The Legal News.

VOL. XI. NOVEMBER 3, 1888. No. 44.

The retirement of Mr. Justice Monk has been followed, with a very short interval, by the intelligence of his death which occurred at Montreal on the 29th October, at the age of 73. The deceased was appointed an assistant Judge of the Superior Court on the 4th June, 1859, so that he had nearly completed thirty years on the bench at the date of his resignation.

If A. write a private and confidential letter to B., and the letter be stolen from B., do not all who use the contents of the stolen epistle for their own ends and profit become more or less *participes criminis?* At all events, such use of a thing stolen, or obtained fraudulently, is the reverse of "knightly" conduct. It is, therefore, rather surprising, if anything in a presidential contest could surprise us, to find one like Mr. Blaine, who rejoices in the distinction of the "Plumed Knight," using, for the purposes of a popular harangue, the contents of the letter obtained from Lord Sackville by a shameful fraud.

The *Chicago Legal News*, referring to the *Taylor* contempt case (*ante*, p. 249) says:—"This is the most remarkable contempt case that ever came under our notice. A man sentenced for contempt of court to receive 'thirty lashes and to be held in penal servitude during the term of his natural life.' This case shows beyond all question the wisdom of regulating the power of judges to punish for contempt of court. Many of the States have so far changed the law as to require the finding of a jury before a person can be punished for contempt. When Judge Bradwell was in the Legislature, he prepared a bill to regulate this power, which received the favorable report of the judiciary committee of the House, although it was violently opposed by some of the best lawyers of that body, among whom were Mr. Connelly and Mr. Dunham."

Another contempt case which has attracted some notice, and in which a very moderate punishment was awarded, is the *Terry* case, in San Francisco. On the 3rd September, the U. S. Circuit Court pronounced a decision in the *Sharon* case, sustaining a judgment which had declared the alleged marriage contract between Sarah Althea Sharon and the late Wm. Sharon to be a forgery. The decision was read by Associate Justice Field, of the U. S. Supreme Court, and was concurred in by two other Judges. Before Judge Field concluded, the woman, who is now married to one Terry her counsel, jumped up and exclaimed: "Justice Field, we hear that you have been bought. We would like to know if that is so, and what figures you hold yourself at. It seems that no person can get justice in this court unless he has a sack." The Judge ordered the marshal to remove the woman from the court-room. What ensued is related as follows:—"The marshal advanced toward Mrs. Terry, but she took no notice of him, but broke out with oaths and vulgar language. Franks grasped her arm, and in an instant Judge Terry arose and exclaimed that no living man should touch his wife. With this he dealt Franks a terrible blow on the neck with his fist, which sent the marshal rolling across the floor. Franks regained his feet, and, with several deputies and bystanders, rushed upon Terry and quickly removed him. Mrs. Terry was also taken from the room and locked up in the marshal's office. A deputy was placed at the door, when Terry advanced upon him and demanded admission, which the deputy refused. Terry put his hand in his pocket and drew forth a dangerous-looking dirk, with a blade eight inches long, and with a curse held it above his head and declared he would stab any man who dared keep him away. Several others at once jumped upon him and tried to take the knife away. A desperate struggle followed. All the men fell to the floor, and the knife was finally taken away from Terry without anyone being injured. Terry was then locked in a room with his wife." The Judges retired to consult together, and on returning to the court-room sentenced Terry to six months' imprisonment in the county jail,

and Mrs. Terry to thirty days. Terry has since petitioned to be discharged from imprisonment, but the application has been refused.

SUPERIOR COURT.

AYLMER, (Dist. of Ottawa,) Oct. 20, 1888.

Before WURTELE, J.

DESJARDINS v. PAUZÉ.

Procedure—Summary matters—51-52 *Vict.* (Q.), *ch.* 26 — *Default to appear — Inscription ex parte—Depositions under* 33 *Vict.* (Q.), *ch.* 18.

