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HON. T. D. McGEE.

THOMAS D'ARCY McGEE, whose assassination on the morning of the 7th of April, is now one of the striking events of history, and whose loss the people of all Canada have mourned as one man, was a member of the Bar of Lower Canada, and as such, claims some mention even in the columns of a legal periodical. We find it difficult, however, to limit our notice of one for whom we cherished feelings of the warmest personal regard, to that small and comparatively unimportant portion of his career which was devoted to the law. In venturing, therefore, to say a little where much has already been well said, we shall attempt rather to record a few reminiscenses in the order in which they occur to us.

It was about 1858, that Mr. McGEE, then a private member of Parliament, considered it worth while to obtain admission to the Bar of Lower Canada, and caused himself to be articled to Mr. E. CARTER, of Montreal. We have Mr. CARTER'S testimony that amid the multitude of matters pressing upon his attention, Mr. McGEE found time to render himself familiar with the dry details of legal practice, and to make considerable progress in the study of our jurisprudence. In December, 1861, Mr. McGEE was duly admitted, and during the afternoon of the day of admission, laughingly imparted the news to a number of his friends, to whom the fact of his legal studies was not so well known as his more public occupations. He appeared in Court once, and only once so far as we can remember, namely, in the defence of PATRICK LANE, in the Court of Queen's Bench, on the 29th of March, 1862. This PATRICK LANE was charged with the murder of his wife, at St. John's, C. E. We were present throughout the trial, and well remember the able address with which Mr. McGEE enchained the attention of the Jury. It appeared that LANE was, at the time of the act, just recovering from a very violent attack of small pox, which, according to the medical evidence, had brought on a phrensy or delirium, amounting to temporary insanity. Mr. McGEE, whose conduct of the defence was marked throughout by the gravest and most earnest attention, adduced numerous instances in point from writers on medical jurisprudence, and obtained a verdict of *Not Guilty*. Those of our readers who may wish to refer to this case, will find a report in the *Herald* newspaper of the 31st of March, 1862. Mr. DRISCOLL, Q. C., who, we think, introduced Mr. McGEE to the Court, and who sat beside him during the day, jocularly observed that he had the honor of being Mr. McGEE'S father-in-LAW.

Mr. McGEE would, doubtless, had he continued at the Bar, have made an able advocate, though we are inclined to doubt whether practice in the Criminal Courts would have been agreeable to his tastes; but the advent of his party to power, and his consequent elevation to office, afforded his great talents a wider scope. Previous to the LANE trial, he had taken into partnership Mr. T. J. WALSH, a young advocate of whom we remember he had some time previously spoken in the most flattering terms. This partnership, chiefly confined to civil business, continued for some time after Mr. McGEE had entered the Ministry. At the meeting of the bar held on the 11th of April, Mr. DAY, Q. C., mentioned the singular fact that one of the first civil suits in which Mr. McGEE was engaged, bore the number 1848, the number of a momentous year in his own history. He remarked to Mr. DAY, who was counsel for the plaintiff, that he feared the number of the cause boded ill for the success of his defence, and subsequently, when his official duties called him away from town, transferred the cause to his learned friend, Mr. DOHERTY.

About this time, Mr. McGEE was frequently solicited to deliver lectures and addresses at public concerts and enter-

tainments. He was obliging enough to comply with most of these requests, and his magic eloquence never failed to charm and instruct the vast concourse that thronged to hear him. He also found time to woo the muses, and composed many beautiful little poems, most of which were printed under a *nom de plume* in various newspapers.

Like most great orators, it was the practice of Mr. McGee to prepare his public addresses carefully beforehand, in writing. In his delivery, he usually amplified the written discourse. The train of thought, and even the mode of expression, was closely followed, but two or three spoken sentences would appear on paper skilfully blended into one. It must not be supposed, however, that Mr. McGee was not a master of extempore delivery. His brilliant parliamentary speeches are sufficient to show that while he followed the rule laid down by great masters, by preparation in writing for stated times and occasions, he was, nevertheless, ready at all times to speak, and speak well, without preparation. We remember hearing him once remark that he found it extremely difficult to *read* an address. On one occasion, previous to a nomination for Parliament, Mr. McGee, having been given to understand that a certain obscure individual was about to be brought forward by his opponents in opposition to him, had prepared a humorous speech, which, if delivered, would have overwhelmed his opponent with the inextinguishable laughter of the audience. At the nomination, however, the courage of the gentleman above referred to failed, or for some other reason, his name was withdrawn. Mr. McGee was not disconcerted in the least by the sudden change, but made an eloquent speech wholly different from that which he had prepared.

The personal appearance of Mr. McGee presented nothing very remarkable. While engaged in the delivery of lectures, his luxuriant black hair was usually allowed to fall unchecked over his broad forehead. His delivery was calm and free from gesticulation. We were much struck once by his remark that while engrossed by the delivery of a lecture, the audience became a perfect blank to him, his perception of external objects being suspended by the concentration of his mind upon his subject.

Few persons ever won their way so quickly to the hearts of those among whom they moved, as Mr. McGee. Few persons have had such hosts of friends of all political shades. It is remarkable that in the first hasty announcement of his death by the press throughout the length and breadth of Canada, and in the outbursts of sorrow at indignation meetings, the language rather indicated grief at the loss of a personal friend, than lamentation at a public calamity. Even when thrown into the company of those much younger than himself, and of wholly different pursuits, Mr. McGee speedily attracted their love and admiration.

Not a little has been said by various writers respecting Mr. McGee's profound acquaintance with history and general literature. It was, indeed, wonderful, and no more than justice has been done to him in this respect. But we have not seen much said about the genial humor which was one of his characteristics. Every one who has had the privilege of conversing with him will at once recall numberless sallies of wit. One of those which occurs to us while we write, being connected with an historical event, may bear insertion here. At the time of the *Trent* affair, an effort was made to raise an Irish battalion of which Mr. McGee was to be colonel. One evening after coming from a meeting of those engaged in organizing the corps, he happened to be writing something on the subject at a table under a flaring gas jet. While rising, with his attention fixed on what he had been writing, his luxuriant tresses came into contact with the flame, and took fire. Mr. McGee immediately exclaimed: "You see, I am able to stand fire already!"

Literature was his idol, and politics the business which the accidents of birth and fortune had thrust upon him. But amid all the absorption of official life, he sighed

after learned ease and retirement. On one occasion, while Mr. McGee held the office of Minister of Agriculture, the conversation turned upon Goldsmith. Mr. McGee was eloquent in his praises of the author of the Deserted Village, and after several apt quotations, exclaimed: "I would rather be known as the author of a good tale or a good poem, than fill any office in Canada. But," he added somewhat sadly, "I am in the ring now, and cannot help myself." The little poems, which appeared from time to time in Canadian journals, at first over a *nom de plume*, and subsequently over his initials, were the children of his leisure hours, and are the truest reflection of his own character. His last literary effort was a touching tribute in verse, to the memory of his friend, Mr. Devany, which, followed so speedily by his own sudden death, will always be read with melancholy interest.

ADMINISTRATION OF JUSTICE IN THE PROVINCE OF QUEBEC.

If the violent agitation respecting the mal-administration of justice which prevailed about a month ago results in some definite reform and permanent benefit to the country, the pain and injustice inflicted upon several members of the bench by that public discussion may be to some extent compensated. But much of what was said and written upon the subject was too vague to be useful. The writers too often displayed their entire ignorance of the facts, and, by indiscriminate abuse of the judges, excited a feeling of disgust in those acquainted with the truth. The real grounds of complaint have been already pointed out by us on several occasions, and all the discussion of last month threw no new light upon the subject. One of the most serious defects is well indicated by what transpired in the House of Commons on the 26th of March, when Mr. Workman, the member for Montreal Centre, inquired "whether it was the intention of Government, at as early a day as possible, to appoint a fifth judge in the Court of Queen's Bench for the Province of Quebec, and thereby remedy the great inconvenience and loss now suffered by suitors." Mr. Cartier replied that there was no actual vacancy in the Queen's Bench. One of the judges had tendered his resignation, but it was accompanied by a demand for retiring allowance, and the matter was then under the consideration of Government. In other words, owing to some ill-judged parsimony in the settlement of pensions, the highest tribunal in the country was left incomplete, and one of the judges who deserved most from the State was left month after month in an embarrassing position.

The debate in the House of Commons on the 30th March was almost necessarily of such a painful and personal character, that we feel much reluctance in adverting to it. The discussion substantially confirms what has been already stated. As Mr. Abbott, Q. C., very clearly pointed out in the course of the debate, the difficulty in Montreal has not arisen from the incapacity or immorality of the judges, but from want of a sufficient number to carry on the work. We all know how heavily the judges of the Superior Court at Montreal have been, and are taxed, in consequence of the absence of Mr. Justice Smith. It is not fair to make these gentlemen responsible for delays beyond their control. Nor is it fair to describe the judges generally as infirm and immoral, because, in the first place, the want of an adequate pension fund, and, in the next place, the absence of a sufficiently powerful public opinion, has permitted several persons to retain seats on the bench to whom the epithets infirm or immoral may without injustice be applied. Mr. Cartier, in defence of his appointments, referred to some of the judges in terms in which we heartily concur. "In the matter of industry and ability," said he, "no honest lawyer could complain of Mr. Justice Mondelet. If there was upon the bench any judge desirous and capable of discharging his duties faithfully and impartially, it was Mr. Justice Berthelot. Judge Monk was an ornament to his profession. He had recom-

mended Judge MEREDITH, and also Judge TASCHEREAU, whom he had known as a most hardworking man, the most valuable quality which a lawyer could possess. After complimenting some other gentlemen occupying seats on the bench, he referred in high terms to Judge WINTER. The last recommendation for which he was responsible was that of Mr. Justice BOSSE, whose eminence in his profession was indisputable."

Mr. CARTIER went on to say :—"The true difficulty in remodelling the judiciary had been already most justly stated to be the want of any means of pensioning old or infirm judges, for which they had only £2,000 at their disposal in Lower Canada, on which small fund there were already some charges existing. It was quite correct, as had been stated, that the business to be transacted in Montreal was equal to that of all the rest of the Province, and the absence or illness of any judge necessarily occasioned inconvenience. He went on to relate the circumstances under which Mr. Justice Smith had taken leave of absence on the ground of ill-health. When at any time it was proposed to a judge to retire, he demanded a pension equal to the full amount of his salary, and the judge to whom the hon. member for Gaspé had referred, who was 85 years old, had ten years ago refused a pension of two-thirds, offered as an inducement to him to resign."

We trust that the Minister of Justice will appeal to Parliament to place the pension fund on a more liberal footing, and also that some regulations will be introduced to prevent judges from setting public opinion at defiance by retaining their seats when obviously disqualified by age or infirmity.

THE FORM OF OATH.

