. Rep. 574.

MORTGAGOR AND MORTGAGEE—PROVISO FOR CONTINUANCE IN POSSESSION BY MORTGAGOR—DISTRESS CLAUSE—CONSTRUCTION—27 & 28 VIC. CAP. 31—PLEADING.—A clause in a mortgage that the mortgagor shall continue in possession, coupled with his occupation in pursuance of such clause, and coupled also with a covenant for distress, in accordance with the terms of clause 15 of the 2nd schedule to 27 & 28 Vic. cap. 31, creates the relationship of landlord and tenant at a fixed rent.

Held also, that by the indentnre of mortgage set out below, the tenancy created was until the day of repayment of the principal, for a determinate term, and thereafter a tenancy at will at an annual rent, incident to which tenancy was the right of distraining upon the goods of third persons upon the premises; but, *held*, on demurrer, that the avowries set out below, justifying under such a distress clause contained in a mortgage, were bad, as not alleging that the mortgage contained a provision that the mortgagor should be permitted to continue in possession of the mortgaged premises, nor that he did occupy, in pursuance of such permission, at the time of the distress, or at any time.—*Royal Canadian Bank* v. *Kelly*, 19 U. C. C. P. 196.

MORTGAGEES—POSSESSION NOTICE OF TITLE—REGISTRATION—EVIDENCE—COSTS.—The rule that possession is notice of the title of the party so in possession considered and acted on.

The plaintiff purchased the land in question from J., who had purchased from G., no conveyance having been made to J. by G., who afterwards conveyed the same land to T., a son of the plaintiff, who mortgaged it, and represented the property as his own; the plaintiff being all the while in possession. The title was not a registered one.

Held, that the mortgagees were affected with notice of the plaintiff's title by reason of his possession, although there was no pretence of actual notice to them; and they having omitted to set up the registry laws as a defence, liberty was given them to apply for leave to do so, if so advised.

A person having a paper title to land of which he was not the actual owner, created a mortgage thereon to a person not a party to a suit, by the party beneficially interested, to get rid of another mortgage created on the estate, was asked if he had given notice of the claim of the real owner at the time of the alleged execution of the first mortgage, which he asserted he had given, and also denied having made such mortgage; evidence was called to contradict him.

Held, that this could not be deemed a collateral issue, and therefore such evidence was admissible.

The beneficial owner of land omitted to have the paper title thereto in his own name, and thus enabled his son, who held such title, to mislead parties into accepting a mortgage thereon from the son: the court, though unable to refuse him relief, in a suit brought to set aside such mortgage, under the circumstances, refused him his costs.—*Gray* v. *Coucher*, 15 Chan. R. 419.

STAMP ACT, 27, 28 VIC. CH. 4—CONSTRUCTION—PENALTY.—The Stamp Act does not require an instrument to be stamped which with stamps would not be valid for some purposes; or, *semble*, which would not be a promissory note, draft, or bill of exchange.

No penalty therefore can be recovered under 27, 28 Vic. ch. 4, sec. 9, for not affixing stamps

to a promissory note for money lost at play, for such note under the statute of Anne is utterly void.—*Taylor* v. *Golding*, 27 U. C. Q. B. 198.

AGREEMENT TO HIRE—EVIDENCE OF.—In an action for wages of the plaintiff's son as defendant's servant, it was proved that defendant had said he would give the son what was going; that the son went to him at twelve years of age, and worked for him four years, and that, on his leaving, defendant told him to send his father and he would settle with him.

Held, affirming the judgment of the County Court, that this was clearly evidence to go to the jury of an agreement between plaintiff and defendant.—*Pickering* v. *Ellis*, 27 U. C. Q. B. 187.

CONVEYANCE BY MARRIED WOMAN—CERTIFICATE OF EXAMINATION—1 W. IV. CH. 2.—By 43 Geo. III. ch. 5, and 59 Geo. III. ch. 3, a married woman's deed was declared to have no force unless she were examined by the Court of K. B., or a judge thereof, or a judge of Assize, touching her consent, &c., within twelve months from the execution. By 1 W. IV., ch. 2, sec. 3, it was enacted that where the deed would have been valid if such certificate had been obtained within twelve months as was required by the laws then in force, such certificate might be obtained at any time, and should have the same effect as if given within twelve months. This section took effect on the passing of the act in March, but another section, which enabled two justices of the peace, and other persons not mentioned in the former acts, to take such examinations, and made various changes in the form of certificate, did not come into force until the 1st of August following.

A deed was executed in 1822 by a married woman and her husband, but no certificate was endorsed until 1836, and the certificate then given was signed by two justices, and sufficient in form under the earlier acts, though not under the 1 W. IV. There was no evidence of examination, &c., except the certificate:

Held, that the certificate was sufficient, for that the 3rd section of 1 W. IV. might be construed to mean such certificate as would in its terms have been sufficient under the previous acts, without requiring it to be given by the officers then authorized.

The certificate given in 1836 stated that the married woman appeared before the justices and "acknowledged that she executed the within deed freely and voluntarily, and it appeared to us that her execution thereof was not the effect of fear or coercion," &c.: *Held*, sufficient, without stating the fact of examination.

Held, also, that her acknowledgment in 1836 was evidence of her consent at that time to the deed taking effect, and not merely of her free execution in 1822; and that other objections based upon the requirements of the later act as to the form of the certificate, were not available.—*Grant and wife* v. *Taylor*, 27 U. C. Q. B. 234.

DISTRESS DAMAGE FEASANT.—The plaintiff's horse escaped from his stable and got into defendant's pasture field, but was immediately pursued by one M., the plaintiff's son-in-law, who saw it escape, and was leading it out of defendant's field when defendant seized and detained it. The plaintiff replevied, and defendant avowed as for distress damage feasant.

Held, that the horse, under the circumstances, was not distrainable; and the judgment of the County Court, upholding a verdict for defendant, was reversed.—*McIntyre* v. *Joseph Lockridge and William Lockridge*, 27 U. C. Q. B. 204.

FIRE INSURANCE—MORTGAGE.—A fire policy, in favor of a mortgagor, contained a clause providing that in the event of loss under the policy, the amount, the assured might be entitled to receive, should be paid to A. L., mortgagee.

Held, by the Court of Appeal, that this clause did not make A. L. the assured; and that a subsequent breach by the mortgagor of the conditions of the policy, made it void as respected A. L. as well as himself. [SPRAGGE, V.C., dissenting.]—*Livingstone* v. *The Western Insurance Company* [*in appeal*], 16 Chan. Rep. 9.

ROAD COMPANY—SNOW DRIFTS—ACTION FOR NOT REPAIRING.—A snow drift, about two or three rods long and two feet in depth, had formed on a gravel road. It had been there two or three weeks, and owing to the thawing and freezing of the snow, ruts [redacted] formed in it which made it unsafe for waggons. On the 1st of March the plaintiff was passing over it in a waggon, when the wheel going down threw him out and the hind wheel went over his leg and broke it. The defendants afterwards cleared away the snow there. The road was good except for the snow, and there was a heavy snow storm and sleighing after the accident.

Held, that there was evidence of negligence on the part of the defendants in not keeping the road in repair, and a verdict for the plaintiff was upheld.—*Caswell* v. *The St. Mary's and Proof Line Junction Road Company*, 27 U. C. Q. B. 247.

SALE OF WHEAT—WAREHOUSEMAN'S RECEIPT.—Where a warehouseman sold 3,500 bushels of wheat, part of a larger quantity which he had

in store, and gave the purchaser a warehouseman's receipt under the statute, acknowledging that he had received from him that quantity of wheat to be delivered pursuant to his order to be indorsed on the receipt:

Held—(MOWAT, N. C., dissenting)—that, the 8,500 bushels not having been separated from the other wheat of the seller, no property therein passed.—*Box* v. *The Provincial Insurance Co.*, 15 Chan. Rep. 552.

ONTARIO REPORTS.

COMMON PLEAS.

(Reported by S. J. VAN KOUGHNET, Esq., *Reporter to the Court.)*

IN RE THE JUDGE OF THE COUNTY COURT OF THE UNITED COUNTIES OF NORTHUMBERLAND AND DURHAM.

Division Court—Unsettled account over $300—Prohibition.

In a suit in the Division Court the plaintiff claimed $94.88, annexing to his summons particulars of claim, shewing an account for goods for $384 23, on which he gave certain credits, which reduced the amount to the sum sued for; but nothing had been done by the parties to liquidate the account, or ascertain what the balance really due was, with the exception of a small amount admitted to have been paid, and a credit of $33, given for some returned barrels, but which still left an unsettled balance of upwards of $300:

Held, that the claim was not within the jurisdiction of the Division Court, and a prohibition was therefore ordered.