HELD:—1. *That in actions in summary matters under the Statute* 51-52 *Vict., chapter* 26, *default to appear is recorded, not at noon as heretofore, but only after the expiration of the day of the return of the writ.*

2. *That in the case of default either to appear or to plead, such causes must be first inscribed upon the roll for proof, and after proof has been made, on the roll for hearing on the merits, and should not be inscribed for proof and hearing at the same time.*

3. *That the deposition of a witness cannot be taken under the Statute* 33 *Vict., chapter* 18, *before a default to appear or to plead has been regularly recorded, or before a plea has been filed.*

The judgment in this cause explains the whole case, and is as follows:—

"The Court, &c.,

"Seeing that the action in this cause purports to be a summary matter under Article 887 of the Code of Civil Procedure as replaced by the Statute 51-52 Vict., chapter 26, and that by Article 892, as replaced by the said statute, the defendant is allowed the whole of the day of the return of the writ to appear, and is not bound to appear as heretofore at noon;

"Seeing that in this cause the prothonotary recorded a default to appear against the defendant at noon on the day of the return, and granted a certificate thereof, and that the plaintiff thereupon forthwith inscribed the cause for proof and hearing on the merits;

"Seeing that the plaintiff took and filed the deposition of his witness on the day of the return of the writ;

"Considering that the default was prematurely and illegally recorded against the defendant, and that the inscription was prematurely and irregularly made, and that the deposition of the witness was irregularly taken and filed before the defendant was in default to appear;

"Considering, moreover, that, in the case of default to appear or to plead, a cause must be inscribed first for proof and subsequently, after proof has been made, for hearing on the merits;

"Considering that the said proceedings are all without legal effect;

"Doth declare the record of the default to appear and the certificate of the same, the inscription for proof and for hearing on the merits, and the deposition produced, to be null and without effect, and doth discharge the cause from the roll of cases under advisement."

Rochon & Champagne for plaintiff.

CIRCUIT COURT.

AYLMER, (Dist. of Ottawa,) Sept. 19, 1888.

Before WURTELE, J.

CAMPBELL v. BELL *et al.*

Tutor—Oath of Office—Agreement to pay interest on interest.

HELD:—1. *That a person who has been appointed tutor can neither implead nor be impleaded in that capacity until he has taken the oath of office.*

2. *That an agreement to the effect that accrued interest shall bear interest from the date on which it will become payable until payment, is valid, and that effect will be given to such an agreement.*

PER CURIAM:—The defendants John Bell and Peter Francis Bell signed a bond on the 29th April, 1885, by which they promised jointly and severally to pay $500 to the plaintiff at the expiration of four years, with interest at the rate of nine per centum per annum, payable yearly. The bond contains this stipulation: "In default of the payment "of the interest as the same becomes due, "all overdue interest to produce interest at "the same rate as the capital sum."

John Bell was married and was in community of property with his wife when the

bond was executed. She has since died intestate, leaving ten children, of whom one is a minor. The plaintiff, as a creditor of the minor, convened a family council to name a tutor for him, and his father John Bell was appointed. A copy of his nomination was served upon him, but he has not taken the oath of office.

The suit is against John Bell and Peter Francis Bell, jointly and severally, for one year and a half of accrued interest, with interest at the same rate on such arrears from the dates at which they became payable, and is also against John Bell as tutor for the minor's share of the debt and for the costs of the appointment.

The latter argues that not having taken the oath of office as tutor, nor having accepted the tutorship, he cannot be impleaded for the minor; and then both the defendants plead that interest can only run on arrears of interest under an agreement entered into subsequently and not previously to the date on which the arrears accrued.