It has always been with some repugnance that we have regarded the use of a testament, generally greasy and much defaced, in administering oaths, and we shall not be sorry to see the day when the practice of kissing the book is abolished. We therefore entirely concur in the following from the *Gazette :*

"We publish a letter, signed L. X., criticising a decision of Mr. Justice Monk refusing to set aside a judgment of a Commissioner's Court on *certiorari*. The ground on which our correspondent insists as being sufficient to quash the proceedings of the lower court is that the witnesses were not sworn on the Holy Evangelists, but on the *Paroissien Romain*. A technical difficulty to giving effect to the objection, even if it were a valid one, probably existed in the absence of anything on the face of the record to show the nature of the book used by the person administering the oath. But L. X.'s question goes further. He asks whether "an oath taken on the *Paroissien Romain* is valid in the eye of the law." We have no hesitation in saying that such an oath is binding both morally and legally. We remember having heard the late Mr. Justice Panet, a man of the highest integrity, explain this very question. We do not now remember how it was raised, but the learned judge explained that the binding nature of the oath depended on its being a solemn undertaking to tell the truth, that the particular form of it was of no kind of importance, that it was prescribed by no law, and that it varied in almost every country in the world. He also remarked that the kissing the book was only the visible sign of adhesion; but that it was not of the essence of the oath; and that this sign might be given in any way which conveyed an acquiescence in the terms of the solemn undertaking. As an illustration of this we may instance the mode of swearing witnesses in the Scotch Courts, where no book is used. There the witness holds up his hand and repeats the words of the oath. The Jews, too, in our Courts here, swear on the Old Testament, and with their hats on. As there is no special law here for the Jews in this matter, if L. X. be right that the oath is not valid unless the person be sworn on the Holy Evangelists, then the Jews never testify in our Courts under oath. We do not think it wise on the part of Magistrates and Commissioners to make such innova-

tions on well-known and established practice as that complained of by L. X.; but we have no doubt as to the validity of the oath so taken, or taken on the English prayer-book, as a substitute for the *Paroissien Romain.*"

LEGAL COSTUME.

At the opening of the Superior Court Term, on the 17th of February last, Mr. Justice MONDELET observed:—"The rule which requires Queen's Counsel and barristers practising in the Court, to appear habited in black, with robes and bands, must be strictly enforced, and no one can be allowed to address the Court unless properly habited. I say this not from any personal reason, but out of the great respect which I entertain for the profession to which I have the honor to belong."

Every one must admit that the rule while it exists should be enforced, so as to secure uniformity. The tendency here is to drop all ceremony of dress. No doubt costume has been carried to an absurd point in England, where barristers and judges are growing heartily sick of the ugly wig they are doomed to wear. We would not be surprised to see the horsehair wig speedily pass into the category of things that were. On the other hand, it would take some time to reconcile us to the free and easy style of most American Courts. But these things are matter of use more than anything else. Twenty years ago, a business man possessed of the natural adornments of beard and moustache would have been looked upon as unfit to hold an office of trust. Even four or five years ago, if we remember aright, the moustache was censured by one of our Superior Court Judges as "indecent."

CHARLES D'AOUST.

We must withdraw from the ordinary agitations of life, in order to appreciate the memory of a man who, during all his days, knew how, in the midst of pain, to find for himself an asylum, a peaceful solitude, where contemporary passions did not enter, and where opponents and friends always found a calm and benevolent man. Charles D'Aoust was one of those rich natures, whom it is difficult to judge except by their peers, so rare is it for men to pass through the lives of politicians and journalists without accumulating around them the dust of hatred and resentment. He was born at Beauharnois, on the 26th of January, 1825, and studied at the Chambly College. According to the evidence of his companions he had no equal in the studies where talent could be shown. He was the first child in that parish, whose parents had thought of sending him to College. At that period the fairy dream of a farmer's wife was to become the mother of a cure. The administration of the College had need of professors, and the prospect of the services which might be rendered by a man so prodigally endowed, inspired the Directors to show him attentions which were powerful auxiliaries to the maternal desires. Thus before he had time to form a personal opinion, Mr. D'Aoust one day put on the soutane as he might have changed his shirt. But the next year, 1845, he threw off his robe, and embraced the study of law under Mr. Drummond. In 1852, the managers of *Le Pays* were much embarrassed to whom to confide the editorial charge of that journal. Mr. D'Aoust had gone to practice his profession in the locality of his birth, where there was then only a Circuit Court, and no career for his talents. He had, as to literature, only the remembrances of College and some trifling essays in *L'Avenir*, and this was small preparation with which to cross steel with professional combatants. He resisted stoutly the proposition that he should take charge of the *Pays*; but, as he was incapable of a long resistance, he yielded. Two years after, in 1854, he was sent to Parliament with some fifteen members of the same party. Perhaps the charge of his journal diminished his force as a Member of Parliament; perhaps it was natural timidity, or both. Those who have heard him speak in Court, or on the hustings, know that he was able to play a brilliant part, speaking, as he wrote, easily,

correctly, not noisily, but with wealth of expression and quiet and far-seeing vigour. Mr. D'Aoust, when defeated in 1858, gave himself up to his profession, renounced public life, and had become indifferent to politics, when he was seized a year ago by the disease which has just carried him off. He was a journalist without trickery or provocation; replying to insults with good humour. He occupied with honour the seat of President of the Canadian Institute, leaving behind him there, as elsewhere, the reputation of unchangeable good temper.—*Le Pays.*

APPOINTMENTS.

The Hon. Charles D. Day, of Montreal, to be arbitrator for the Province of Quebec, for the division and adjustment of the debts, credits, liabilities, properties, and assets of Upper Canada and Lower Canada. (Gazetted 3rd Feb., 1868.)

Charles W. Deegan, Esq., to be Registrar of the County of Ottawa, in the stead of James F. Taylor, deceased. (Gazetted 30th March, 1868.)

ACTIONS FOR SEPARATION.

The following Index to the actions for separation as to property, instituted during the year 1867, may be found useful. The figures refer to the page of the *Canada Gazette* for 1867.

Armand, Charlotte, 1062; Belanger, Sara, 3766; Benoit *dite* Livernois, Theophile, 3672; Beriau, Marie P., 1163; Bohlé, Rose M., 432; Brown, Anna Isabella, 989; Denis, Militime, 2329; Desmarais, Charlotte, 3217; Duclos, Veronique, 3672; Dufour, Obeline, 3855; Elie *dite* Breton, Julie, 1412; Farnam, Hannah C., 2825; Fortier, Marguerite, 811; Foy, Elizabeth, 21; Godreau, Luce, 3478; Gregory, Amelia H., 1333; Hardy *alias* Fullum, Marguerite, 432; Legaud *dite* Desloriers, Marie, 432; Leduc, Marie Adelaide Hermine, 989; Michel, Angélique, 3009; Pichet, Philomene, 989; Poirier, Euphrosine, 811; Rehicuril, Lydia Almeda, 2667; Reynolds, Eliza, 2745; Ricawy, T. V., 432; Roberts, Eliza, 1163; Talbot, Adèle, 3540; Thereau, Marcelline, 3009; Thivierge, Emerance, 2065; Turgeon, Seraphine, 2389; Vezina, Marie Donatilde, 731.

DISTRICTS OF BEAUCE AND MONTMAGNY.

By proclamation, dated 11th Feb., the periods of holding the terms of the Court of Queen's Bench in the District of Beauce, and of the Circuit Court for the County of Bellechasse, District of Montmagny, are fixed as follows:—Two Terms of the Queen's Bench at the parish of St. Joseph de la Beauce, beginning on the 20th June and October; and three terms of the Circuit Court for the County of Bellechasse, of five days each, at St. Michel from 20th to 24th March, from 28th June to 2nd July, and from 28th October to 1st November.

THE ADMINISTRATION OF JUSTICE.

Another letter from the Hon. Mr REDFIELD appears in the *American Law Register* for February, dated London, 10th November, the subject being, "The importance of judicial administration to the protection of the innocent, the punishment of the guilty, the defence of property and personal rights, and the just maintenance of constitutional government; with illustrations drawn from English constitutional history and the common law, as well as recent trials in Westminster Hall and other portions of the United Kingdom." Judge REDFIELD's letters, though evidently written in haste, are always interesting and instructive, and we therefore continue our transcript of them.

The last letter is as follows:—

The administration of justice, in all countries, and at all times, is a subject broad and difficult, both in its operation and its influence. It is perhaps more indicative, a truer test, of the real temper and spirit, both of the government and the people of the state or country, than any other one thing. This is especially true in regard to the admin-

istration of criminal justice, where the Court is called to hold the scale of justice impartially between the State and the accused; or, what is sometimes more difficult, between the government or different factions or parties, for the time holding the administrative functions of government, and the people at large. And this difficulty is greatly enhanced where offences against the government are concerned; especially in monarchical governments or states; and more so as those monarchies partake more of the absolute or despotic character. It may, then, well be supposed, that where the judge holds office at the mere will of the Sovereign, and is liable at any moment, upon the slightest occasion, or none at all, to be removed in disgrace, and thus have both the source of present support and future acquisition removed, in such cases it may well be supposed that the judge will almost necessarily merely echo the will or the desire of the Sovereign, and that justice will be very little regarded. Hence, very little fairness or purity is expected in countries under despotic rule, from the administration of justice, where the will of the Sovereign is placed in the scale against the rights, either of individuals or of the people at large. This is a proposition so obvious, as to meet no general denial or question. If any case occurs where fairness and firmness are exhibited in the courts of such a country, in opposition to the influence or the interests of the Sovereign, it will be the more admired and praised, but none the less regarded as exceptional, and not to be counted upon in the general estimate of consequences and results.

Now, this spirit, it must be remembered, is not peculiar to despotic governments, for it is natural, and almost necessary, that all governments and all parties having for the time the possession of administrative functions, should desire to have the courts favorably inclined towards themselves. And this being so, all governments and all governing parties will study to make and to keep the judicial administration favorable to their own views, and will consequently endeavor to frown down or put down all opposing views in the courts. This will be done in different countries and at different times in ways differing materially from each other; but in all cases with the same purpose of controlling and thus virtually corrupting the purity and independence of the judicial administration. And so far as we have observed, this is none the less true in republics than in monarchies. It is a thing to be expected everywhere alike. And it is not a thing which one can fairly consider as within certain reasonable limits. If we concede the same good faith to others which we all claim for ourselves, we must expect governments and parties, who believe in the soundness or the wisdom of their own policies, to labor to place themselves and their friends, and the doctrines and constructions for which they contend, upon the high vantage-ground of universal recognition and acceptance. To expect anything less would be to impeach either the good faith, the courage, or the zeal of the parties concerned.

Thus, it will occur in more despotic governments, as for centuries in the history of the British monarchy, and even at the present time in many European states, whose governments are, upon the whole, wisely and beneficially administered, that the judges will be removed or removable at the mere arbitrary will of the Sovereign. And equally, in such governments, the Sovereigns—as did the British monarchs, until the accession of William and Mary, after the Revolution of 1688—will claim and exercise, at will, the power to suspend the operation of any law, written or unwritten, so long as to them shall seem for the interest of the state. These are the usual prerogatives of arbitrary and despotic empires, without which they would cease to be such.