[19 U. C. C. P. 299.]

N. Kingsmill obtained a rule calling on the junior Judge of the United Counties of Northumberland and Durham to shew cause why a writ of prohibition should not issue to prohibit him from further proceeding on a plaint, in the First Division Court, of *Simpson* v. *Keys*, on the ground of want of jurisdiction.

On the summons there was a claim at the foot for £23 14*s*. 5*d*. and costs 9*s*. A particular of claim was annexed, shewing an unliquidated account for goods, $384 23.

Then came a credit, for cash and barrels returned, of $252 50, and a balance struck of $131 75, and again another sum of like nature $36 85; and a balance, $94 88 This account was produced at the trial, the defendant objecting to the jurisdiction.

H. Cameron shewed cause, citing *Myron* v. *McCabe*, 4 Pr. R. 171; *Saunders* v. *Furnivall*, 26 U. C. Q. B. 119; *Higginbotham* v. *Moore*, 21 U. C. Q. B. 326.

Loscombe supported the rule.

HAGARTY, C. J., delivered the judgment of the Court.

The jurisdiction of the Division Court is limited to one hundred dollars, and the sum now claimed is under that amount. It is admitted that no act had been done by the parties to liquidate the amount ascertained, or settle any balance as the account really due. The plaintiff admits that he has been paid a certain amount in cash, and about $33 is credited for returned barrels. The account is chiefly for liquor sold, and the barrels, if returned, were to be allowed for at a fixed rate. No difficulty arises as to this part of the case. It is conceded that such amount might be properly applied at once in reduction of the gross amount, and leaving the whole claim as if originally so much less.

If this amount be deducted, there would still be an account considerably over $300.

This, as already remarked, has never been reduced to any ascertained balance by act of the parties.

The 59th section of the Division Court Act enacts that "a cause of action shall not be divided into two or more suits, for the purpose of bringing the same within the jurisdiction of a Division Court; and no greater sum than one hundred dollars shall be recovered in any action for the balance of an unsettled account; *nor shall any action for any such balance be sustained where the unsettled account in the whole exceeds two hundred dollars.*"

In *Higginbotham* v. *Moore*. 21 U. C. Q. B. 326, the debit side of the plaintiff's claim, as first delivered exceeded £73. In the account the plaintiff, as here, gave credit for £46 15*s*., leaving a balance of £26 8*s*. 8*d*., and he abandoned the excess of £1 8*s*. 8*d*. and claimed to recover the £25. The Judge of the Court had given permission to amend this statement of claim, and it was accordingly so amended as not to appear to shew an excess of jurisdiction; but, with reference to the claim, as first delivered, Robinson, C. J., at p. 329, says: "The plaintiff's claim, as first delivered, in stating an account of which the debit side exceeded £73, stated a case not within the jurisdiction of the Court, according to the 59th section, although the balance claimed was only £25; that is, if the *whole* account is to be taken as an account unsettled, notwithstanding there were among the items two notes which in themselves were liquidated demands."

This we take to be an authority to govern this case, in which there is not any item on the debit of the nature of a liquidated demand in itself. The whole account shews an unliquidated account, and an unsettled account exceeding two hundred dollars, in the terms of the Act, which, as we think, clearly excludes the jurisdiction of the Division Court over the claim.

We have been referred to *Myron* v. *McCabe*, 4 Prac. Rep. 171, before Mr. Justice Adam Wilson, in Chambers, in which case the clause of the Statute is not referred to. If the learned Judge arrived at the conclusion which he did with this clause of the Statute before him, we are unable, upon the best consideration, to concur with him: we think the case comes within the Statute, which is imperative.

The cases which have arisen as to the jurisdiction of County Courts, upon the question whether Superior Court or County Court costs should be granted, do not, as it appears to us, affect this case; for the County Court jurisdiction is not limited by any clause similar by the 59th section of the Division Court Act. The County Court jurisdiction is only restricted by the amount sought to be recovered. Such was the case also with the Division Court Act of 1841 (4 & 5 Vic. ch. 3), referred to by Burns, J., in *McMurtry* v. *Munroe*, 14 U. Q. B. at p. 171.

The case before us appears to come within the very words of the Statute: "the unsettled account in the whole exceeds two hundred dollars," and this appears to us to conclude the matter.

Rule absolute.

Parkyn v. Staples.

Arrest by magistrate—Notice of action—Omission of time and place—Insufficiency.

In an action against defendant, a Justice of the Peace, for the arrest and imprisonment of plaintiff, the notice of action stated that defendant assaulted plaintiff, imprisoned and kept him in prison for a long time, to wit, four days, and caused him to be illegally arrested, and gave him into the custody of a constable, and illegally committed and sent him in such custody to the jail at the town of Lindsay, and caused him to be there confined for a long time.

Held, insufficient, as omitting to state where and when the assault took place, and the evidence not being confined to the imprisonment at Lindsay.

[19 U. C. C. P. 240.]

Trespass for assaulting plaintiff, imprisoning him for four days, and causing him to be illegally arrested, and charging that defendant gave him into custody of a constable, and illegally committed and sent him in custody to the gaol at the town of Lindsay, and caused him to be there confined, &c.

Plea, not guilty, by statute.

At the trial, at Lindsay, before Smith, Co. J., evidence was given of plaintiff's arrest on defendant's warrant, as a J. P., in the township of Laxton, his examination there, and commitment to Lindsay gaol, on a charge intended to be one for attempting to poison cattle, and of his discharge on proclamation at the Quarter Sessions, no charge having been preferred.

The notice of action, after the preliminary matter, proceeded thus: "For that you, the said Robert Staples, assaulted the said Chas. Parkyn, and imprisoned him, and kept him in prison for a long time, to wit, for four days, and caused him to be illegally arrested, and gave him into the custody of a constable, and illegally committed and sent him in such custody to the gaol at the town of Lindsay, and caused him to be there confined for a long time, whereby," &c.

It was objected at the trial that this notice was insufficient, in not stating any place where assault was charged, &c., nor when the same took place, besides other objections, on all of which leave was reserved to move to enter nonsuit, and plaintiff had a verdict.

S. Smith, Q C., obtained a rule on the leave reserved, to which *Hector Cameron* showed cause, citing *Taylor* v. *Nessfield*, 3 E. & B. 724; *Martin* v. *Upcher*, 3 Q B 661; *Friel* v. *Ferguson*, 15 C.P. 584; *Jones* v. *Bird*, 5 B. & Al. 837; *Prickett* v. *Gratrex*, 8 Q. B. 1020; *Jacklin* v. *Fytche*, 14 M. & W. 381; *Jones* v. *Nicholls*, 13 Q B. 561; *Breese* v. *Jerdine*, 4 Q. B. 585; *Neil* v. *McMillan*, 25 U. C. 485; *Moran* v. *Palmer*, 13 C P. 450, 528; *Moffatt* v. *Barnard*, 24 U. C. 498; *Dickson* v. *Crabbe*, 24 U. C. 494.

A. N. Richards, contra, cited *Oliphant* v. *Leslie*, 24 U. C. 398.

Hagarty, C. J., delivered the judgment of the court.

We must first consider the objection to the notice.

If we follow the case of *Madden* v. *Shewer*, 2 U. C. Q B. 115, decided Easter, 8 & 9 Vic., we must hold this notice insufficient. There the notice was, that on or about the 3rd September, 1844, the defendant caused plaintiff to be arrested and imprisoned by one J. W., a constable, acting under defendant's orders, &c., and kept and detained him a prisoner about six hours; and also for that the said J. W., acting as aforesaid, then and there assaulted, beat, &c., the plaintiff, as such prisoner; and also for that the said J. W., acting as aforesaid, did other wrongs then and there to plaintiff; and also that defendant, on the said 3rd September, or thereabout, did assault, &c., and imprison plaintiff about six hours, and carried him to a certain dwelling house in the township of Ernestown, four miles distant from the place where he was so arrested, and other wrongs, &c.

The late Sir J. Robinson, in delivering judgment, says: "With respect to the first trespass, in assaulting and seizing the party, no place is stated. The two acts have not necessarily any close connection as regards locality; and for all that appears, the former act may have been out of the district altogether, and out of the defendant's jurisdiction; and that may be the very ground of the action. We may notice judicially that the township of Ernestown is in the Midland District, &c.; but we cannot know judicially in what district any place said to be four miles from it may be situate. When once it is settled that the notice must give explicit information of the place where, &c., then we must see that this condition is reasonably complied with, and not allowed to be frittered away by ingenious construction."