I will first consider the contention of John Bell. The duties of a tutor either precede his administration, or concern it, or follow it. His first duty, as we see in Prevôt de la Jannés, Nos. 598 and 599, consists in taking the oath of office, and precedes any act of administration. Pothier, Coutume d'Orléans, titre 9, No. 13, says: "Celui qui est élu tuteur "doit aussitôt, s'il est présent, prêter le ser- "ment de fidèlement gérer la tutelle. S'il "est absent, celui sur la poursuite de qui "s'est faite l'élection, l'assigne pour être con- "damné à accepter la tutelle et à prêter le "serment." Then our Civil Code, in article 291, provides that: "A tutor, as soon as his "appointment is known to him, and before "acting under it, must make oath to well "and truly administer the tutorship." To represent a minor in a suit, either as plaintiff or as defendant, is to act under the appointment as tutor, and to perform an act of administration; and, therefore, a person who has been named tutor cannot legally do so before taking the oath of office. Until he has legally accepted the office and taken the oath to administer faithfully, he cannot act as tutor. The action against John Bell as tutor is consequently dismissed.

I now take up the other point. The old law of France forbade interest on arrears of interest, and the new law, as contained in article 1154 of the Civil Code, only allows it under certain conditions. This article provides that: "Les intérêts échus des capitaux "peuvent produire des intérêts, ou par une "demande judiciaire, ou par une convention "spéciale"; and under this wording it has been contended that the special agreement cannot precede, but must come after, the accruing of the arrears. The defendants' counsel cites in support of this pretension 2 Mourlon, No. 1159, 16 Laurent, No. 344, and 4 Marcadé, No. 534; but the last mentioned author admits, nevertheless, that the jurisprudence of his country seemed to adopt a contrary view. And on referring to the decisions given by Sirey, under article 1154, Nos. 18 and 20, I find the weight of the rulings of the courts to be in favor of the validity of a previous agreement. Aubry and Rau, vol. 4, sect. 308, say: "La convention destinée à "faire produire des intérêts aux intérêts d'un "capital peut être valablement conclue avant "l'échéance de ces derniers;" and Delvincourt, Toullier, Duranton and Larombière all express the same opinion.

But it is not necessary to weigh these conflicting opinions, to decide the question submitted to me in this cause, as the wording of article 1078 of our Civil Code, which corresponds with article 1154 of the French Civil Code, removes all ambiguity. As the French version is the clearest, I will refer to it: "Les "intérêts échus des capitaux produisent "aussi des intérêts, lorsqu'il existe une con- "vention spéciale à cet effet." That is to say, that when a special agreement to that effect exists at the time the interest accrues and becomes payable, interest runs on the arrears from the date on which they accrue, by virtue of such pre-existing agreement. I am against the defendants on this point, and judgment must go against them for the arrears of interest due, with interest at the same rate on such arrears from the dates on which they accrued.

Judgment against the two defendants personally.

Asa Gordon, for plaintiff.
Thomas P. Foran, for defendants.

TRIBUNAL CIVIL DE VERVINS.

6 août 1886.

Présidence de M. RENOULT.

RENSON v. DAVID.

Bail—Maison—Puits—Eau non potable—Résiliation.

Le locataire d'une maison doit être déclaré mal fondé à demander la résiliation de son bail, lorsque sa demande s'appuie uniquement sur une circonstance, qui ne le prive pas de la jouissance de la chose louée, mais en rend seulement l'usage plus incommode.

Spécialement cette circonstance qu'un puits, situé dans la maison donnée à bail, ne fournit qu'une eau impropre à tout usage alimentaire ou domestique, est insuffisante pour justifier la demande en résiliation.

Il n'en serait autrement qu'au cas où il serait établi que l'usage du puits et la qualité de l'eau avaient été pour le preneur une cause déterminante de sa location.