Now, it must be remembered that these defects in governmental, and especially judicial, administrators, are not peculiar to despotic empires or states, and certainly not confined to governments of any particular organization. The short experience of our own happy and prosperous country, whose government is free and popular, be-

yond all former precedent, is not without some lessons of loud admonition in this same direction. The courts, which at first were very generally modelled upon the independent structure and tenure of office of the English courts since the Revolution of 1688, have been gradually receding from that independent position, until, at the present day, there is scarcely one state in the Union where that character extends to all its judicial tribunals. In Massachusetts, for the security as well as the credit of that ancient and honorable commonwealth, the courts and the profession of the law have succeeded in pacifying the politicians and the legislature for the time being with the rather plausible theory that the Supreme Judicial Court, being the highest judicial tribunal in the state, is so embalmed or embedded in the constitution, that its soundness cannot be violated by any profane legislative hands. And this is all which could be saved from legislative demolition. And in order to secure even that last fortress of protection and defence against the rashness and delusions of popular prejudice, or passion, or fury of any kind, they have been compelled to adopt the suicidal policy of compromise by throwing a tub to the whale, as it has been sometimes called. In order to pacify the insatiable demands of popular ferment and political or legislative aspiration for advancement or progress, sometimes unjustly characterised as improvement, it has been found indispensable, even in this staid old commonwealth, to concede that all the inferior tribunals whose judges held office by the same permanent tenure, *dum bene se gesserint;* that all those inferior tribunals whose judges numbered ten times as many as those of the Supreme Judicial Court might be remodelled at the will of the legislature. And this has been literally accomplished within the last fifteen years, for no better object, in fact, than to change the names of the courts, and thus be enabled to appoint another set of judges, some of whom were younger men than their predecessors, and some were not; some of whom were better qualified to fill the places than those whom they succeeded, and some were not; but all were men in accord with the principles and the policies of the existing government.

Now, it must be conceded that, in thus volunteering to suggest that there is no difference in principle between the inferior and superior tribunals of a state, and that the Supreme Judicial Court of Massachusetts must put off its time-honored and venerable functions, and ere long consent to lie down in the same legislative sepulchre, thus prepared for all the subordinate tribunals of this noble old commonwealth, we feel not a little guilty of the offence of betraying our fellows, struggling manfully in the same honorable cause for the perpetuity of constitutional government. And we would fain hope there really may be more soundness in this, as it seems to us, rather shadowy distinction between the inviolability of the highest and the subordinate judicial tribunals of this commonwealth, than now occurs to us. But we all know that, in the neighboring state of New Hampshire, where the constitution, in regard to the tenure of the judicial office, is modelled carefully upon that of Massachusetts, the highest court in the state has had the same fate as all its subordinates, and has actually been remodelled by the legislature not less than three times within the memory of some now living, with no other purpose or pretence than to change the name of the court, and thus get rid of the judges. So that, in this state, where the tenure of office of the judges is, in terms, the same as in Massachusetts, or in England, *dum bene se gesserint*, the actual security from removal, upon any change in the ascendancy of political parties, is really less than in the neighboring state of Vermont, where the judges are elected annually by the legislature, and where, by immemorial usage, ripened into law, the judges are selected without reference to party, or political bias, and are continued indefinitely by a formal re-election, unless some cogent reasons exist, demanding

some change in regard to which all parties are agreed; thus showing very satisfactorily that the actual facility of change, in popular governments, sometimes actually conduces to the stability of the judiciary, while the opposite not unfrequently begets a popular distrust and uneasiness, not so much on account of existing evils, as of those apprehended in the future.

But having said so much in regard to the manifest disposition among the American states to reduce the tenure of judicial office to a brief term of years, and, in most cases, to subject it to the test of popular elections, we feel bound to add, that it has not seemed to us that this could fairly be laid to the account, chiefly, or to any considerable degree, of popular impulses or desires. The great mass of the people are, no doubt, deeply and vitally interested in having and maintaining, permanently, the ablest, most fearless, and independent judiciary which the wisdom of man can devise. Wherever the appointment and the action of the judiciary has been brought near enough to the people to have them properly appreciate its importance, it has always been found that a fearless and able judiciary was sufficiently safe in their hands. And although they do not readily volunteer to extend the term of judicial office, they are always content to let it remain where it is. It has always been found hitherto that movements in the different states, to limit the term or weaken the tenure of judicial office, have proceeded from those who hoped some time to obtain the position themselves, or who desired the places as political capital, to distribute among their followers, or else dreaded the opposition or the control of an independent judiciary, as an obstacle to legislative and other reforms in the municipal administration. With the exception of these three classes, there would never have been any difficulty in maintaining the perfectly independent tenure of judicial office in all those states where it was first adopted. The interests of a permanent judiciary have been betrayed by political demagogues and time-serving placemen, and not by the people at large.

And, sooner or later, it is obvious that the American States will have to consider the question of the indispensable necessity of an able and independent judiciary, in order to the proper maintenance of constitutional government. That was first secured after a struggle of many hundred years, in the British Government, at the period of the Revolution of 1688. And from that day to this it has proved the mightiest bulwark of the British constitutional Government. We do not here refer, of course, to any written constitution, for, aside from some few ancient charters, the Magna Charta, the Petition of Right, and the Bill of Rights, there is, as every student of the history of British constitutional law must know, no such thing as a written constitution in the British empire. But it is none the less a constitutional government, and one based upon well-settled and recognized principles, and principles lying at the very foundation of all the American constitutions. There is no guarantee of constitutional freedom in America which is not, as every well-read lawyer knows, extracted from the common law of our British ancestors. And one cannot enter the superior courts in Westminster Hall, or Lincoln's Inn, and not feel that the character and temper, the wisdom and forbearance of the English judiciary has very much to do with the quiet and order of this island.

Amid all the lawlessness and disturbance in this great Babel of cities (London), the largest, and really the least arbitrarily governed of any great city in the world, with the hundred other cities and large towns in Great Britain, what could be accomplished, with such universal freedom, and such unquestionable exemption from all arbitrary exercise of power, either by the general executive officers or the police of the towns and cities, except by a judicial administration, above all possible doubt or question, and one which the people felt to be their best friend and surest defence? What security exists for rights of property or person except in the judiciary? The legislature, in all times of disturbance, will be the first to propose the concession of part which is demanded, and thus by degrees yield the whole.

In a short visit to the Courts at Westminster Hall, for two days in succession, this fact was deeply impressed upon us. We there saw, indeed, men of ordinary human infirmity, with passions and prejudices, no doubt, such as fall to the common lot, sitting in their ancient places, which had come down from the creation of the Aula Regis, dating back almost to the period of the Norman Conquest; but men who felt the support of the prestige and the traditions of eight hundred years to back them—men who had all their lives witnessed the field at Runnymead, where the Magna Charta of English liberty was signed and sealed by King John and the English barons; who had looked upon, and read, and pondered the original instrument for fifty years; who knew every word of it, and all its commentaries and amendments by heart; and, above all, men who had imbibed, with their earliest mental culture, the sense of the soundness of British law, and the rights of British subjects; a thing to earn and settle which had cost centuries of toil, and treasure, and blood too; upon which no price could be placed by any man not base enough to become a slave himself.

With such men for judges, holding office beyond the limit of all earthly control, unless forfeited by crime, what temptation was there to know any man's person in judgment, or to feel any interest, or influence, beyond that of simple justice? It is impossible to witness an argument before any of the Courts in law, in Westminster Hall, and not feel that the judges, the counsel on both sides, and the parties, if present, which seldom is the case, as well as the bystanders, who are often very numerous, are all striving, consciously and quietly, towards one result, to find out, in the shortest way and time, the exact truth and justice of the case. So that, if the presiding judge, or, what is often the case, all the judges in succession, interpose ever so formidable objections, there is no fluttering among the counsel at meeting unexpected difficulties, and no feeling of disappointment among the judges at having objections satisfactorily and conclusively answered. There seems to be no pride of opinion among the judges, no unwillingness to yield a first impression, but rather, on the contrary, a feeling of satisfaction to have it corrected if it were wrong.

In short, one cannot spend an hour in one of these courts, and not feel that the courts are far more the courts of the people than of any other interest. Not that the interests of influential parties are any less regarded or respected than those of inferior standing; but from the natural presumption that the cases of parties of means and position will be likely to be more carefully investigated and thoroughly argued than those of persons who are less expensively represented, it will always become the duty of upright and impartial judges to look carefully to the protection of the rights and interests of those who have no one else to look after them. This was wonderfully illustrated in the late trials, under special commission, both at Manchester and Dublin. In both these cases the accused were arraigned for alleged crimes aimed most directly at the quiet and good order of society, in one case a treasonable conspiracy against the Government, extending through a very considerable number of disaffected persons, and, in the other, the deliberate assassination of one of the police, in open day, and in cold blood, for the avowed purpose of rescuing a prisoner in acknowledged lawful custody! But in all the trials, before both these commissions, the deliberation and watchfulness of the judges, to reach the exact truth in all the cases, was so marked and undisputed, that no prisoner was heard to utter the least complaint in regard to the fairness and justness of his trial. And in the case of those prisoners who chose not to be defended by counsel, the judges literally performed the constructive duty assigned by the common law of supplying the counsel for the prisoners, in making repeated suggestions to the prisoner to put questions favoring his defence. And then, the summing up of the judges, in all these cases, was so entirely fair and full, in bringing out all

the just grounds of defence on the part of the prisoners, that it was well characterized by some of the journals as "a summing up for an acquittal." And still, there was no attempt to impeach, or bring in question, on the part of any one, the entire propriety of this watchfulness of the judges to secure an impartial trial for all the prisoners. It seems to be comprehended here, that the only sure way to convict a guilty man before a jury, is to give him all possible chance of acquittal.

And, during the present week, in the Court of Common Pleas, before Lord Chief Justice Bovill and his associates, the hearing of a motion on the part of the somewhat notorious Miss Fray, was well calculated to test the patience and forbearance of the English bench in regard to troublesome suitors who choose to urge their own claims personally before the Court, and thus verify the maxim in regard to parties who become their own counsel. This lady had been long in controversy before the Court, all the time conducting her own case, until she was fairly thrown in the cause, and judgment was irrevocably given against her; when, instead of paying the same at once, she delayed until the *capias ad satisfaciendum* was placed in the hands of the sheriff's officer and she committed to prison, and then tendered the amount of the payment and less fees than were due to the solicitors. They naturally demanded the entire sum due, as every lawyer understands was their right. But Miss Fray, knowing nothing of the law on this point, which had been settled for fifty years, chose to argue the matter *de novo* as *res integra*, and on a motion for rule to strike the attorney's name off the roll, was very patiently heard to the end. And then, because the Court could not adopt her view, she threatened the Lord Chief Justice to bring the case before the Queen's Bench in error. All which was received with the utmost quiet and equanimity by his lordship, without the slightest attempt to be witty at the expense of the good lady, or once looking at the bar over his shoulder to learn whether they commiserated his melancholy condition. And the same, and more, might be said of the forbearing manner in which the somewhat famous Mrs. Yelverton was treated by the House of Lords a few months since in arguing an appeal in her own favor brought from the decree of the Court of Sessions in Scotland. Lord Cranworth, who presided at the trial in the absence of the Lord Chancellor Chelmsford, manifested a degree of indulgence almost calculated to encourage irregularity, not to use any more expressive language, which would be, perhaps, fairly justified by the wonderful pertinacity and want of accommodation manifested by the good lady during the trial.