On the argument, *Martin* v. *Upcher*, 3 Q. B. 662, and *Breese* v. *Jerdine*, 4 Q. B. 585, were noticed.

In *Cronkhite* v. *Somerville*, 3 U. C. Q B. 131, the same principle is upheld. The notice spoke of an assault, &c., in Whitby, and also an assault and imprisonment for six days in Pickering. The evidence showed an arrest in Pickering and committal in Whitby to the Toronto gaol for six days. It was held that the Toronto imprisonment could not be given in evidence, and, following *Madden* v. *Shewer*, that "it is indispensable to state in such notice the place where the injury was committed," and that it must follow that the place should be correctly stated. In the reporter's note the case of *Jacklin* v. *Fytche*, 14 M. & W. 381, is cited, but it is not noticed otherwise.

In that case we find a disposition to relax the strictness as to statement. The notice was, "for that you, on 10th May, &c, with force and arms, caused an assault to be made upon me, and then caused me to be beaten, laid hold of, &c., and forced and compelled to go into, along and through divers public streets and roads to a certain prison, &c. at Louth &c., and to be imprisoned there." &c. It was objected that there was no place named with respect to the assault and original imprisonment, relying on *Martin* v. *Upcher* and *Breese* v. *Jerdine*. To meet the objection, the evidence at the trial was confined to the imprisonment at Louth. Parke, B., says, "According to *Martin* v. *Upcher*, the first part of the trespass is not described with convenient certainty, but the imprisonment at Louth is."

Rolfe, B.: "Here I should say that it is the description of one continued act, concluding with the imprisonment at Louth. I doubt very much, therefore, whether even that (the former) part of the statement is not sufficient."

Parke, B.: "I am very much disposed to concur with my brother Rolfe in that opinion, but it is not necessary to decide that, because the evidence was confined to the imprisonment at Louth."

In *Leary* v. *Patrick*, 15 Q. B. 266, the notice was, "for that the defendant, in the parish of St. Nicholas, in the borough of Harwich, on the

1st day of August, 1848, caused him to be imprisoned, and also for that they, on the said 1st August, 1848, caused his goods to be seized," &c.

This was objected to on the argument. Lord Campbell says, "It is clear that the justices must, in making this notice, have known where the causes of action all arose. It cannot be necessary to have a specific *venue* laid to every traversable fact in a notice of action."

Patteson, J.: "The notice is good, as there is a place mentioned in it fairly applicable to every fact."

Wightman, J.: "In *Martin* v. *Upcher*, no place whatever was mentioned; the present case is distinguishable, for here a place was mentioned, which is reasonably applicable to all the trespasses."

If we uphold the notice in the case before us, we shall carry the relaxation a step further. This notice says that defendant assaulted plaintiff, "and imprisoned him, and kept him in prison for a long time, &c. for four days," stating no place: it then proceeds, "and caused him to be illegally arrested, and gave him into the custody of a constable, and illegally committed him and sent him in such custody to the gaol at the town of Lindsay, and caused him to be there confined for a long time."

An arrest and imprisonment for four days is stated without *venue* or statement of time, before the statement of arresting and giving him in custody to a constable and the commitment to the Lindsay gaol.

Assuming that the doubt expressed by Rolfe and Parke, BB., to be good law, can we say that this whole statement falls within the description of the matter in that case, that "it is the description of one continuous act, concluding with the imprisonment at Louth?" There the notice was that the defendant caused an assault to be made on plaintiff, and then caused him to be beaten, laid hold of, &c., and forced and compelled him to go in, through and along divers public streets and roads to a certain prison, &c. at Louth.

Again, adopting the law as laid down in *Learey* v. *Patrick*, is there a place stated fairly applicable to every fact? There it was held sufficient to state the place of the trespass to the person on a named day, and that also on the same day the defendant caused his goods to be seized. The place or *venue* first stated is held to apply to the other trespass on the same named day.

No time whatever is stated in the notice before us. In all the cases cited we find a time mentioned at which this trespass was said to have been committed, and we think there the allegation of time materially helped the rest of the notice, so as to make it sufficiently clear and explicit. *Martin* v. *Upcher* is very clear on this point. Lord Denman says, "I do not go so far as to say that a party will always be strictly bound to prove the time and place which he names in his notice; but I think the words of the statute require that a time and place for the occurrence be named;" and in *Jacklin* v. *Fytche*, the case most in favour of plaintiff, Alderson, B., says, "The plaintiff is not bound to tell the defendants more than that they unlawfully imprisoned him, and when and where they did so."

We think the notice was insufficient, and that the rule must be absolute to enter nonsuit.

Rule absolute to enter nonsuit.

In re Beard.

Insolvency—Attachment to Sheriff in Quebec.

Where a trader in Ontario becomes insolvent, and an attachment in insolvency is issued to the sheriff of the county in which he resides, the County Court judge has jurisdiction to issue another attachment to the sheriff of any county in Ontario, or of any district in Quebec, in which the insolvent has property.

[15 U. C. Chan. R. 441.]

This was an appeal from an order of the judge of the county of York, refusing to issue an attachment to the sheriff of the district of Montreal, on the ground that he had not jurisdiction to do so. The insolvents were residents of the county of York, and an attachment to the sheriff of that county had been issued; but there being property of the insolvents in the district of Montreal, the creditors desired a writ to that district also.

Mr. Roaf, Q. C., for the creditors, referred to the Insolvent Act of 1864, sec. 3, sub-sec. 10, sec. 7, subsecs. 2 & 6; and to the 6 & 15 sections of the Act of 1865; and contended that, as the jurisdiction of the County Court judge to issue an attachment was not confined to his own county, neither was it restricted to the Province of Ontario.

No one appeared against the appeal.

Mowat, V.C., allowed the appeal, and granted an order for the attachment to Montreal.

COMMON LAW CHAMBERS.

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

Holmes v. Reeve.

Certiorari to remove case from Division Court.

Held, 1. The mere fact that a judge of a Division Court has expressed an erroneous opinion in a case before him is no ground for its removal by certiorari.

2. Where a defendant knows all the facts of a case before the day of trial, but, nevertheless, argues the case and obtains an opinion from the judge, the case should not be removed, and the fact that the judge is desirous that the case should be disposed of in the Superior Court can make no difference.

[Chambers, March 15, 1869.]

This was an action brought on a promissory note for sixty-eight dollars, made by the defendant, and was placed in suit in the third Division Court of the County of Huron, and the summons was served for the Court to be holden on 25th January, 1869.

The defendant obtained a summons for a writ of *certiorari* to remove the case from the said Division Court into the Court of Common Pleas, on the ground that difficult questions of law were likely to arise.

One of the affidavits upon which the summons for the *certiorari* was granted was made by Mr. Sinclair, attorney for the defendant, and was as follows: "That the said judge reserved his judgment on said evidence, and the points raised from the twenty-fifth day of January last until the sixth instant, and from then until the thirteenth day of February, instant, when I attended before him, and he expressed a desire to have a short time longer for consideration, and he sug-

gested the eighteenth day of February, instant, as the day he would be prepared to give his judgment: that on said last mentioned day I attended before the said judge, and Mr. Elwood appeared for the plaintiff, when the judge of said Division Court expressed his opinion adversely to the defendant: that he did so with great hesitation, as he expressed it, on the ground that the decisions bearing on the point appeared contradictory, that I suggested to the said judge the propriety of his delaying his delivery of judgment until I had an opportunity of applying for a *certiorari* to remove the case to one of the superior courts of law, the case being one of great importance to the defendant, and one involving some questions of law which had not then come up for decision in any of the superior courts of law in the manner raised by the facts of this case: that the said learned judge remarked that he certainly thought it a fit case to be removed by *certiorari* and would grant time to enable me to apply therefor, and postponed the delivery of judgment until the fourth day of March next, for the purpose of such application"

The plaintiff's attorney, in his affidavit filed on shewing cause, swore "That on the return of the said summons (in the Division Court) the said John Reeve appeared, and also the said Richard Holmes: that James Shaw Sinclair, of the said town of Goderich, Esquire, appeared as counsel for the said John Reeve, and I this deponent appeared as counsel for the said Richard Holmes: that the said cause was duly called on for hearing on that day before Secker Brough, Esq., judge of the County Court of the County of Huron, who is also the judge of the said third Division Court: that after the said case had been thoroughly gone into, and after several witnesses were examined, both on behalf of the said Richard Holmes and the said John Reeve, and after a lengthy legal argument had taken place, and when the said judge had expressed his opinion that his judgment should be for the said Richard Holmes, and just as he was about to endorse his said judgment on the said summons, the said James Shaw Sinclair got up and asked and pressed on the said judge, that if he would not then enter his judgment but would defer same to some future day, he could produce to him authority to shew that in law he was entitled to his judgment: that the said Judge, in pursuance of the said request, adjourned the said cause until the sixth day of February: that on that day the said Mr Sinclair on behalf of the said John Reeve, and John Y. Elwood, of the said town of Goderich, barrister-at-law, my partner, on behalf of the said Richard Holmes, appeard before said judge, and further argued the said case. That after hearing the said argument, the said judge informed the said parties that he would be prepared to give his judgment on the thirteenth day of February: that on that day the said Sinclair and Elwood appeared before the said judge to hear his said judgment, but he not being prepared to give it then, said he would give same on the eighteenth day of February."