LE TRIBUNAL,

Attendu que, aux termes de l'art. 1721 du Code civil, le propriétaire n'est responsable que des causes qui empêchent l'usage de la chose louée;

Attendu que, s'il résulte de l'expertise et des documents de la cause qu'un puits situé dans la maison donnée à bail ne fournit qu'une eau impropre à tout usage alimentaire ou domestique, cette circonstance rend seulement plus incommode l'usage de la chose louée, mais n'en prive pas le preneur, qui ne saurait dès lors invoquer les dispositions de la loi pour demander la résiliation du bail;

Attendu qu'il ne pourrait être fait exception à ce principe que s'il était démontré que l'usage du puits et la qualité de l'eau avaient été pour le preneur une raison déterminante de sa location;

Attendu que les termes mêmes du bail établissent que les parties n'avaient pas eu spécialement en vue, quand elles ont contracté, le puits qui n'était que l'accessoire de la maison louée;

Attendu, au surplus, que la réclamation de Renson ne se produit qu'après trois ans de jouissance de la maison et qu'aujourd'hui encore, en demandant la résiliation, il conclut à être maintenu dans les lieux pendant six mois, alors qu'il reconnaît dans son articulation que l'état dont il se plaint existait dès avant le bail; qu'ainsi Renson établit lui-même l'inanité de ses prétentions;

Attendu que les faits articulés, en supposant qu'ils fussent prouvés, ne seraient pas de nature à changer cette situation, et que, par suite, il n'y a lieu de recourir à l'enquête sollicitée;

Attendu que le demandeur ne justifie d'aucun préjudice imputable à son propriétaire et qu'ainsi il n'échet de lui allouer des dommages-intérêts;

Par ces motifs,

Déclare Renson mal fondé en ses demande, fins et conclusions, l'en déboute.

DIVORCE BILLS.

Mr. J. A. Gemmill writes to a daily paper as follows:—"I have just read the paragraph in which you say that there are six applications for divorce pending for next session of Parliament, and that applications appear to be on the increase. As a fact there will be eight applications—two of them were held over from last session, two are from the North-West Territories, while, of the remaining four, three are from Ontario and one from Quebec. There is, therefore, no increase in the annual crop of applications from the part of the Dominion which constituted the old Province of Canada, and in which Parliamentary divorce first took root. With the rapid influx of population into Manitoba and the North-West Territories, we must expect applications of this kind from that part of Canada, so that any general increase will not be so much due to a lax observance of the marital obligations as to an increase in population. You also throw out a suggestion that the duty of dissolving the marriage tie should be transferred to a Court, and that jurisdiction might be given the Supreme Court. All attempts to transfer the mode of obtaining relief from Parliament to a Court have heretofore been promptly sat upon by the several Governments of the day as well as by both Houses of Parliament, and in the present generation there is really no hope of such a reform. The point was raised in the House of Com-

mons by Hon. Messrs. Jones and Davies last session, and replied to by Sir John A. Macdonald, who, among other objections, said that the amount of divorce business annually was too small to warrant the expense of a special court, and he feared, too, that the establishment of a Divorce Court would only lead to the encouragement of greater infidelity in the marriage state.

"Your suggestion to transfer jurisdiction to the Supreme Court would not dispose of the greatest objection to the present system, namely, its expense, which practically makes it a remedy available for the rich only. That court is stationary at Ottawa, and, as at present in cases before Parliament, applicants would be obliged to be at the expense of bringing their witnesses here. When the case comes from a distance, say the North-West Territories, the enormous expense in witness fees alone will be readily understood. To this objection to the present legislative system of divorce may be added the high fees required by the rules of the Senate, viz., $200 fee to the Crown on the bill, and some $70 or $80 to cover the expense of printing the bill and advertising the application for six months. The fee to the Crown is supposed to cover the expenses attending the hearing of the case, but a glance at the proceedings in any one of them will show that the expenses rarely exceed half that sum. Then again the expenditure for advertising is practically money thrown away. The legislation is of a private character, and the rules of the House require that the respondent, the only person who is likely to be interested, shall be served with notice of the application at least a month previous to the opening of the session of Parliament. There is, therefore, no object in heralding forth to the public for the long period of six months the fact that a bill of divorce will be applied for by so and so. My experience is that the system of advertising tends to stimulate applications in cases that might otherwise have slumbered, and may be even the means of encouraging infidelity.