We have extended this paper further than we intended, but not further than seemed needful to illustrate our point, that the more truly independent the judges are made, the more securely will the Courts become an asylum and a defence for the innocent, and the more willingly will the people acquiesce in the conviction and punishment of the guilty. And we desired, also, to bring prominently before the profession and the public the vital truth that the only reliable security for all property or personal rights and interests rests in an impartial and fearless administration of public and private justice; and that the just principles of free constitutional government, of which we are all so justly proud in America, cannot stand secure for all time upon any other basis.

NEW PUBLICATIONS.

AMERICAN LAW REVIEW. Boston.—The April number contains an interesting review of the "Life, Letters, and Speeches of Lord Plunket," besides the usual amount of original and compiled matter, to which we are indebted for several selections which appear in the present issue.

AMERICAN LAW REGISTER. Philadelphia.—The March number opens with an obituary notice of Professor AMOS DEAN, of the Law Department of Albany University, and one of the editors of the Magazine, who died suddenly on the 26th of January last.

STATUTES OF CANADA—31 VIC.

The Statutes of Canada, passed in the first part of the Session, have been issued in a separate volume. The Imperial Act for the union of Canada, Nova Scotia, and New Brunswick is prefixed to the volume, together with the Act for authorizing a guarantee of interest on the Intercolonial Railway Loan. Then follows the Imperial Act passed 20th August, 1867, to amend the Merchant Shipping Act of 1854.

The Acts passed in the first part of the first session of the first Parliament of Canada are twenty-one in number.

Cap. 1. An Act respecting the Statutes of Canada. This settles the form of the enacting clause, the interpretation to be given to various words and phrases, &c., the word "holiday" being made to include two new holidays, namely, Easter Monday and Ash Wednesday.

Cap. II. An Act respecting the office of Speaker of the House of Commons of the Dominion of Canada, provides that the Speaker leaving the Chair may call upon a member to act as Speaker during his absence.

Cap. III. An Act relating to the indemnity to members, and the salaries of the Speakers, of both Houses of Parliament.

Sec. 1 of this Act continues the ridiculous provision by which members of the Senate and of the House of Commons receive $6 per diem, if the Session does not extend beyond thirty days; but if the Session extends beyond thirty days, then each member is entitled to $600 for the Session. The practical effect of this grotesque enactment is that there never is nor ever will be a Session of less than 30 days, while desperate efforts are constantly made by the unscrupulous to split the business of every year into two Sessions.

Sec. 12 fixes the salaries of the Speakers of the two Houses at $3,200 each.

Cap. IV. An Act for granting Supplies, 1867-8.

Cap. V. An Act respecting the collection of the Revenue, &c.

Cap. VI. An Act respecting the Customs.

Cap. VII. An Act imposing Duties of Customs, with the Tariff of Duties payable under it.

Cap. VIII. An Act respecting the Inland Revenue.

Cap. IX. An Act to impose duties on Promissory Notes and Bills of Exchange. The duty on notes is, one cent on a note of $25; two cents from $25 to $50; three cents from $50 to $100; and over $100, three cents for each $100 or fraction of $100. The proper mode of cancelling the stamps is for the maker to write his initials on them; *or*, to write or stamp the date on them. It is not necessary to both initial and date.

Cap. X. An Act for the regulation of the Postal Service. This Act introduced several important changes, which are too well known to require repetition. The most salutary and liberal provision was the reduction of letter postage from five cents to three cents per half ounce.

Sections 62-75 provide for Post Office Savings Banks, which will pay four per cent interest to depositors. This makes the interest one cent per month on every three dollars. As no fraction of three dollars is taken into account, and neither the month of deposit nor the month of withdrawal, the calculation of interest becomes a very simple matter. It was proposed, we believe, to make these deposits *insaisissable* by garnishment, lest the department should be incommoded by attachments; but this iniquitous proposition failed to become law. Monthly statements of these deposits are to be published in the *Canada Gazette*, and will be looked for with much interest.

Cap. XI. An Act respecting Banks. Sec. 17 provides that no Bank shall, after the passing of this Act, incur any penalty or forfeiture for usury; and any Bank may stipulate for, take, reserve or exact any rate of interest or discount not exceeding seven per centum per annum, and may receive and take in advance any such rate, but no higher rate of interest shall be recoverable by any Bank.

Cap. XII. An Act respecting the Public Works of Canada.

Cap. XIII. An Act respecting the construction of "The Intercolonial Railway."

Sec. 1. Railway to connect the Port of Rivière du Loup with line of Railway leading from city of Halifax, at or near the town of Truro. Sec. 3. Construction of Railway to be under charge of four commissioners.

Sec. 27. Loan, with Imperial guarantee, for construction of road, to the extent of £3,000,000 sterling. Sec. 32. Government of Canada empowered to raise, by loan, without imperial guarantee, the further sum of £1,000,000 sterling.

Cap, XIV. An Act to protect the inhabitants of Canada against lawless aggressions from subjects of Foreign Countries at peace with Her Majesty.

Cap. XV. An Act to prevent the unlawful training of persons to the use of arms.

Cap. XVI. An Act to authorize the apprehension and detention of such persons as shall be suspected of committing acts of hostility or conspiring against Her Majesty's person and Government.

Cap. XVII. An Act for the settlement of the affairs of the Bank of Upper Canada.

Cap. XVIII. An Act to authorize the amalgamation of the Commercial Bank of Canada with any other Bank, &c.

Cap. XIX. An Act to amend "The Grand Trunk Arrangements Act, 1862," and for other purposes.

Cap. XX. An Act to incorporate the St. Lawrence and Ottawa Railway Company.

Cap. XXI. An Act to amend Acts incorporating and relating to the Canadian Inland Steam Navigation Company, and to change its corporate name to that of the Canadian Navigation Company, and for other purposes.

JUDICIAL CHANGES IN GREAT BRITAIN.

The number of changes in the English Judiciary has been unusually large during the last two years, and several important appointments have been made within the last few months.

Early in the year, Sir John Rolt, who was recently appointed one of the two Lords Justices of Appeal in Chancery, in the place of Lord Justice Turner, deceased, was attacked by paralysis. It was at first stated that mind and memory were not affected by the attack, and that Lord Justice Rolt would be able, after a brief interval of repose, to resume his judicial labors. But in view of the large amount of business before the Court, which would not admit of delay, Lord Justice Rolt thought proper to place his resignation in the hands of the Government. Sir John Rolt was an able Chancery lawyer, and during the short time he occupied a seat on the bench, fulfilled the high expectations which had been formed of his judicial ability.

Sir Charles Jasper Selwyn, the Solicitor-General, succeeded Sir John Rolt. This appointment has not received the commendation usually bestowed on judicial appointments in Great Britain. A leading journal speaks of him as "without judicial experience, with very moderate learning, and with no high capacity of any kind." He was born in 1813, called to the bar in 1840, received his silk gown in 1859, and has held the office of Solicitor-General a little over half a year. The recent statute which empowers one Lord Justice to sit alone in hearing appeals, renders this appointment the more unfit. The *Law Times* says: "The result must be palpably ridiculous, if Sir Charles Selwyn, sitting alone, is to have power to reverse the decisions of the learned Vice-Chancellors and the Master of the Rolls, all of whom, we may say without disrespect, are more eminent and capable lawyers than himself." The vacant place was offered to Sir Roundell Palmer, but was declined, as he is certain, on the coming in of a Liberal Ministry, to be made Lord Chancellor, and is unwilling at present to leave his enormous practice at the bar.

Mr. William Baliol Brett, Q.C., succeeds Sir Charles Selwyn as Solicitor-General. He was a member of the Common Law bar, as was also the present Attorney-General,

Sir J. B. Karslake. It has been usual, of late years, to take one of the law-officers of the Crown from the Chancery, and one from the Common Law bar. Mr. Brett was born in 1817, was called to the bar in 1846, and appointed Qeeen's Counsel in 1860.

Lord Chelmsford has resigned the Lord Chancellorship, and is succeeded by Lord Cairns, who was appointed one of the Lords Justices of Appeal in Chancery, on the resignation of Sir James L. Knight Bruce. During the short time that Lord Cairns has been on the bench, he has displayed the highest judicial capacity, and bids fair to become one of the greatest Equity judges of modern times.

The place vacated by Lord Justice Cairns' elevation to the woolsack has been filled by the promotion of Sir William Page Wood, who has for many years been one of the Vice-Chancellors. Lord Justice Wood has had great experience as an Equity judge, and his appointment has given general satisfaction. Mr. Giffard, Q.C., a leading member of the Chancery Bar, succeeds to the vacant Vice-Chancellorship.

Sir William Shee, one of the puisné judges of the Queen's Bench since 1864, died on the 20th of February, after a very short illness. This event has caused universal and profound regret throughout the profession in England. The *Law Times* speaks of "the prominent position this eminent man had held at the bar for such a number of years, the intense popularity which his many admirable qualities had won for him in a profession generally so hypercritical, and the importance of his appointment as a vindication of the profession from any narrow-minded feelings of religious bigotry." Mr. Justice Shee was a Roman Catholic. He was born in 1804, and was called to the bar in 1828. The *Law Times* says: "He joined the Surrey sessions; and both there and on circuit his business increased with unusual rapidity, so much so that he obtained the coif when of only twelve years' standing. While still in the outer ranks, he had won a high reputation for eloquence and those other qualities which make a successful leader, more particularly by the manner in which he conducted a case which at the time excited a great deal of attention, and which is usually spoken of as 'Joe Punter's case.' Punter was a cottager on the property of Lord Grantley, whose cottage had been pulled down, and who sued his Lordship for trespass *in formâ pauperis*. Mr. Shee being his counsel, a verdict was found for the plaintiff for £50. A new trial was granted on the ground of the verdict being against evidence. Mr. Shee again appeared for Joe Punter; a second time the jury found for the plaintiff, this time for £100 damages. A new trial was again obtained, and in the third trial a crowning proof was given of the power and brilliancy of Mr. Shee's advocacy, by the jury finding a verdict for £150. The Court above, on another application for a rule, refused it, and they said they did so in mercy to the defendant. It is needless to trace Mr. Shee's subsequent professional triumphs; his manly bearing, his high character for unblemished integrity, his fascinating manner, but, above all, his eloquence, insured for him a large practice and distinguished position, and left him, after the advancement of Thesiger and Cockburn to the bench, undoubtedly the most prominent figure at the English bar. His name is identified with all the *causes celèbres* of modern times,—the *Hudson* v. *Slade* case, the *Bewicke*, the *Palmer*, the *Roupell* cases, and a host of others, that at this moment we cannot recollect. In the year in which he obtained the coif, he had greatly increased his reputation as a lawyer by his publication of an edition of Lord Tenterden's book on Shipping, another edition of which he brought out only last year; also by his edition of Marshall on Marine Insurance. It was on his own circuit that Sergeant Shee was in his glory. He was there the idol of all; and as leader he exercised a sway such as no man had ever done before, or probably will again, founded both on affection and respect. As a peacemaker among many elements often discordant, he shone conspicuously. His

genial and irresistible influence healed every dispute, and put an end to every contention. Few who have been at the Home Circuit Mess will easily forget the happy and graceful speeches, so characterized by good taste and genuine feeling, of Sergeant Shee; his kind encouragement given to the young and timid; and the genuine, friendly tone, adopted by him to all, so free from affectation of self-assertion. So long employed in cases where able advocacy rather than an acute knowledge of legal technicalities was required, in the calm atmosphere of the judicial bench, Sergeant Shee was not in his element, and failed to prove as effective a judge as many men of much less note."