It also appeared from another affidavit, that on the 18th February, the learned judge said he was then prepared to deliver his judgment, and then proceeded to deliver, and did deliver the same; and said that "in his opinion the plaintiff Richard Holmes was entitled to his judgment," and then proceeded to give, and did give his grounds for said judgment, and reviewed the authorities cited to him on the said argument: that after the said judge had delivered his said judgment, Mr. Sinclair, on behalf of the said John Reeve, applied to, and urged upon the said judge not to endorse his judgment on the back of the said summons, but to refrain from doing so until the fourth day of March instant, as in the meantime he would apply for a writ of *certiorari* to remove the said plaint.

Spencer shewed cause, and contended that the application was made too late, the case having been considered by the judge of the court below and judgment in effect given though not formally entered: *Black* v. *Wesley*, 8 U. C. L J 277; *Gallagher* v. *Bathie*, 2 U. C. L. J. N. S. 73

John Patterson, *contra*, urged that the judge had given no judgment, and had expressly postponed his decision to enable the *certiorari* to be applied for. He had merely expressed an opinion. He cited *Paterson* v *Smith*, 14 U. C. C. P. 525.

RICHARDS, C J.—On principle I do not think this case ought to be removed from the Division Court. If the case was one fit to be tried before the judge of that court, the mere fact that he may have formed and expressed an opinion which was erroneous, is no ground for taking the case into the Superior Court. The defendant knew all the facts of the case before the day of trial, and if it was considered it ought to have been removed from the Division Court, steps should have been taken for that purpose before it was heard.

It seems to me to be an unseemly proceeding, that the defendant, after having argued the matter before the judge, and obtained his opinion, and having had the cause adjourned for the purpose of furnishing new authorities, and after consideration of those authorities, the judge had expressed an opinion, that the case should then be taken out of his jurisdiction by a *certiorari*. The fact that the judge himself may have been willing or even desirous to have the matter disposed of in the Superior Court can make no difference. After he has taken on himself the burthen of disposing of the case, having heard the evidence, and expressed his opinion, I do not think, as a general rule, a *certiorari* ought to issue. The cases of *Black* v. *Wesley*, 8 U. C. L. J. 277; *Gallagher* v. *Bathie*, 2 U. C. L. J. N. S. 73, seem to me to lay down principles inconsistent with removing this case. The case of *Patterson* v. *Smith*, 14 U. C. C. P. 525, does not, I think, lay down any doctrine contrary to that of the other cases referred to, for although there had been an abortive attempt to have a trial there was no verdict, and the court no doubt looked at that case in the same way as if no jury have been sworn at all.

I think the summons should be discharged on the grounds I have mentioned, but as the learned judge of the County Court delayed the entry of judgment to enable the defendant to make this application, it will be without costs. I arrive at this conclusion as to the costs more readily from the fact that one of the affidavits filed on behalf of the plaintiff states the belief of the deponent, that the attorney for the defendant speculated on the chance of getting a decision in his favor, and it being against him, he now makes

this application. I do not see how this statement thus made was calculated to be of any service to the plaintiff; the way in which it is made is not likely to keep up kindly feelings between professional gentlemen practicing in the same town. No particular grounds seem to be referred to in the affidavit as justifying the belief expressed, though no doubt the person making the affidavit entertained such belief. If the facts stated in the affidavit justify the inference, it will generally be better to place that inference before the court as a matter of argument and conclusion to be drawn from facts rather than as a fact in the affidavit, which the deponent swears he believes.

Summons discharged without costs.

McGregor v. Small.

Examination of insolvent debtor—Effete order.

An execution creditor cannot examine a judgment debtor on a stale order which has been partially acted upon.

[Chambers, March, 15, 1869.]

On the 26th of February, 1867, an order was made for the examination of the defendant touching his estate and effects before the deputy clerk of the Crown, for the County of Frontenac. Upon this an appointment was a few days afterwards made, which was served on the defendant together with the order. An arrangement was subsequently made between the parties for the payment of the judgment debt by instalments, and though some of the debt was paid pursuant to such arrangement, the defendant made default in his promises of payment, and execution was issued for the balance due, the result of which was an interpleader issue to test the right of a claimant to the goods seized, which was still pending. On the 10th of March, 1869, the plaintiff obtained from the deputy clerk of the Crown, and served on the defendant, another appointment for the 12th of March, 1869, on the order of the 26th of February, 1867.

The defendant then obtained a summons to shew cause why the order of the 26th of February, 1867, and the last appointment thereunnder, or the said appointment alone should not be set aside on the ground that the said order was effete and lapsed, a previous appointment having been made thereon, and that it had been waived by delay.

Osler shewed cause. The first appointment was never acted upon, and the proceedings were stayed at defendant's request and for his benefit, and he cannot be heard now to object to proceedings on this order. There is no time limited within which those orders can be acted upon.

O'Brien contra, the order has been acted on and is effete. This attempted proceeding would, if successful, give the plaintiff a new order for the examination of the defendant, without giving the latter an opportunity of shewing cause why he should not be examined. The circumstances of the case may have so changed that a judge would not grant an order for examination. There is, in fact, an interpleader issue about to be tried, which may result in the payment of the debt, and the object sought to be gained by this examination, viz., to obtain evidence for the execution creditor in the interpleader suit is not a legitimate object.

He cited *Jarvis* v. *Jones*, 4 Prac. R. 341.

Richards, C. J.—The defendant cannot in my opinion be examined on an appointment under an order more than two years old, and which has been partially acted upon. This appointment must be set aside, but I give no costs.

ENGLISH REPORTS.

Reg v. Alsop.

Perjury—Corroborative evidence—Materiality.

Upon the trial of C. for perjury, committed in an affidavit, proof was given that the signature to the affidavit was in C.'s handwriting, and there was no other proof that he was the person who made the affidavit. The prisoner was then called, and swore that the affidavit was used before the taxing master; that C. was then present, and that it was publicly mentioned, so that everybody present must have heard it, that the affidavit was C.'s.

Held, that the matters sworn by the prisoner were material upon the trial of C.

[C. C. R. 17 W. R. 621.]

Case reserved by the Recorder of London at the February Session of the Central Criminal Court, 1869 —

The defendant was at this session convicted before me of wilful and corrupt perjury committed by him in the evidence which he gave before me at the preceding session of this court upon the trial of one James Coutts, for perjury.

Coutts was indicted for perjury, committed in an affidavit made by him in a cause of *Kelsey* v. *Coutts*, and which affidavit had been afterwards made use of before the master upon the taxation of the costs in the said action.

Proof was given that the signature to the affidavit was in the handwriting of Coutts, but no other proof was given that he was the person who had made the affidavit, the commissioner who administered the oath being unable to identify him. The case of *R.* v. *Morris*, 1 Leach, 50, was referred to.

The present defendant, John Alfred Alsop, was then called, and swore that the affidavit in question was used before the taxing master upon the adjourned taxation, and that the defendant Coutts was then present, and that it was publicly mentioned, so that everybody present must have heard it, that the affidavit was the affidavit of James Coutts. The indictment against the present defendant Alsop alleged that it was a material question upon the trial of the said James Coutts, whether the said James Coutts was present on the 14th of November before the master on the taxation of the said costs.

And whether or not on the said 14th of November the said affidavit was used and read in the presence of Coutts.

And whether or not on the occasion of the taxation of the said costs it was stated publicly in the presence and hearing of Coutts that the affidavit was his

Upon the trial it was objected that the above-mentioned matters were not material questions for inquiry upon the trial of Coutts, as the particulars sworn to related to matters occurring subsequently to the making of the affidavit, and were tendered merely as collateral proof that the affidavit had been made by Coutts, and that the only matter material for inquiry was the truth or falsehood of the statements contained in that affidavit.