"During the last session of Parliament, Hon. Mr. Gowan, a gentleman who, after a long and distinguished career of forty years as a judge in Ontario, was called to the Senate in 1885, took the initiative in reforming the procedure in that House, and the beneficial result of his labors was apparent before the House was prorogued. If the reform had extended to the two objections I have mentioned, as well as provided some inexpensive machinery for taking the testimony of witnesses, and thus made the remedy available for the poor man as well as the rich, I am satisfied that the present system would be more popular. The more simple and inexpensive the legislative procedure is made, the less will be the grounds in favor of divorce courts."

DOMINION AND PROVINCIAL COURTS.

How far it is a wise exercise of legislative discretion to vest Dominion or Federal judicial power in local or provincial courts is a matter worthy of more consideration than it has yet received. The double jurisdiction and the double legislative interference with that jurisdiction may lead to grave complications in respect of the jurisprudence or the judicial powers of the double-headed courts, and ought, therefore, to be sparingly exercised. Besides, by extending the Dominion litigation powers of the courts, extra liabilities are forced on the provincial revenues in the shape of additional officers and clerks and extra salaries and fees. Hitherto, with the exception of the little friction occasioned by the "Dominion Controverted Elections Act" a few years ago, no serious questions have drawn attention to this double jurisdiction; and so far, the provincial officers of the local courts have executed the functions of Dominion officers in the additional Dominion litigation and jurisdiction vested in their courts. The anomaly of this double jurisdiction may be illustrated by a comparison of the powers of the High Court of Justice under the Ontario Judicature Act and the Dominion Winding Up Act. Under the former, its judgments can only affect and bind persons and property within the Province of Ontario; but under the latter, its orders, being Dominion Court orders, are operative over and affect persons and properties in all the provinces and territories of the Dominion, and are binding on their courts, and must be enforced by their officers as if

they were orders of the court enforcing the same. The anomaly may be illustrated further; for not only may the Dominion use the provincial court for its own purposes, but it is not bound to recognize the limit of jurisdiction given to it by the Provincial Legislature. It may give original jurisdiction to a provincial appellate court, as it has to the Court of Appeal in Dominion election cases, and, if we are rightly informed, inferentially in other cases; and it may give civil jurisdiction to a criminal court, and so interfere with the courts of the province as to overcrowd them with Dominion jurisdiction and litigation, and practically oust or paralyze their provincial powers.

Every properly constituted Government is said to consist of three departments—the Legislative, the Executive, and the Judicial. It is not competent for the Dominion, under our constitution, to extend the legislative jurisdiction of the province; nor can it interfere with its executive jurisdiction, and it is not a wise discretion to interfere with its judicial department, especially as the Federal Parliament has full power under the British North America Act to pass laws "for the establishment of any additional courts for "the better administration of the laws of "Canada." It is contended that because the Dominion pays the salaries of the judges of the provincial courts its Parliament may require extra services of the judges. So it may; but the provincial courts and their jurisdictions and officers are exclusively subject to the control of the Provincial Legislature, and it is not reasonable that the Dominion should interfere with the created institutions of the province in a way in which it could not interfere with the Legislature which creates or establishes them.—*The Mail.*

THE COUNTRY ATTORNEY.

The country attorney is a happy man, although he doesn't know it. He lives in a house in the midst of the village, for he knows too much to try to "farm it," but he has yard and verdure enough about him to afford him, as he sits at his office window, ample contrast with the well-filled shelves of books and papers which line his wall.

He has recently built within the curtilage of his dwelling—that is to say, in a front corner of the yard aforesaid—an office for himself, the front door of which looks out on the main street, and the back door of which opens upon the well-worn path to the side piazza of his house.

This path is not his alone. Somebody is accustomed to trip down it early in the morning before clients come, or in the twilight or the edge of the evening, to whose bright visits are due much of the order and neatness with which the shelves and cases usually, and the new blotting paper and fresh pens on the table almost always, light up this cosy room. The open fire-place, too, is adorned with brasses that look all too bright for the sombre leather bindings and faded papers around the room.