Mr. Justice Shee's successor is Mr. James Hannen. Mr. Hannen is a Liberal in politics, but his nomination seems to meet with the approval of all parties. The *Law Times*, which is of decidedly Conservative leanings, closes an article in which it speaks of the new judge "as an excellent lawyer and a very accomplished man," by saying: "It is rarely we have had as gratifying a task as to address, on behalf of the profession, these few words of welcome to Mr. Justice Hannen."

The last appointment we have to notice is that of Mr. T. D. Archibald, of the Home Circuit, to succeed Mr. Hannen, in the office of Junior Counsel to the Crown, or, as it is vulgarly called, "the Attorney General's Devil."

RECENT ENGLISH DECISIONS.

Appeal. 1.—The Queen in Council has jurisdiction of an appeal from the colonies in criminal as well as in civil cases; but, in a criminal case, an appeal will be granted only under special circumstances. *Regina* v. *Bertrand*, Law Rep. 1 P. C. 520.

2. Leave to appeal from a conviction of a colonial court for a misdemeanor having been granted, subject to the question of the jurisdiction of the Privy Council to entertain the appeal, and it appearing that since such leave the appellant had received a free pardon, the Judicial Committee of the Privy Council declined to enter upon the case, and dismissed the appeal. *Levien* v. *Regina*, Law Rep. 1 P. C. 536.

Award.—A statute directs that an arbitrator shall make his award within a certain time after he "shall have entered on the reference." *Held*, that an arbitrator enters on a reference, not when he accepts the office, or gives notice of his intention to proceed, but when he enters into the matter of the reference, either with parties before him or *ex parte*. *Baker* v. *Stephens*, Law Rep. 2 Q. B. 523.

Bill of Lading.—A *bona fide* assignee for value of a bill of lading is entitled to the goods named therein, if he had no notice of fraud or insolvency in the person assigning to him, and if such person had authority to transfer the bill of lading. *The Argentine*, Law Rep. 1 Adm. and Ecc. 370.

Champerty.—The plaintiff agreed to share with a solicitor the profits arising from the successful prosecution of a suit to establish his title to property, on being indemnified against the costs. *Held*, that though the contract amounted to champerty and maintenance, yet the plaintiff was not disqualified from suing, since his title was vested in him, before the illegal contract. A decree was made in his favor, but without costs. *Hilton* v. *Woods*, Law Rep. 4 Eq. 432.

Collision. — 1. When a collision takes place in which both vessels are to blame, the master and crew of one cannot sue for salvage for having saved the cargo of the other from perils resulting from the collision. *Cargo ex Capella*, Law Rep. 1 Adm. and Ecc. 356.

2. If the crew of a ship have contributed to a collision by not keeping a sufficient look out, though the pilot is also to blame, yet the owners are liable. *The Velasquez*, Law Rep. 1 P. C. 494.

Confession.—The prisoner's master called him up, and said, "You are in the presence of two police officers, and I should advise you, that, to any question put to you, you will answer truthfully, so that, if

you have committed a fault, you may not add to it by stating what is untrue." He afterwards added, "Take care; we know more than you think." *Held*, that a statement then made by the prisoner was admissible against him on his trial for larceny. *Regina* v. *Jarvis*, Law Rep. 1 C. C. 96. (*Note.*—This question of the propriety of admitting proof of confessions made on solicitation, has repeatedly come up during the present term of the Court of Queen's Bench at Montreal. It seems to us that Mr. Justice Drummond's decisions have carried the rejection of such testimony somewhat farther than the above ruling at least would warrant.—ED.)

Directors.—1. Where a person who has been drawn into a contract to purchase shares by the fraudulent misrepresentations of directors, brings a suit to rescind the contract, the misrepresentations are imputable to the company. But if such person, instead of seeking to set aside the contract, sues for damages for deceit, he can maintain such action only against the directors, and not against the company. *Western Bank of Scotland* v. *Addie*, Law Rep. 1 H. L. Sc. 145.

2. If the articles of a company do not prescribe how many directors shall be a quorum, the number who usually act in conducting the business will be a quorum. A forfeiture of shares by two out of six directors held valid. *Lyster's Case*, Law Rep. 4 Eq. 233.

Evidence.—1. The prisoner, an attorney, was indicted for perjury, in having sworn that there was no draft of a certain paper made by his client. No notice to produce the draft had been given to the prisoner; and, on the trial, it was proved to have been last seen in his possession. *Held*, that secondary evidence of its contents was inadmissible. *Regina* v. *Elworthy*, Law Rep. 1 C. C. 103.

2. On a trial for felony in a colony, the jury disagreed; on a new trial, some of the witnesses having been resworn, their evidence on the former trial was read to them from the judge's notes, both the prosecution and the prisoner having liberty to examine and cross examine. *Semble*, that this was irregular, and could not be cured by the prisoner's consent. *Regina* v. *Bertrand*, Law Rep. 1 P. C. 520. (*Note.*—This case reminds us of a communication made to us last April, which has been overlooked. We were informed that in the case of Thomas Wilson, tried for murder at Caughnawaga, in the Court of Queen's Bench at Montreal, the jury, on the 23rd of April, had to be discharged in consequence of the serious illness of one of their number. A new jury being sworn in, the evidence already given was read to the jury from the judge's notes, the witnesses being resworn, and in attendance. This appeared to us at the time a serious innovation, and the Privy Council have decided its illegality.—ED.)

Indictment.—An indictment, charging the prisoner with neglect to provide food and clothing for his child, sufficiently avers his ability to provide, it being implied in the word "neglect." *Regina* v. *Ryland*, Law Rep. 1 C. C. 99.

Insanity.—If disease be once shown to exist in the mind of a testator, it matters not that it is discoverable only when the mind is addressed to a certain subject, to the exclusion of all others, or that the subject on which it is manifested has no connection with the testamentary disposition; and if a diseased state of mind is proved to have once existed, the burden of proving restored health lies on those who assert it. The question of insanity is a mixed one, within the range partly of common observation, and partly of special medical experience; and the Court, in searching for a conclusion, must inform itself of the general results of medical observation, and must make a comparison between the sayings and doings of the testator at a time when the disease is alleged to exist, and (1) his sayings and doings at a time when he was sane, or the sayings and doings of those persons whose general temperament and character bear the closest resemblance to his own, and (2) the sayings and doings of insane persons. *Smith* v. *Tebbitt*, Law Rep. 1 P. & D. 398.

Malicious Prosecution.—No action lies for a malicious prosecution unless the prosecution has failed, even though the plaintiff has been convicted under a statute giving no appeal. *Basebé* v. *Matthews*, Law Rep. 2 C. P. 684.

Marriage.—In Scotland, a connection commencing in adultery may become, on the parties becoming at liberty to marry, matrimonial by consent, and habit and repute are evidence of such consent. *The Breadalbane Case*, Law Rep. 1 H. L. Sc. 182.

Master and Servant.—An action will lie for enticing away the plaintiff's servant, his daughter, though it be not alleged that the defendant debauched her, or that there was any binding contract of service between her and the plaintiff. The plaintiff's daughter, nineteen years old, resided with him, and assisted him in his business. By a fictitious letter, dictated by the defendant, she procured her mother's consent to leave home for a few days, when she left, and the defendant took her to a lodging-house, where he cohabited with her for nine days. She then returned home. *Held*, that there was a sufficient continuing relation of master and servant, and sufficient evidence of an enticing away, to maintain the action. *Evans* v. *Walton*, Law Rep. 2 C. P. 615.

New Trial.—The Court cannot grant a new trial, on the application of the prisoner, in a case of felony. *Regina* v. *Bertrand*, Law Rep. 1 P. C. 520.

PROVINCE OF QUEBEC.

COURT OF QUEEN'S BENCH.

CROWN SIDE.

THE QUEEN *V.* ROBERT NOTMAN.

MONTREAL, APRIL 22ND, 1868.

Criminal Law—Statements by Jury.

Held, that a statement made by the jury previous to giving a verdict, that a newspaper had been handed to them, cannot be recorded on the register of the Court.

The prisoner, Robert Notman, was tried on an indictment charging him in substance with having procured, counselled, and commanded one Alfred Patton to administer a certain noxious thing (ergot of rye) to Margaret Galbraith, to procure miscarriage. The jury having retired to consider their verdict, came into Court at five o'clock and asked for further explanation of the indictment, as they thought, from the statement contained in a copy of the *Herald* newspaper submitted to them, that the prisoner was indicted for actually administering the noxious thing.

The copy of the newspaper had reached them in this way: Certain letters written by the prisoner, which had been proved at the trial, had been printed in the newspaper, and the presiding judge having found that they were correctly printed, directed the Deputy-Clerk of the Crown to allow the jury to refer to the printed version. The Deputy-Clerk of the Crown, however, by inadvertence, permitted the jury to take into their room the entire newspaper, which also contained a report of the evidence.

Mr. Justice Drummond expressed his regret at the inadvertence, and instructed the jury as to the nature of the indictment. The jury having retired, the counsel for prisoner, Messrs. Devlin and Kerr, requested the Court to direct the statement of the jury respecting the newspaper to be recorded on the minutes.

DRUMMOND, J. No such thing was ever known in England or here as to record statements made by the jury. The application is refused.

The jury having come into Court again with a verdict of *Guilty*, the prisoner's counsel renewed their application.

Devlin. How can we bring the matter up again, or obtain the opinion of other judges, unless the statement of the jury be recorded on the minutes?

DRUMMOND, J. That is for you to consider. The Court rejects the application.

SUMMARY OF RECENT DECISIONS.

Admiralty.—When a collision occurs, in consequence of deficiency of look-out and management on board, and not solely from

any fault or neglect of the pilot in charge, the owner of the vessel in fault cannot claim exemption from liability for the damage caused by the collision, on the ground that he was compelled to have a pilot on board. *The Secret*, V. A. C. 11 L. C. J. 294.

Appeal.—An appeal made within eight days from the rendering of a judgment which is subject to revision, is premature. *Beaulieu* v. *Charlton*, 11 L. C. J. 297.