The opinion of the Court for the Consideration of Crown Cases Reserved is requested whether the above-mentioned matters were material to

the issue involved in the trial of Coutts, and whether the conviction should stand or be reversed.

The defendant was admitted to bail with sureties for his appearance at the session next after the judgment of the Court is pronounced upon these points.

Poland, for the prisoner, submitted that inasmuch as the identity of the person making the affidavit was established by proof of his handwriting (*R.* v *Morris*, 1 Leach, 50, 3 Russ. 92), the evidence of the prisoner given subsequently was collateral and immaterial. [*Waddy*, for the prosecution —At the trial the identity of Coutts was not made out, and then it was that the prisoner supplemented the proof of it] [BRETT, J.—The jury may have disbelieved the witnesses who gave evidence as to the handwriting.] LUSH, J —The prisoner's counsel must go to the extent of saying that all evidence in corroboration of facts of which other proof has been given is immaterial.]

Waddy, for the prosecution, was not called on.

KELLY, C.B.—The prisoner's counsel has done his duty, and we must now do ours. This conviction must be affirmed.

Conviction affirmed.

REG. *v.* HENRY JENKINS.

Murder—Evidence—Dying declaration.

Upon a trial for murder, a declaration of the deceased taken by a magistrate's clerk, tendered as evidence for the prosecution, contained the following:—"From the shortness of my breath I feel that I am likely to die, and I have made the above statement with the fear of death before me, and with no hope *at present* of my recovery." The words "at present" were interlined, and the clerk having been recalled to explain the interlineation, said that after he had taken the deposition he read it over to the declarant and asked her to correct any mistake that he might have made, and that she suggested the words "at present;" that she said "no hope at present of my recovery," and he then made the interlineation.

Held, that the words suggested by the declarant qualified the statement as it stood previous to the alteration, and showed that she was not absolutely without hope of recovery, and, therefore, that the declaration was inadmissible.

C. C. R. 17 W. R. 621.

Case reserved by Byles, J.:—

The prisoner, Henry Jenkins, was convicted at the last Bristol assizes of the murder of Fanny Reeves, and is now lying under sentence of death, subject to the decision of the Court of Criminal Appeal as to the admissibility of the dying declaration of the deceased woman.

It appeared in evidence that on the night of the 16th October, between eight and nine o'clock, the screams of a woman were heard in the river Avon, at a place where the river is deep. It was about high tide. Assistance was procured, and the deceased was rescued from the water, but in an exhausted condition. She continued very ill, and became, according to the medical evidence, in great danger. On the next day, the 17th, she said she did not think she should ever get over it, and desired that some one should be sent for to pray with her. A neighbour of the name of Axell accordingly visited her about eight o'clock p.m., who prayed with her, and, as her mother said, talked seriously to her.

At ten o'clock the same evening the magistrate's clerk came. He found her in bed, breathing with considerable difficulty and moaning occasionally. He administered an oath, and she made her statement, as hereinafter set forth. He asked her if she felt she was in a dangerous state—whether she felt she was likely to die. She said, I think so. He said, why? She replied, from the shortness of my breath. Her breath was extremely short; the answers were disjointed from its shortness; some intervals elapsed between her answers. The magistrate's clerk said, "Is it with the fear of death before you that you make these statements?" and added, "Have you any present hope of your recovery?" She said, none.

The counsel for the defendant pointed out that in the statement the words "at present" are interlined.

The magistrate's clerk was recalled. He said that after he had taken the deposition he read it over to her, and asked her to correct any mistake that he might have made. She then suggested the words "at present." She said—no hope "at present" of my recovery. He then interlined the words "at present." She died about eleven o'clock the next morning.

Without the declaration of the deceased there was no evidence sufficient to convict or even to leave to the jury, but the evidence for the prosecution was, so far as it went, confirmatory of the deceased woman's statement.

The case therefore rested on what was called the dying declaration of the deceased.

The counsel for the defendant, Mr. Collins, submitted that upon the evidence there was not such an impression of impending death on the mind of deceased as to render the declaration admissible.

I expressed no opinion, but thought it the safest course to reserve this question for the opinion of this Court, and to let the case go to the jury.

The examination of Fanny Reeves, taken on oath the 17th of October, 1868:—

The deponent saith—I am a single woman and have two children, the one aged four years and the other aged about five months. The father of the first child, which is a boy, is Henry Jenkins. He lives in Ship-lane, Cathay, and is a ship carpenter. He has been paying me, under order of magistrates, 2s. per week for the support of that child, but he has not kept up the payments, and he now owes me £1 7s. Last night, the 16th inst., about half-past six o'clock, I met him by appointment on the New Cut, in the parish of Bedminster, in this city, and I asked him if he was going to give me some money to buy a pair of boots for myself. He said that he hadn't any money. I told him that I must sue him for my money, and then he asked me to walk with him to the Hot Wells, and said that he would get some there. I accompanied him to the Hot Wells, and he went into a house at Cumberland-terrace; I waited for him outside, and he came out in a short time, and said that he could not get any money, and he asked me then to walk with him up Cumberland-road, and we went along that road together, until we got near Bedminster-bridge, and we stood on the New Cut, near his residence, and we had a few angry words together about the money he owed me, and he told me that I could have a warrant for him if I liked. After we had stood there about ten minutes, he said, "here's a rat climbing up the bank," and he advanced to

the edge of the bank, and I went too, and looked, but could not see any rat, and directly I got on the edge of the bank, he pushed me with both hands on the back, and at the same time said, "take that you bugger," and he pushed me direct into the river Avon, which runs along there; I screamed out and managed by catching hold of the bank to keep myself up until I was taken out of the water, and I believe it was by a policeman. After being so taken out, I became insensible, and did not recover till I found myself in bed in this house. Since then I have felt great pain in my chest, bosom, and back. From the shortness of my breath I feel that I am likely to die, and I have made the above statement with the fear of death before me, and with no hope *at present* of my recovery. Dr. Smart has been to see me twice to-day. It was about eight o'clock on the said evening when the said Henry Jenkins pushed me into the water. He was under the influence of liquor at the time—but was not tipsy: I had two drops of rum with him during our walk; I know of no motive for his so pushing me into the water, except it was that I had asked him for money.

The mark × of Fanny Reeves.

The jury found the prisoner guilty.

Sentence of death was passed, but execution stayed, that the opinion of this Court might be taken on the admissibility of the declaration.

J. Barnard Byles.

Collins (*Norris* with him), for the prisoner.—This declaration was inadmissible. The general principles on which this anomalous species of evidence is admitted are laid down in *R* v. *Woodcock*, 1 Leach, 500, 3 Russ. on Crimes, 4th ed. 250. The preliminary facts to be proved before it can be received are that the deceased at the time of making her declaration was under a sense of impending death and an impression of immediate dissolution; but it is not essential that death should, in fact, take place immediately. There must be no hope of recovery: *R.* v. *Van Butchell*, 8 C. & P. 629, 3 Russ. 253; *R* v. *Crockett*, 4 C. & P. 544, 3 Russ. 252; *R.* v *Dalmas*, 1 Cox C. C. 95; *R.* v *Spilsbury*, 7 C. & P. 187, 3 Russ. 254. "It must be proved that the man was dying, and there must be a settled hopeless expectation of death in the declarant," per Willes, J, in *R.* v. *Peel*, 2 F. & F 22; *R.* v. *Hayward*, 6 C. & P. 160, 3 Russ. 253; *R.* v *Nicolas*, 6 Cox C. C. 120; *R.* v. *Megson*, 9 C. & P. 418, 3 Russ. 255. In this case it appears that on the day following that on which the deceased was rescued from the Avon she said she did not think she should ever get over it, and desired that some one should be sent for to pray with her, and on the same evening the magistrate's clerk took her deposition. It appears that he had asked her if she had any present hope of recovery, to which she replied—None; and, having reduced her statements to writing, he read them over to her, asking her to correct any mistake he might have made, and that she then suggested the words interlined "at present." She said—No hope at present of my recovery. It is submitted, therefore, that she treated what he had at first written as a mistake, and qualified that. Some meaning must be given to the words "at present," and it is submitted that what the deceased intended was that she had no hope then, but thought that a time might come when she might have hope; and, if so, there was not such a settled hopeless expectation of death as is essential to the reception of such evidence.