This man has an active life, with many small cases and few large ones. He has to take turns, in the intervals of student assistance, as his own managing clerk and his own copyist, and he knows every point in every case that he has, or ever has had, with a certainty that would disconcert some of us.

He imagines sometimes that he would like an office in the ninth story, with a steam elevator, large fees and a general rush. He will probably have one some of these days (when those boys that are playing in the yard have grown up) and he will have the accompaniments of great rents, expensive staff, fierce competition, and interviewers about his clients' affairs.

But he will never forget the days he spent in that leisurely and studious office under the trees, the short walk to the town-hall where the circuit was held, and the fishing-rod and gun that he generally put into the waggon when he had to go into the next county on business.—*N. Y. Daily Register.*

THE LEGAL TEST OF INDECENCY.

A criminal prosecution was recently instituted in London against Mathieson & Co., the publishers, at the Guildhall Police Court, for selling copies of Boccaccio's Decameron."

The defendants showed that the work was

one of high literary merit, and had been so recognized for five hundred years; that during that time it had never been out of print, and that in the British Museum there were two hundred copies of the book.

The Judge said it was rather late to institute the prosecution, and dismissed the charge.

If the complaint had been made here, the defendants would not have fared so well: in fact, the dismissal of the charge, even in England, did more credit to the magistrate's common sense than to his knowledge of law, for such a sale was undoubtedly illegal.

All the arguments used; the book's high literary character, its age, its being in the library of the British Museum, &c., while they might have been good reasons for a little discreet inactivity in commencing the prosecution, were no legal defences at all.

There were before the Court just the plain questions: Is the book indecent? and did defendant sell it, knowing it to be so?

That the good intention of the seller is no defence is well settled, the principal decision in England being in the case of the "Confessional Unmasked," *Reg.* v. *Hicklin*, 3 L.R., Q. B. 360; *Steele* v. *Brannan*, 7 L. R., C. P. 261; and see *Reg.* v. *Bradlaugh*, 2 L. R., Q. B. D., 569, reversed, 3 *Id.*, 607; *Commonwealth* v. *Tarbox*, 1 Cush., 66; *U. S.* v. *Bennett*, 16 Blatch., 338: *Montross* v. *State*, 72 Ga., 261.

As an illustration of that rare jewel, consistency, it may be well to bear in mind that only a few months ago Burton's edition of the "Arabian Nights" was suppressed in London, although the "Arabian Nights" certainly has every argument in its favor which was urged on behalf of the "Decameron," being still older than that work, certainly more universally read, and having a far greater value as a picture of social manners and customs.

The most important recent case upon this question is *People* v. *Miller*, 2 N. Y. Crim. Rep., 279, affirmed, *Id.*, 375, where the law is very fully laid down.

It is, as was there decided, the province of the jury to determine whether or not the work is obscene.

In that case the Court of Appeals held that as the words of the statute are descriptive and in common use, so that every person of ordinary intelligence understands their meaning, the opinions of witnesses, whether experts or not, as to indecency, are inadmissible; that the testimony of witnesses, skilled in matters of art, to the effect that there is a dividing line between pure and impure, or indecent, art, is inadmissible; that the fact that the originals of the pictures in question in the case were exhibited at public places of high repute did not forbid a finding that the pictures were obscene and indecent; that there is no exception in the statute by reason of any special intent in making the sale, its object being to suppress the traffic in obscene publications.

It is very evident that if the court, and not the jury, decides on the indecency, that it is the court, and not the jury, which is trying the case.

A recent and clearly unsound case in Texas, *Smith* v. *State* (Tex. Ct. App.), 5 S. W. Rep., 510, holds that where the composition is a written one, it is the province of the court to *construe it* and determine whether or not it is obscene.

This is a strange misapplication of construction of written documents by the Court. *N. Y. Law Journal.*

DISALLOWANCE OF LOCAL LEGISLATION.