Costs.—Where an action by a foreign plaintiff has been dismissed for want of security for costs, a second action for the same cause of debt will be suspended until the costs of the first action are paid. *Dunlop* v. *Jones*, 11 L. C. J. 316.

Distribution. — Hypothecary creditors must be collocated merely on the net proceeds arising from the specific properties hypothecated in their favor. *In re* Lariviere, 11 L. C. J. 265.

Evidence.—The evidence of a witness may be contradicted by proving by another witness certain statements made by him in a conversation, with respect to which conversation he himself had not been interrogated. *Methot* v. *Lalonde*, 11 L. C. J. 301.

Hypotheque.—A *hypotheque* acquired on the property of a non-trading debtor, whilst *en état de déconfiture*, is valid, in the absence of fraud. *McConnell* v. *Dixon*, 11 L. C. J. 300.

Lease.—Where a lease has been continued for one year by *tacite reconduction*, no notice is necessary to terminate the lease thus continued, and the same legally expires at the end of the year. *Laflamme* v. *Fennell*, 11 L. C. J. 288.

Marriage. 1. A marriage between two Roman Catholics will not be annulled for cause of *impuissance*, until after the sacrament of marriage has been annulled by ecclesiastical authority. *Lussier* v. *Archambault*, 11 L. C. J. 53.

2. A marriage between two Roman Catholics will not be annulled until after the sacrament of marriage has been annulled by ecclesiastical authority. *Vaillancourt* v. *Lafontaine*, 11 L. C. J. 305.

Bail-Bond.—After the expiration of the delay of one month accorded for the surrender of a defendant by his Bail, under a bond in terms of sec. 11 of ch. 87 C. S. L. C., the liability of the Bail to pay the plaintiff's debt becomes absolute. *Lynch* v. *Macfarlane*, 12 L. C. J. 1.

Recusation of Judge.—The plaintiff had instituted at St. Hyacinthe ten actions *qui tam* against persons who were alleged to be associated in partnership for the construction of a bridge at St. Hyacinthe, and who had traded, without filing the necessary declaration of co-partnership. Mr. Justice Sicotte, the sole judge at St. Hyacinthe, filed a statement in the record to the effect that he had been one of the partners or proprietors, but had ceased to be so in 1855. *Held*, that this declaration did not justify the recusation of the judge. *Leclerc* v. *Bilodeau*, 12 L. C. J. 20.

Capias.—The defendant was arrested at the instance of the plaintiff, under a warrant of arrest, issued by a Commissioner for taking affidavits to be used in the Superior Court, and which empowered the gaoler to detain the defendant "for forty-eight hours and no longer, unless before the expiration of that time a writ of *capias ad respondendum* be duly served upon him." No writ of *capias* was served within the forty-eight hours, but the defendant was detained for two days longer, when the writ of *capias* issued in this cause was served upon him in gaol. *Held*, that the detention of the defendant after the expiration of the period of forty-eight hours was illegal, and that the arrest made under the writ of *capias* while the defendant was so illegally detained, was void, and the defendant was discharged from custody, upon his petition to that effect. *Hingston* v. *McKenty*, 12 L. C. J. 25.

Evidence.—Copies of the depositions of witnesses examined in another cause may be filed in a cause proceeding at *enquête*, for the purpose of discrediting a witness examined therein. *O'Connor* v. *Brown*, 12 L. C. J. 28.

RECENT AMERICAN DECISIONS.

Contract by Telegraph.—Where parties residing at a distance from each other

agree to communicate by telegraph in their business transactions, the same rules apply in determining whether a contract has been made, as in cases of communications by letter. Therefore an offer accepted by telegraph constitutes a contract, although the party making the offer attempts to revoke it before his receipt of the acceptance. An acceptance by letter of an offer is sufficient to make a contract, not by virtue of being sent through the public mail, but because it is an overt act, manifesting the intention of the acceptor, and thus making the *aggregatio mentium*, which is the essence of a contract. *Trevor* v. *Wood*, 7 Am. Law Register, 215.

Navigation.—The fact that one vessel carries a prohibited light does not absolve another from the observance of the caution and nautical skill required by the exigences of the case. Although a white light usually represents a vessel at anchor, an omission to watch the light and ascertain from its bearings whether the vessel is in motion, is a neglect of ordinary care and skill, and makes the collision the result of mutual fault. There may be circumstances under which a vessel that is unable to show the proper lights may nevertheless continue her voyage at night. *Greening* v. *Schooner Grey Eagle*, 7 Am. Law Register, 226.

Signature by Mark.—A note signed by a mark may be valid against the signer, though there be no subscribing witness. *Willoughby* v. *Moulton*, Sup. Ct., N. H.

What is a Note?—A promissory note or bill, to come within the rules for the protection of the holders of mercantile paper, must be payable absolutely at some period, not depending on a contingency, nor payable out of a particular fund. *Skillen* v. *Richmond*, 48 Barb.

Railroad Company — Negligence. — It is negligence for a passenger on a railroad train to put his arm out of the car window; and if the facts are undisputed that the injury resulted from this cause, the Court should pronounce it negligence as a matter of law. There may be qualifying circumstances in the condition of the passenger which would make special care the duty of the carrier, but such facts should be proved as part of the case. *Pittsburgh and Connellsville Railroad Company* v. *McClurg*, 7 Am. L. R. 277. (The action in this case was brought by a passenger whose arm was injured while he was sitting in the car with his elbow protruding beyond the window sill. Chief Justice Thompson, in giving judgment, reasoned thus: "A passenger, on entering a railroad car, is to be presumed to know the use of a seat, and the use of a window; that the former is to sit in, and the latter is to admit light and air. Each has its separate use. The seat he may occupy in any way most comfortable to himself. The window he has a right to enjoy, but not to occupy. Its use is for the benefit of all, not for the comfort alone of him who has by accident got nearest to it. If, therefore, he sit with his elbow in it, he does so without authority, and if he allows it to protrude out of it, and is injured, is this due care on his part? He was not put there by the carrier, nor invited to go there; nor misled in regard to the fact that it is not part of his seat, nor that its purposes were not exclusively to admit light and air for the benefit of all. His position is, therefore, without authority. His negligence consists in putting his limbs where they ought not to be, and liable to be broken, without his ability to know whether there is danger or not approaching.")

Landlord and Tenant.—Where the landlord and owner of the premises in fee, claiming that the term has expired, enters without process and without force, during the temporary absence of the tenant, the latter has no right to take the law into his own hands, and attempt to dislodge the former by force. The landlord, being in the actual possession, has a right to maintain it, and to use force, if necessary, for that purpose. *Sage* v. *Harpending*, 49 Barb.

Statute of Limitations—Commencement of Suits.—A suit is to be regarded as commenced so as to avoid the Statute of Limitations, when the writ is completed with the

purpose of making immediate service. *Mason* v. *Cheney*, Sup. Ct., N. H.

Contract—Singular Suit.—Peres was preacher and teacher in a synagogue, under an entire contract. But he kept a shop on Saturday, and his congregation dismissed him: whereupon he sued for his salary during the entire term. *Held*, that these facts, if proved, justified the dismissal; but that evidence of the testimony before the Church was not admissible, without the production of the witnesses.—*Children of Israel* v. *Peres*, 2 Coldwell, 620.

Railroad.—A party whose cattle, without fault on his part, escape from his enclosure, and wander on to a railroad track, and are there killed by alleged carelessness in not slackening the speed of the locomotive, cannot recover for the loss from the railroad company. *Price* v. *N. J. R R.*, 30 N. J. 229.

Rights of Mortgagee of Stock.—The case of Langton *v.* Waite, in which Vice-Chancellor Malins gave judgment last Saturday, is another case of considerable moment to the dealers and speculators in stocks and shares. Disencumbered of details, the facts were, briefly, that the plaintiff, through his brokers, mortgaged a quantity of Grand Trunk Canada Railway Stock to the defendants, who were stock brokers, for a three months' loan. During the interval the defendants sold the stock, and the price having fallen at the end of the three months, realized a profit of about £3,000. The plaintiff claimed that the defendants must account to him for the proceeds of this sale. The defence was: firstly, that there was no privity between the plaintiff and the defendants; this objection was clearly untenable; and, secondly, that by the rules of the Stock Exchange, the holders of stock can deal with it as they please. Upon this point there was a conflict of evidence. The Vice-Chancellor concluded there was no such usage, nor do we see how there could be a usage so one-sided in its operation. And he held, finally, assisting himself by the decision in *ex parte* Denison (3 Ves. 552), that the mortgagees must account to the plaintiffs for the amount received for the stock.—*Solicitor's Journal.*

Digest of English Law Commission.—The following letter has recently been forwarded to the several Inns of Court, by Mr. Godfrey Lushington, the Secretary to the Commission:—

"Digest of Law Commission,
"Lincoln's Inn, 22nd Nov., 1867.

"Sir,—I am directed by H. M.'s Commissioners for inquiring respecting a Digest of Law to state to you, for the information of the Benchers, that the Commissioners, in their first report to the Queen, gave it as their opinion, that a Digest of Law is expedient, and recommended that a portion of the Digest, sufficient in extent to be a fair specimen of the whole, should be in the first instance prepared, which specimen, they submitted, might be conveniently executed under their superintendence. The Commissioners now propose, with the authority of H. M.'s Government, to proceed with the preparation of specimen Digests, such as they have recommended, of certain portions of the law. The subjects they have selected for this purpose are the following:—

(1) Bills of Exchange, including Promissory Notes, Bank Notes, and Cheques.

(2) Mortgage, including Lien.

(3) Rights of Way, Water and Light, and other Easements and Servitudes.

"The Commissioners are desirous to obtain for this undertaking the co-operation of the Bar, and they accordingly propose to intrust the preparation of a specimen Digest of the Law under each of these heads to a gentleman of the Bar, to be selected by them, with liberty to him to associate with himself another member of the Bar, to be nominated by him, and approved of by the Commissioners. The gentlemen selected will be required to execute the several specimens in conformity with the views expressed in the Commissioners' First Report, and their work

will be subject to the general superintendence of the Commissioners. The specimens, when completed and approved of by the Commissioners, will be reported to Her Majesty, with the names of the gentlemen by whom they have been executed.

"With regard to remuneration, the Commissioners do not consider themselves to be as yet in a position to determine on the amount; and they think that, on the whole, the most acceptable course to the profession will be, that the sum to be paid for the preparation of each specimen should be fixed, after its execution, by a committee of three of the Commissioners; for which purpose the Commissioners propose to nominate their Chairman (Lord Cranworth), Sir James Wilde, and Mr Reilly. The Commissioners, then, with a view to their guidance in the selection of gentlemen for this purpose, suggest that any member of the Bar, willing to undertake the preparation of one of the specimen Digests, should, on or before the last day of Hilary Term next, send in to the Commissioners a statement of such his willingness, accompanied with,—

(1) A general summary, in an analytical form, of the whole matter of the law comprised under the head chosen by him.