Sanders (*Bailey* with him), for the prosecution, admitted the authority of the cases cited, but contended that this came within them. If there is a belief on the part of the deceased that she will die, though she does not feel it to be impossible that she may recover, it is sufficient. The question is, What is the belief? and not, What the possibility?—for it may almost in every case be said, whilst there is life there is hope. *R.* v. *Brooks*, 3 Russ. 264. [Kelly, C.B.—She treats what the clerk first wrote as a mistake, not as a mere omission.] [Lush, J.—The added words do not strengthen what she had previously said; but do they not weaken it?] [Byles, J. Do they not mean—I have no present hope; but I think I may have hope by and bye?] [Lush, J.—It must be clear that the deceased has no hope, and must not be left doubtful.]

Collins.—The law looks with jealousy on this kind of evidence (Greenleaf on Evidence, 233), and any hope, however slight, renders it inadmissible. Here the deceased declined to say all hope was gone.

The learned judges constituting the Court (Kelly, C.B., Byles, Lush, and Brett, JJ., and Cleasby, B.) having retired, on their return

Kelly, C.B., delivered judgment as follows:—We are all of opinion that this conviction must be quashed. The question for us, and the only question, is whether the declaration of the deceased was admissible; and it is clear that if that is excluded, there was no evidence to go to the jury. The question depends entirely upon what passed between the magistrate's clerk and the dying woman. It appears that he found her breathing with difficulty, and moaning, and, having administered an oath, that he asked her if she felt she was in a dangerous state and likely to die. She said, "I think so." So far it shows she was under an impression merely that she was likely to die, and there is nothing in that part of the statement to render it admissible; but he goes on to ask her why? and she replies from the shortness of her breath. Her answers were disjointed from its shortness. He then asks her, "Is it with the fear of death before you that you make these statements: have you any present hope of your recovery?" She said none, and thereupon he reduced to writing what she had said in these terms: "From the shortness of my breath I feel that I am likely to die, and I have made the above statement with the fear of death before me, and with no hope of my recovery." If the dying woman had subscribed that declaration it is sufficient for us to say that the case for our consideration would have been a very different one from the present. But it appears that after the prisoner's counsel had pointed out to the judge at the trial the interlineation of the words "at present" in the statement as it then stood, the magistrate's clerk was recalled, and said that after he had taken the deposition he read it over to her and asked her to correct any mistake that he might have made, and that she then suggested the words "at present," and said, "No hope at present of my recovery," and he interlined the words "at present." The question is, whether this declaration is admissible. I am of opinion that the decisions show that there must be an unqualified belief of impending death,

without hope of recovery. Looking at the decisions, the language of Eyre, C.B., is, "When every hope in this world is gone;" of Willes, J., "There must be a settled hopeless expectation of death in the declarant" To make this kind of evidence admissible the burden of proof lies on the prosecution, and we must be perfectly satisfied beyond doubt that the deceased was at the time under an unqualified expectation of impending death. Here the declarant herself suggests the interlined words, "at present." The counsel for the prosecution would have us give no effect whatever to them; but they must have had some meaning. She may have meant by them—I desire to alter and qualify my previous statement; I mean to say, not that I have absolutely no hope of recovery, but that I have no present hope of recovery. If the words admit of two constructions, one in favor and one against the prisoner, we should adopt that one which would be *in favorem vitæ*. But the interlineation and alteration here was caused by the magistrate's clerk asking the declarant to correct any mistake, and, the case being one of life and death, she in effect says—There is a mistake, and I desire it to be corrected. The words, therefore, have a definite and fixed meaning, namely, to qualify the statement read to her.

BYLES, J., said that, having tried the case, he wished to state that from the first he entertained a strong doubt upon the question, but as there was no other evidence to leave to the jury he had thought it best to reserve the case. The law properly regarded the admissibility of this kind of evidence with jealousy. There was no power of cross-examining the declarant—no means of indicting for perjury; great danger of mistakes. What the declarant said in effect was, "If I don't get better, I shall die."

Conviction quashed.

UNITED STATES REPORT.

SUPREME COURT OF ILLINOIS.

THE CHICAGO & GREAT EASTERN RAILWAY COMPANY, ET AL v. MARSHALL.

Dying declarations.

In no case, save that of a public prosecution for a felonious homicide, can the dying de larations of the party killed be received in evidence. In civil cases they are not admissible.

BREESE, C.J.—The only question of any real importance presented by this record, which we are disposed to discuss, is, were the dying declarations of the boy admissible in evidence to charge the defendants?

The action was case to recover damages for death occasioned by the careless management of a railroad locomotive, and brought by the father of the boy killed, as his next of kin and personal representative.

This is a new question in this court, and quite an interesting one, which we lack time to discuss at very great length. A few principles of evidence will be noticed, and such opinions as text writers on evidence or courts of justice may have declared on the point.

The general rule is, that *hearsay* evidence, that is, statements coming from one not a party in interest, and not a party to the proceeding, and not made under oath, are not admissible, for the reason that such statements are not subjected to the ordinary tests required by law for ascertaining their truth; the author of the statement not being exposed to cross-examination in the presence of a court of justice, and not speaking under the penal sanctions of an oath, with no opportunity to investigate his character and motives, and his deportment not subject to observation; and the misconstructions to which such evidence is exposed, from the ignorance or inattention of the hearers, or from criminal motives, are powerful objections.

There are, however, well established exceptions to this rule, whether wisely so or not, is certainly a grave question, and among them are dying declarations. These are understood to be statements made by a person under the immediate apprehensions of death, and who did die soon after. In 1 Phil. Ev., 215, it is said, the declarations of a person who has received a mortal injury, made under the apprehension of death, are constantly admitted in criminal prosecutions, and are not liable to the common objection against hearsay evidence, partly for the reason that the awful situation of the dying person is considered to be as powerful over his conscience as the obligation of an oath, and partly on a supposed want of interest, on the verge of the next world, dispensing with the necessity of a cross-examination. Without questioning the soundness of this last reason, obnoxious as it may be to fair criticism, it may be safely said, the exception itself deprives an accused party of a most inestimable privilege secured to him by the ninth section of Article 13 of our State Constitution, "to meet the witnesses face to face," so that by cross-examination the truth may be eliminated.

The exception is in derogation of common right, for, independent of constitutions and laws, an accused person has the right to hear the witness, who is to condemn him, in his presence, so that he may be subjected to the most rigid inquisition. To hang a man, on the statements of one who is on his dying bed, racked with pain, incapable in most cases of giving a full and accurate account of the transaction, weakened in body and in mind; and, though in *articulo mortis*, harboring some vindictive feeling against him who has brought him to that condition, is, to say the least, and has always been, a dangerous innovation upon settled principles of evidence; and no court ought to be disposed to extend it, to enhance cases to which it did not, in its inception apply. The rule itself has no great antiquity to recommend it, it having been first declared, by Lord Chief Baron Eyre, at the Old Bailey, in 1787, in Woodcorlis case, 1 Leach, Crown Law 500, in which the montrouss doctrine was held, that although the *declarant* did not apprehend she was in a critical state, in momentary expectation of death, soon to appear before the throne of the Eternal—and, although the witnesses could give no satisfactory information as to the sentiments of her mind upon that subject, and the surgeon testifying that she did not seem to be at all sensible of the danger of her situation, and never saying whether she thought she should live or die; the court held, on its own conviction, that she was in a condition rendering almost immediate death inevitable; and, as persons about her thought she was dying, her declarations, made

under such circumstances, ought to be considered by the jury as being made under the impression of her approaching dissolution, when the case showed, by the most positive proof, she had no impressions upon the subject.

Having no such impression, how could her conscience have been touched?

The prisoner was convicted and executed, thus adding one more to the judicial murders which blacken the page of history.

And this is the leading case in support of the exception.

To tolerate this exceptional rule, the declarant ought to be, at the time of making the declarations, under the impression of almost immediate dissolution, and without any hope of recovery.

When that has departed—when he is conscious he is, in a moment, to be among the dead, and his soul to take its flight from the body, thus circumstanced, it might be said, his declarations, understandingly made, were of equal force with his testimony delivered in a court of justice; and entitled to be received, and justly, were it not for the fact, the accused was not present, and had no opportunity to cross-examine him.

The bed of death affords no opportunity for this; and the accused may become the victim of statements, which, by reason of the fading condition of the body, in which the mind must in in some degree participate, of him who makes them, *depriving* them of that clearness, distinctness and correctness which should characterize them, and, destitute of which, human life should not be sacrificed by them.

In looking into the books, we find that such declarations are restricted to cases of homicide, not those resulting from accident or mischance, but felonious homicide.