An important return was laid before Parliament in compliance with an address, dated April 22, 1869, "for copies of any correspondence which has taken place between the government of the Dominion and the governments of Ontario, Quebec, Nova Scotia, New Brunswick, or either of them, regarding the power of disallowance of local legislation claimed by the Dominion government, under the 90th Section of the B.N.A. Act."

The first document in the return is the following memorandum of the then minister of Justice:—

DEPARTMENT OF JUSTICE.
Ottawa, 8th June, 1868.

The undersigned begs to submit for the consideration of Your Excellency, that it is expedient to settle the course to be pursued

with respect to the Acts passed by the Provincial Legislatures.

The same powers of disallowance as have always belonged to the Imperial Government with respect to the Acts passed by Colonial Legislatures, have been conferred by the Union Act on the Government of Canada. Of late years Her Majesty's Government has not, as a general rule, interfered with the legislation of Colonies having Representative Institutions and Responsible Government, except in the cases specially mentioned in the instructions to the Governors, or in matters of Imperial and not merely local interest.

Under the present constitution of Canada, the General Government will be called upon to consider the propriety of allowance or disallowance of Provincial Acts, much more frequently than Her Majesty's Government has been with respect to Colonial enactments.

In deciding whether any Acts of a Provincial Legislature should be disallowed or sanctioned, the Government must not only consider whether it affects the interests of the whole Dominion or not; but also, whether it be unconstitutional, whether it exceeds the jurisdiction conferred on Local Legislatures, and in cases where the jurisdiction is concurrent, whether it clashes with the Legislation of the General Parliament.

As it is of importance that the course of Local Legislation should be interfered with as little as possible, and the power of disallowance exercised with great caution, and only in cases where the law and the general interests of the Dominion imperatively demand it, the undersigned recommends that the following course be pursued:—

That on receipt, by Your Excellency, of the Acts passed in any Province, they be referred to the Minister of Justice for report, and that he, with all convenient speed, do report as to those Acts which he considers free from objection of any kind; and, if such report be approved by Your Excellency in Council, that such approval be forthwith communicated to the Provincial Government.

That he make a separate report, or separate reports, on those Acts which he may consider:—

1. As being altogether illegal or unconstitutional;

2. As illegal or unconstitutional in part;

3. In cases of concurrent jurisdiction as clashing with the Legislation of the general Parliament;

4. As affecting the interests of the Dominion generally;

And that in such report or reports, he gives his reasons for his opinions.

That, where a measure is considered only partially defective, or where objectionable, as being prejudicial to the general interests of the Dominion, or as clashing with its Legislation, communication should be had with the Provincial Government with respect to such measure, and that, in such case, the Act should not be disallowed, if the general interests permit such a course, until the Local Government has an opportunity of considering and discussing the objections taken, and the Local Legislature has also an opportunity of remedying the defects found to exist.

All of which is respectfully submitted.

JOHN A. MACDONALD.

This memorandum was formally approved and adopted by an Order in Council, and copies were sent to the lieutenant-governors of the provinces. The other papers comprised in the return are merely the acknowledgments of receipt of this communication.

GENERAL NOTES.

TELEGRAMS.—Authority given to an agent by telegram must be held, for the purposes of jurisdiction, to have been given at the receiver's, not the sender's, end of the wire (*Cowan* v. *O'Connor*, 57 Law J. Rep. Q. B. 401).

WORKING MEN AS MAGISTRATES.—The Lord Chancellor having now under consideration the appointment of justices for the first commission of the peace for West Bromwich, a movement is on foot asking for the appointment of several workingmen on the bench.

MAINTAINING THE PEACE OF THE COURT.—Where a noise is made in the vicinity of the Court of such a character as to prevent the business of the Court being transacted, the presiding judge has power to issue either a verbal or written notice to the perpetrator of the noise, warning him of its effect, and directing him to stop it; and it is not necessary that the presiding judge should, before issuing such notice and direction, satisfy himself as to whether the noise was made for the purpose of interfering with the business of the Court or not (*Re Dakin*, 9 Australian L. T. Rep. 62).