(2) A small subdivision of the same worked out in detail, as an example of the mode in which he would propose to fill up the outline furnished by his analytical summary.

(3) Any general observations he may think relevant respecting the execution either of the portion of the Digest that will embrace the particular subject chosen by him, or of the Digest generally.

"The Commissioners would not object to more than one gentleman combining in executing one of the specimens, and accordingly joining in preparing and sending in the papers indicated. GODFREY LUSHINGTON, Secretary."

HEAVY COSTS.—What may be called an astounding compensation case cropped up in the Queen's Bench on Thursday. The arbitration had reference to damage to a bridge belonging to a company. The umpire awarded £100. The costs were £3000, of which the umpire received £600.

NEW YORK CODE.—Some time ago we printed some parts of this code, which appeared to us to be admirable. We have since had occasion to look into it more closely, with the especial object of seeing how its authors treated one of the subjects set by the Commissioners in England for specimen digests, viz., Easements. We were amazed: the brevity of the digest is simply ludicrous. A subject to which Gale devoted an erudite treatise (which is now entering a fourth edition), and to which, moreover, Dr. Washburn, an American writer, has given his very careful and learned attention in a far larger work than Gale's, which has just been published, is disposed of in the New York code in a few paragraphs. For practical purposes it is useless,—it is a mere bite out of a colossal fruit. As a guide to those inclined to compete for the honor of framing specimen digests of English law, it affords no assistance; indeed, it is rather discouraging, as showing how great must be the labor, how acute the intellectual vigor, which shall reduce a branch of law to a set of propositions capable of invariable and rapid application.—*Law Times.*

LORD WENSLEYDALE.—Perhaps no English lawyer, as a lawyer, has had so extended a reputation in America of late years as Lord Wensleydale, better known as Mr. Baron Parke, whose death, in his eighty-sixth year, has recently been announced. James Parke was born in March, 1782, and was called to the bar in 1813. He was never made King's counsel, but in 1828 succeeded Mr. Justice Holroyd in the Court of King's Bench. Six years later he was transferred to the Court of Exchequer, where he sat for 22 years. The opinions delivered by him in that Court run through thirty volumes of reports, from the second of Crompton and Meeson to the last of Exchequer. During almost the entire period, he was the senior puisne baron; and throughout the whole 22 years, his distinguished associate, Mr. Baron Alderson, had a seat on the bench beside him.

In 1856, Mr. Justice Parke received a peerage for his own life only. This important innovation, which threatened to work a revolution in the constitution of the Upper House was stoutly resisted by the Peers, who denied the power of the Crown to create a life peerage; and Lord Wensleydale was finally granted a patent to himself and the heirs of his body, in the usual form. As he leaves, however, no son, the title becomes extinct.

LORD BROUGHAM.—There is a curious litigation now proceeding in reference to the memoirs of the venerable Lord Brougham, which has equal interest for the legal and and the literary worlds. It appears, from the allegations in the bill, that Lord Brougham has been engaged for many years in preparing for publication elaborate "Memoirs of his Life and Times," including his correspondence with almost all of his distinguished contemporaries. He had employed Dr. Cauvin to assist him in the revision of his vast accumulation of documents, a quantity of which had been intrusted to the Doctor for that purpose, and it was to recover these that the suit had been commenced. The defendant, Dr. Cauvin, had been recommended to Lord Brougham by Mr. Henry Reeve, and Mr. John Forster; and besides the manuscripts entrusted to him, he was occupied in the arrangement of other papers at Brougham Hall. It was understood that the Doctor was to act only as selecter and corrector, not to write any part of the work nor to put his name upon the title page. This was in 1866. Dr. Cauvin continued his task, in constant communication with Mr. William Brougham, who acted for his brother; and then on his invitation he went to Brougham Hall, where he remained for two months, busily engaged in researches, returning to London in October, and carrying with him a large quantity of original letters and copies. Before he left, he agreed with Mr. W. Brougham to arrange the first volume within a month, for the inspection of Mr. Forster, who, after revising it, was to forward it to Lord Brougham, at Cannes. This volume was to be published early in the spring of the present year, and then Dr. Cauvin was to proceed forthwith to prepare the second volume. During this time no agreement had been made for remuneration. In December, Dr. Cauvin requested a check for £200 or £300 on account. Mr. Brougham declined to advance so large a sum, but offered to pay on account a sum that would bear a fair proportion of the work done to the whole work, and asked for the Doctor's estimate of his services. The Doctor named it at a thousand guineas. This was objected to by Mr. Brougham, who demanded the papers in Dr. Cauvin's possession, which were refused, pending the dispute about the claim, and it is to recover these papers that appeal is made to the Court of Chancery.

The question is, whether the demand is fair and reasonable. Mr. Forster, than whom no man is more competent to advise, says that it is not so, and that at such a sum the book would yield no profit. The defendant says that he already given to the work an entire year, and that he has read more than 30,000 letters. The amount of remuneration to which he is entitled is a question for a court of law. 'Can a court of equity compel him to give up the papers before this is determined, and, if so, upon what terms? Perhaps, on paying the amount claimed into court to abide the result.—*The Law Times.*

A story that reads like a chapter of romance was told to the registrar of the Chelmsford County Court on Saturday last. A young girl of eighteen appeared before him on her own petition to be adjudicated a bankrupt. She owed £40 to the Crown, the amount of a recognizance she had forfeited by neglecting to appear at the Central Criminal Court against a man who had attempted to murder her. This man, named Watkins, seduced her, and about a year ago attempted to stab her to death at Buckhurst-hill, where she then lived with her father. Though she had neglected to prosecute him on his trial, her first depositions were taken as evidence, and he was sentenced to twenty years' penal servitude. During the trial she had been

under the care of his father, a jeweller in London, and had been sent abroad. On her return, she was apprehended for her debt to the Crown, and seems to have found no protector, her own father being too poor to release her. As she was not a trader, the registrar said he could not deal with her case at present, and she would have to remain in jail till March next, when he would see what could be done.—*Law Times.*

German Law.—The following judicial anecdote, the scene of which lies in Germany, illustrates very ludicrously the matter of fact and methodical nature of the Teutonic mind, as well as its severe adherence to logic. A complaint was made to a magistrate that a blow had been given in the course of an altercatien, but the witness who was relied on to prove the assault could only say that he heard the blow given, as he was at the time in a certain inn near which the occurrence had taken place. The defendant, who denied giving the blow, urged that it was impossible, even if it had been given, that the witness could have heard it from where he was. The magistrate resolved to try the point by actual experiment, and proceeded to the inn, while an officer of the court accompanied the complainant to the precise spot where the quarrel had occurred, and there and then gave him a good, sound whack. The magistrate, on resuming his seat in court, said he heard the blow perfectly well from inside the inn, and the defendant must pay a double fine—one for the original blow, the other for the experimental and official thump.—*Once a Week.*

REPORT OF THE COMMITTEE ON BANKRUPTCY AND INSOLVENCY.

17th April, 1868.

The Select Committee appointed to inquire into and report upon the nature and operation of the laws of Bankruptcy and Insolvency now in force in the several Provinces of the Dominion, with power to report from time to time. beg leave to present the following as their third report:—

In pursuance of the objects for which they were appointed, your Committee proceeded to ascertain, in the first place, what are the laws respecting Bankruptcy and Insolvency in existence in the several Provinces.

In New Brunswick there is no bankrupt or insolvent law whatever, nor are there any provisions of law under which the estate and effects of a person unable to pay his debts can be distributed among his creditors, otherwise than by the ordinary means of executions issued at the suit of those obtaining judgments, nor under which the preferences and liens to which executions give rise under the common law and statute law can be avoided or set aside for the benefit of creditors generally.

In Nova Scotia an Act is in force for the relief of insolvent debtors, but its operation is limited. It is rather a remedial measure, intended to supplement and mitigate the law of imprisonment for debt, than a complete system of insolvent or bankrupt law, having for its object the discovery and realization of the assets of an insolvent, and his discharge from liability in consideration of the surrender of his property.

This Act, cap. 137 of the Revised Statutes of Nova Scotia, third series, permits a person imprisoned on any writ of *mesne* process, execution, or attachment for non-payment of money issuing out of the Supreme Court, to petition for his discharge. And upon complying with the conditions prescribed by the Act, he has a right to obtain an order discharging him from custody, in the suit or proceeding in which the warrant for his imprisonment issued. These conditions render necessary a discovery by the Insolvent under oath of the property he possesses and of the debts he has incurred, and require of him as a preliminary to his release the execution of a deed of assignment in trust, for the benefit of the debtor upon whose suit he was arrested. The effect of the order for his discharge seems only to release him from the restraint upon his liberty, actually imposed upon him in the

suit or proceeding in which the order is made. And the assignment in trust seems only calculated to enure to the benefit of the creditor, who is plaintiff in the suit.

The act, therefore, seems to afford to any creditor effective means for compelling payment of the debt due him; but its tendency must be to impede or entirely prevent the distribution of assets among creditors generally. And it affords no means by which, on any conditions whatever, a debtor once insolvent, can be enabled to continue his business with any hope of ultimate success.

In the Province of Ontario, although unrepealed laws respecting insolvency still stand upon the Statute Book (Consol. Stat. U. C., cap. 18 and 26), they have been practically disused since the passage of the Insolvent Act of 1864.

In the Province of Quebec no insolvent law is in existence except the Insolvent Act of 1864; although one of the principles upon which every system of bankrupt law rests is a leading feature of its common law. The right of the creditors of an insolvent to a just distribution of his assets among them all, has always been recognized by the Bar of Lower Canada; although the means under the common law of enforcing that right were cumbrous and expensive. The effects of the debtor could only be realized under execution, and by this process only the minimum price of the goods sold was ever obtained.

And after deduction of the costs of the action, the expenses of the execution, the cost of filing the claims of the creditors, and of preparing and rendering the judgment, distributing the moneys, the moveable effects of a debtor seldom realized sufficient to pay the rent and other privileged claims upon them. With regard to real estate, it almost invariably happened that the debtor, having no means of obtaining a discharge in case of failure, had burthened it in a considerable proportion to its value before he finally stopped payment, and at a Sheriff's sale of it for cash, it usually fell into the hands of the mortgagee, who had the privilege, by reason of his right to the proceeds, of abstaining from paying the price unless his claim proved invalid. No means existed for obtaining possession, or even a sight of the books of an insolvent, and his debts could only be obtained by attachment, a process so costly and so inconvenient as to be seldom if ever resorted to, except as to isolated claims of large amount.

Practically, therefore, the only Insolvent or Bankrupt law in the Dominion which is extensively resorted to is the Insolvent Act of 1864, an act prepared by the Parliament of the late Province of Canada in that year, and having force in the Provinces of Ontario and Quebec. With regard to the other systems referred to, your committee believed, from the preliminary enquiries they made respecting them, that a more extended and minute examination of their nature and operation was unnecessary.