The cases, in England, in which they were received, and not in cases of felony, were the case cited by appellee, in 3 Burrows 1244, *Wright, lessor of Clymer*, v. *Little*. The declarations admitted in that case were the confessions of the forger himself, made on his death-bed, and Lord Mansfield said he should admit them as evidence, but that no general rule could be drawn from it.

The same was the case of *Aviston* v. *Lord Kinnaird*, 6 East, 195. These two cases, the learned author (Phillips on Evidence) thinks, were overruled by the case of *Stobart* v. *Dryden*, 1 Meeson, and Welsby 615, and one not supported by the deliberate judgment of any court; but that the disposition of courts was rather to restrict the admissibility of dying declarations, even in criminal cases.

The true foundation of the rule, that they were admissible in cases of felonious homicide, was policy and necessity, since that crime is usually committed in secret; and it cannot be allowed to such an offender to commit the crime, and, by the same act, still forever the tongue of the only person in the world which could speak his crime.

That they are not admitted in civil cases, is held by most courts in this country and in England.

The only case to the contrary, is the one referred to by appellee, as decided in N. Carolina, *Fulcon* v. *Shaw*, 2 N. Car. Law R. 102.

This was a case for seduction, brought by the father, and he was permitted to give in evidence the dying declarations of his daughter, that the defendant was her seducer.

the leading case in this country against this admissibility, in civil cases. is *Wilson* v. *Bowen*, 15 Johns. 286, opinion of the court by Thomson, Ch. J., referring to the case of *Jackson* v. *Kniffen*, 2 ib. 85, opinion of Livingston, J. The same rule was held in *Gray* v. *Goodrich*, 7 ib. 95, which appellee has cited, were it is said the law require the sanction of an oath to all parol testimony.

It never gives credit to the bare assertion of any one however high his rank or pure his morals.

The cases of pedigree, prescription or custom, are exceptions to this rule What a deceased person has been heard to say, except upon oath, or in extremis when he came to a violent end, never has been considered as competent evidence.

This clearly, has no reference to a civil case but to a criminal prosecution for a felonious homicide. See also *Kent* v *Walton*, 7 Wend. 256.

We think it may be safely said, that the rule at present prevailing in this country and in England on this subject is, that in no case, save that of a public prosecution for a felonious homicide, can dying declarations of the party killed be received in evidence, and to this extent, and no further are we inclined to go.

In civil cases they are not admissible. To admit the dying declarations in this case was error, and for that error the judgment must be reversed and the cause remanded.

UNITED STATES SUPREME COURT.

Durant v. Essex Company.

A decree dismissing a bill in an equity suit in the Circuit Court of the United States, which is absolute in its terms, unless made upon some ground which does not go to the merits, is a final determination of the controversy, and constitutes a bar to any further litigation of the same subject between the same parties.

Where words of qualification, such as "without prejudice," or other terms indicating the right or privilege to take further legal proceedings on the subject, do not accompany the decrees, it is presumed to be rendered on the merits.

Where the judges of the Supreme Court of the United States are equally divided in opinion upon the questions of law or fact involved in a case before the court on appeal or writ of error, the judgment of affirmance, which is the judgment rendered in such a case, is as conclusive and binding, in every respect, upon the parties, as if rendered upon the concurrence of all the judges upon every question involved in the case.

Appeal from the Circuit Court for the District of Massachusetts.

The Constitution vests appellate jurisdiction in the Supreme Court under such regulations as Congress shall make; and Congress, by the act of March 3, 1803, authorizing appeals, provides that "the said Supreme Court shall be, and hereby is, authorized and required to receive, hear, and determine such appeals."

With these provisions in force, Durant filed a bill in October, 1847, against the Essex Company, seeking to hold it liable for certain real estate. The bill was finally "dismissed." An appeal was taken to this court, where, after hearing the case, the judges were equally divided in opinion; and, in conformity with the practice of the court in such cases it ordered that the decree of the court "be affirmed, with costs."

The complainant, conceiving that as the judgment in this court was by a bench equally divided, there had been no decision of his case by the court of last resort, filed another bill—the bill in the court below—for the same relief in the same matter as he had filed the one before.

The defendant pleaded that the former suit and decree in this court—which the plea avered were made after testimony was taken on both sides, and the case heard on its merits and argued by counsel—were a bar to the present bill. This was determined by the court below to be so; and the mandate of this court being filed, the complainant moved for leave to discontinue the suit, or that the bill be dismissed without prejudice. But the court refused leave, and dismissed the bill, no words being put in the decree that showed that the dismissal was other than an absolute one. Appeal here accordingly.

The questions which the appellant now sought to raise were:

1. Whether the decree of dismissal simply was a bar to a new suit?

2 What was the effect of an affirmance by an equally divided court?

Boyce, for the appellant, contended:

1. that the decree in the first suit, being simply one of dismissal, did not prevent the filing of a new bill in another court, or even in the same court.

2. That an affirmance by an equally divided court amounted to nothing; that this court, upon appeal, must "determine such appeal," and that a decree by a divided court was not a compliance with the act of Congress. It was an abdication of the appellate power, and, in effect, imparted the power to the Circuit Court.

Merwin and *Storrow*, contra, considering the first point made plainly untenable, were proceeding to the second, when they were stopped by the court, GRIER, J., referring them to a note of the late Horace Binney Wallace, Esq., of Philadelphia, appended to the case of *Krebs* v. *The Carlisle Bank*, as to the effect (2 Wallace, Jr., 49) of an affirmance of judgment by an equally divided court, which he said was "clear and satisfactory."

Mr. Justice FIELD delivered the opinion of the court, deciding that the decree dismissing the bill in the former suit in the Circuit Court of the United States, being absolute in its terms, was an adjudication of the merits of the controversy, and constituted a bar to any further litigation of the same subject between the same parties.—*American Law Times.*

CORRESPONDENCE.

The Division Court Amending Act of 1869 *and the special rules just made.*

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

GENTLEMEN,—Sometime since you inserted a letter of mine (see March No. of *Gazette*), signed "Lex," in which some remarks (in extenso), were made on the Garnishee clauses of this new Act, and in which I ventured to express an opinion that, under the second section of the Act, clerks should not and had not legal power to sign judgment in cases coming within the meaning of that section, until the return day of the summons; that is, the *Court-day*, or within one month after. In your remarks at the end of the article, you were pleased to mention that you did not agree with what I said in all respects, by which I supposed you dissented from this view of the case. In your following number, however, (see April No.), you seemed to think the construction of this second section would, or might bear my construction, and you further remarked, that the Board of County Judges would set this doubt at rest by the way in which they would frame special rules or forms, in May last. I had an opportunity of conversing with the legal gentleman, who, was in fact the author of the whole Act framed under the directions of the Government, and asked him what was in his mind *the meaning* of the word "*return-day*" and what was the intention of the *Legislature* in his opinion; and he agreed with my view of the law—that is, that the *return-day* meant the *court-day*. But as that matter may be, for the time, supposed to be set at rest by the new rules, without any further remarks on it, I will just for a moment refer to them. Supposing my original view correct, that a clerk could not legally sign a final judgment in a cause under section two of this Act, until upon or after the court day; I will next enquire, does the Act give the Board of County Judges any power to alter the meaning of the Act in this respect?

The two sections of the new Act (Sections 21 & 22), relating to the powers of "the Board of County Judges" are in these words:

"21. The Division Courts Act and this Act shall be read as one Act; and the powers conferred on judges under the sixty-third section of the said Act as amended by this Act, shall *extend to the making and framing* from time to time, of *rules and forms* for the said Division Courts under the new Act, and to altering and amending the same."

It will be seen that this clause does not alter the law (if it be as I say), requiring clerks to sign judgment on the *return-day*. The Board is not by this section vested with that power, nor by the *original Act* referred to therein. "The power of *making and framing rules and forms*" would not extend to altering the intention of the law-makers. For instance, the Judges could not make a rule saying, a summons should be served only five days before its return, or do away with personal service—where personal service is required, nor can they authorise clerks to sign judgments sooner than the law originally meant they should,

nor can they say that a party shall appear on the *eleventh day* after service, where the Act says (the original Act as well as the new Act), that a defendant is bound to appear on the tenth day after service, not counting the *day of service or the court day*—So that if a party is served on the 28th day of May—for a court to be held in Toronto on the 8th June—he is legally bound to appear at that court on any summons served on him, because he has *ten clear days*, not counting the day of service or the court day. Does the new or old Act give the Board of County Judges any power to take away this right of the plaintiff? Do these Acts give the Board the right to say a defendant shall appear within nine days?

On the contrary, Section two of the new Act says that the summonses mentioned therein, "*shall be served according to the practice of such Courts*," which practice we know means, as I have said—that the defendant has only "ten clear days to appear in," *not eleven*. The effect of the new rules is to give him eleven days.

Now let us see what the 22nd section says:

"It only says the 'Board of County Judges' shall have authority, from time to time, in addition to their present powers to make *rules* also for the guidance of clerks and bailiffs in relation &c., to their duties and fees &c., not in relation to suitors, either enlarging or abridging their rights. I have before me a copy of the new form of summons addressed to the defendant thus:

"You are hereby required to appear in the said court on the (the rule requires the clerks to fill in the) eleventh day after the day of service of this summons on you." By this form a party summoned to appear on the 28th May is within its meaning, and is right if he appear on the eleventh day after its service, that is, on the 8th June—*at any time in that day*—having duly filed his defence or denial within eight days—thus throwing the plaintiff over that court—and depriving him of one day's privilege—perhaps causing the loss of his debt—since the case must necessarily stand for trial at the next sitting of the court, unless the court sits two days. In the after part of the summons it is stated that "in case you give such notice (that is, any notice of defence on such eighth day), disputing the claim, the cause will be tried at the sittings of this court, to be held at (say Toronto), next after the return day first above-named, (which means next after the eleventh day after service).

Then on this new form of summons we find a notice endorsed—making in effect the return day thereof to be the eleventh day—and authorising the clerk to sign final judgment on the (say the ninth day), after service, or at any time within a month thereafter, if no defence be filed within eight days.

Now this authority of course nullifies the meaning of the second section of the new Act if that section meant by the "*return* day," the court day—and abridges the defendant's rights, as the first part of that summons abridges the plaintiff's rights. I should be sorry to set up my judgment against the judgment of the "Board of County Judges," or in any way to question their ability, but I respectfully submit that this form of summons is not in accordance with the meaning of the Acts—in other words, abridges the meaning of section two in one way, whilst it enlarges it in another. In other words, does the Act give the judges *legislative power*, or, are they not obliged *to frame rules* in *consonance* with the enactments of the old Act and the new Act? I cannot see that section sixty-two of the old Act gives any other power than to frame rules to carry out the will of the Legislature.

The garnishee sections of the new Act, have since my letter signed "Lex," come under review in various courts in Canada west. In one instance (it may be important to say), in in the case of *Warmoll* v. *Gearing*, and *Thompson* v. *Wright*, in the Toronto courts, it has been held by Judge Duggan, the County Judge—and on appeal by Judge Morrison in Chambers, that a garnishee summons duly served, takes *precedence* if first served over an attaching order issued from the Queen's Bench against the same garnishee—(see section nine of the new Act.) It may be as well to mention here too, that under section six (sub-sec. 4), of the new Act, the judge has power to make a garnishee summons returnable before him in chambers, or on any special day named by him. Further, it may be mentioned, that many suitors have thought that, under the words of the Act, *a debt not due or an accruing debt*, such as the *partly* earned salary of a clerk—or rent accruing, but not fully due may be garnisheed. This, however, is not so—the same construction, would be put, and has (to my knowledge), been put on the words of the

Act, as has been put upon the words of the Common Law Procedure Act. I think the Act upon the whole, is working usefully in the Country.

LEX.

Toronto, June 7th, 1869.

REVIEWS.

LAW MAGAZINE AND LAW REVIEW, May, 1869. Butterworth's, London.

The May number of the Law Magazine contains the following articles:—The Law Digest Commission—Lord Wensleydale—Review of Mr. Finlason's edition of Reeves' History of the English Law—an old Circuit Leader, (an interesting sketch, which we reprint for the benefit of our readers,)—Some Considerations on the Estimates for Law offices—The Real Estate Intestacy Bill—Suggestions on an Improved System of Police for the Metropolis—The Election Enquiries—Indexing and Digesting—Lord Campbell's Lives of Lord Lyndhurst and Lord Brougham; the ennobled author gets it roundly from all the writers,—The site of the New Law Courts—The First Report of the Judicature Commission—also the usual notices of New Books, Events of the Quarter, &c.

APPOINTMENTS TO OFFICE.

JUDGES.

THOMAS GALT, of Osgoode Hall, and of the City of Toronto, in the Province of Ontario, one of Her Majesty's Counsel learned in the Law, to be a Judge of the Court of Common Pleas, in the said Province, in the place of the HON. JOHN WILSON, deceased. (Gazetted June 12, 1869.)

COUNTY JUDGES.

JAMES JOSEPH BURROWES, of Osgoode Hall, and of the Town of Napanee, in the Province of Ontario, Esquire, Judge of the County Court of the County of Lennox and Addington, to be the Judge of the County Court of the County of Frontenac, in the said Province of Ontario, in the room and stead of WILLIAM GEORGE DRAPER, Esquire, deceased. (Gazetted June 5, 1869.)

WILLIAM HENRY WILKISON, of Osgoode Hall, and of the Town of Napanee, in the Province of Ontario, Esquire, Barrister-at-Law, to be the Judge of the County Court of the County of Lennox and Addington, in the said Province of Ontario, in the stead of JAMES JOSEPH BURROWES, Esquire, appointed Judge of the County Court of the County of Frontenac. (Gazetted June 5, 1869.)

WILLIAM ELLIOTT, Esquire, of Osgoode Hall, Barister-at-Law, to be Judge of the County Court of the County of Middlesex, in the Province of Ontario, in the room and stead of the Honourable JAMES EDWARD SMALL, deceased. (Gazetted June 12, 1869.)

DEPUTY CLERK OF THE CROWN.

WILLIAM A. CAMPBELL, of the City of Toronto, Esquire, to be Acting Deputy-Clerk of the Crown, and Clerk of the County Court of the County of Oxford, in the room and stead of JAMES KINTREA, Esquire, superseded. (Gazetted June 12, 1869.)

COUNTY ATTORNEY.

WILLIAM ALBERT REEVE, of the Town of Napanee, Esquire, Barrister-at-Law, to be County Attorney and Clerk of the Peace, in and for the County of Lennox and Addington in the room and stead of WILLIAM H. WILKINSON, Esquire, resigned. (Gazetted June 12, 1869.)

NOTARIES PUBLIC.

THOMAS MACINTYRE, of the County of Elgin, Esquire, (Gazetted May 29, 1869.)

WILLIAM A. REEVE, of the Town of Napanee, Esquire, (Gazetted June 5, 1869.)

HAROLD RANDULPH PARKE, of the Village of Port Colborne, Gentleman, Attorney-at-Law. (Gazetted June 12, 1869.)

CORONERS.

RICHARD DRAKE SWISHER, of the Village of Thamesville, Esquire, M.D., to be an Associate Coroner within and for the County of Kent. (Gazetted June 12, 1869.)

One of the humorous aspects of a repulsive subject is seen in the curiosity and fastidiousness of prisoners on trial for capital offences with regard to the professional status of the men who try them. A sheep-stealer of the old bloody days liked that sentence should be passed upon him by a Chief Justice; and in our own time murderers awaiting execution sometimes grumble at the unfairness of their trials, because they have been tried by judges of an inferior degree. Lord Campbell mentions the case of a sergeant, who, whilst acting as Chief Justice Abbott's deput on the Oxford Circuit, was reminded that "he was merely a temporary" by the prisoner in the dock. Being asked in the usual way if he had aught to say why sentence of death should not be passed upon him, the prisoner answered—"Yes; I have been tried before a journeyman judge.', —*Jeaffreson.*

GRATIFIYING MORCEAU FOR DRUNKARDS.—We observe that the Legislature of Illinois, at its recent session, has enacted very stringent and peculiar laws for the edification of its bibulous citizens. The Overseers of the Poor are to have charge of the persons of the insane, and habitual drunkards, and the county courts are to order warrants drawn upon the county treasury for their support. When a person has been declared insane or a drunkard, and a conservator appointed, he must, under this law, at least remain so for one year, as the conservator cannot be removed, except for misconduct within that time.—*U. S. Exchange.*

OLD BUT GOOD.—Nevada sets a good example of liberality in legal proceedings. Last winter a prominent lawyer of that state had a suit of some importance before Bob Wagstaff, justice of the peace in Scrub City, a small mining district in the upper part of the the county. After the evidence had been taken, and the lawyers had finished their talkee-talkee, the counsel for plaintiff arose and asked the justice if he would charge the jury. "Oh, no, I guess not," replied his honor; "I never charge 'em anything; they don't get much anyhow, and I let 'em have all they make!"—*Chicago Legal News*