But the Insolvent Act of 1864 appeared to be acted upon so frequently in the late Province of Canada, and to enter so largely into the regulation of commercial questions connected with insolvency, that your committee felt it to be their duty to organize as formal and extensive an inquiry into the operation and effect of it as their powers enabled them to do.

With this view it was determined in the early part of the session to address a series of questions to persons interested in its working, and to those engaged in putting it into force. These questions were of two classes, one of which was submitted to all the persons addressed, and another which accompanied the first when it was transmitted to persons holding any official position, giving them cognizance of proceedings adopted under the act.

These questions were addressed as follows:—

1. They were addressed to one hundred and sixty-two persons, including all the judges having jurisdiction.

2. All the clerks and prothonotaries of the courts before which proceedings are had.

3. All the Boards of Trade throughout Quebec and Ontario.

4. All the official assignees whose names could be ascertained.

5. And to a large number of Solicitors, Merchants and Accountants.

And answers have been received from a considerable proportion of these Institutions and persons throughout the provinces of Ontario and Quebec.

And your committee believe that the general purport of the answers, thus obtained, fairly indicates the views of the community upon the nature, operation, and effect of the law.

It will be observed, that, in scanning the questions already referred to, your committee desired to elicit opinions and information.

Firstly: With regard to the procedure requisite under the act to vest the estate of an Insolvent in the Assignee.

Secondly: With regard to the provisions for the management of the estate while in the possession of the Assignee.

Thirdly: With regard to the means of preventing fraud, and fraudulent preferences, and of punishing those guilty of either.

Fourthly: As to the regulations respecting the Insolvent and his discharge; and,

Lastly: As to the general effect of the law, and particularly as between the Insolvent and his Creditors.

Adopting this order, as matter of conscience, and proceeding to discuss the first subject of inquiry, namely the procedure requisite under the Act for vesting the estate of an Insolvent in an Assignee; Your committee would observe, that under the Act, this may be either voluntary or compulsory.

Under the Act, as originally passed, an Insolvent desirous of making a voluntary assignment, was ordinarily required to await the selection of an Assignee by his creditors, before making an assignment; and this necessitated a notice, calling a meeting of his creditors, which could not be given in less than two weeks, and might extend over a longer period.

An amending Act in 1865 permitted him to make a voluntary assignment, without notice to his creditors, to any one of a class of men selected by the Boards of Trade for the purposes of the Act, and styled Official Assignees. But the amendment did not prohibit the calling of a meeting, and the selection of an assignee by the creditors in the manner provided by the first Act. These modes of appointing an assignee to a person voluntarily placing himself within the purview of the Act have been fully discussed in the replies, and various opinions have been expressed upon them. The question whether the debtor should assign to an assignee at his own domicile, or to one resident at the domicile of the majority of his creditors, has also excited much attention, and the validity of the latter class of assignments has been disputed before the courts with conflicting results. And the propriety of allowing the debtor to select his assignee, even though he be restricted in his choice to the persons selected by the Board of Trade, is combatted. And while the opinion generally prevails that the creditors should have the exclusive power of choosing the assignee: there is an equally prevalent disinclination to permit the debtor to retain possession of his estate pending the time requisite for the notices preliminary to exercising that power at a meeting properly called.

The attention of your committee has, therefore, been first attracted by the result of their enquiries as to the extent to which in a voluntary assignment the creditors should influence the choice of an assignee; whether or no the Act leaves to the debtor after his acknowledged failure too extended a control over his property, in the event of his calling his creditors together to appoint an assignee, and how far the choice of such assignee is restricted by considerations as to his place of residence.

If the debtor calls a meeting of his creditors, as he would under the Act of 1864, the delay required for the notices he must give does not appear to be considered more than sufficient to enable a full attendance of creditors to be procured, and the information as to his affairs which he is required to give before or at the meeting so called seems to be sufficient. But if he adopts

this mode of proceeding he has the undisputed possession of his estate, and his books, for a time amply sufficient to enable him, if he pleases, to dispose of assets, make entries, or receive or expend debts due to him, in such a manner as to injure his creditors.

On the other hand, if he follows the procedure permitted by the Act of 1865, he himself exercises the right of selecting his assignee; and however limited the number of persons from whom his selection may be made—it is stated that in certain cases the competition has given rise to collusive arrangements and favouritism;—both alike detrimental to that thorough investigation of the affairs of the estate in which the creditors should have the energetic co-operation of the assignee.

These considerations and the suggestions contained in the replies laid before the committee, appear to point to some arrangement by which the debtor should make an immediate assignment to some official person, who should at once call a meeting of the creditors, and during the interval of time required for notices, should perform similar duties to those imposed by the present act upon the guardian in compulsory liquidation. By this mode it is suggested that the estate would be at once secured; the information required to enable the creditors to act intelligently in the choice of assignee would be prepared; their freedom of selection would be preserved; and while the notices were being published the preparations for realizing the estate would be progressing.

With regard to the residence or quality of the assignee to be ultimately chosen by the creditors, the prevalent idea of the Act seems to be, to give the entire control of the conduct and arrangement of the estate to the creditors as being a matter in which they alone are interested. They are authorized to make such regulations for winding it up as they think proper—they can pronounce upon nearly every question as to its administration, that can arise; and the success or failure of the means they adopt only results in the increase or diminution of their dividends, as the case may be. It may be of the highest importance to creditors to have an active and competent man as assignee, though he may not reside in the same place as the debtor, and the identity of domicile of the debtor and the assignee will be an insufficient substitute for qualities essential to the advantageous administration of an estate. Your committee therefore are of opinion, that a liberal interpretation of the Act, under which no restriction is imposed on the choice of an assignee by the creditors, is beneficial, and in accordance with the general tendency of the Act. But the selection of assignee should not in any respect affect the *forum* having jurisdiction over the Insolvent and over his acts and contracts.

The same remarks will in many respects apply to the proceedings, by means of which an insolvent is compulsorily divested of his estate. The choice by the Sheriff of a guardian, like the choice of an interim assignee by the creditors, should be restricted to persons resident in the locality, for the sake of convenience in the immediate protection of the estate; while the ultimate selection of an assignee should be left free, that the creditors may obtain the person they consider best calculated to procure for them the largest returns from it.

With regard to the procedure for compulsory liquidation; in the great majority of answers the provisions of the Act seem to be considered convenient and sufficient. The most important addition proposed is suggested by several of the Boards of Trade, to the effect that a levy under execution should be made a ground for compulsory liquidation; and that money so levied within sixty days before the insolvency should be recoverable by the assignee either from the Sheriff, or from the seizing creditor to whom he has paid it, as the case may be. The first branch of this suggestion appears to be already met by the provisions of the Act. The second would seem to be open to many grave objections, and could only be sustained on a principle inconsistent with that upon which mainly rests the law as to preferences enunciated by the Act.

Upon the second class of enquiries—namely, those having reference to the mode of winding up the estate after it has reached the assignee—the suggestions received have been numerous. In this stage of proceedings in insolvency, the interest of the debtor in his estate has virtually ceased to exist. The duties of the assignee may be summed up, as requiring him to act for the best interests of the creditors in realizing the estate for their benefit; and the theory of the law seems to have been that as the parties chiefly interested they should have the chief direction of his actions. This view has been adopted in most of the replies, and the suggestions have been made chiefly with the intention of facilitating the exercise by the creditors of their control over the assignee; of increasing his powers acting under such control; of abridging delays and of diminishing expenses. These objects are sought to be attained by various means, the principal of which may be thus summed up:—

By authorizing the appointment from among the creditors of a superior or supervising Committee, to whom the creditors may delegate all or any portion of their authority in respect to the winding up of the estate.

By authorizing the assignee to offer a reward for the discovery of concealed assets.

By authorizing the guardian and assignee to obtain communication of all letters addressed to the Insolvent.

By abridging the period required for advertizing the sale of real estate, the intervals between the insolvency and the power of declaring dividends, holding legal meetings of creditors and the like.

The first and second of these classes of suggestions seem to interest the creditors alone, and probably they may safely have power to give to a Sub-Committee of themselves the powers of administration, which they themselves may exercise; and to decide to what extent they may beneficially employ the funds of the estate, in procuring information as to concealed assets. It would only be necessary, in the interest of the great body of creditors, to provide against the abuse of these powers by a section of the parties interested to the injury of the majority.

The desire that power shall be given to examine the wife of the Insolvent seems to be entertained by the Boards of Trade and by some others of the parties answering.

Act of 1861, c. 118, the Bankrupt Law of England permits the examination of the wife for the discovery of effects illegally concealed, kept or disposed of, and the jurisprudence is said to confine her examination strictly to these points. The new United States statute authorizes the summoning of the wife to attend for examination "as a witness," but it gives no power to compel her submission for examination, and provides no penalty for disobedience except the refusal of her husband's discharge unless he proves that he could not procure her attendance. The Scotch statute authorizes the examination of the wife of a bankrupt relative to his estate. And both in England and in Scotland the right of examining to some extent the wife of a bankrupt, preceded the change in the law of evidence which permitted her to be examined as a witness in ordinary civil cases to which her husband is a party.

Your Committee, therefore, report upon this point that their investigation discloses a prevalent opinion in accordance with the rule adopted in other commercial countries, namely, that the wife of the insolvent should be to some extent subject to examination as to his estate.

With regard to the delays provided for by the Act, which it is suggested should be abridged, it may be remarked that the greater portion of these delays appear to be justified solely on the ground of the possible or probable existence of creditors in other countries having the right of assisting at the decision of important questions, or of sharing in the proceeds of the estate. As the Act now stands they are not uniform, for practically in voluntary assignments the interval between the first notice of the insolvency, and the time for legal meetings or dividends is lengthened or diminished according as the assignee is appointed with

or without notice to creditors; and this interval is again greatly increased when the appointment is made in compulsory liquidation. If the interval were made to count from the date of the first advertisement of any kind published in either case under the Act, and were reduced to six weeks instead of two months, the effect would be an abridgement of delay in most cases of fully one month, and a closer approach towards uniformity in the two modes of acquiring control over the debtor's estate.

And a like desirable object might be obtained as regards the sale of real estate, by fixing the maximum length of the advertisements required, and leaving to the creditors, or to their supervising committee, the right of still further diminishing it.

The absence of power to receive and open letters addressed to the insolvent is also pointed out in several of the answers as being a defect in the act. No such provision exists, nor in fact is it to be found precisely in that form in the American or British bankrupt acts. It is true that in the English and Scotch acts the judge is authorized to make an order to that effect extending over a limited period; but it does not appear to what extent judges in England have exercised this power. The only case cited in the treatises applied to the letters addressed to a debtor who had absconded, which would probably be admitted to be a fit occasion for the exercise of such a power. Under the United States bankrupt law no authority of the kind is conferred or can be obtained.

Your committee therefore report upon this point that it is suggested in several of the answers that the power of opening and receiving letters addressed to the insolvent should be conferred upon the assignee, and would be an advantageous addition to the existing law; and that in England and Scotland the judge is authorized to grant this right to the assignee.

Among the duties of the assignee is comprised that of collecting the debts, and in the event of being unable to collect, of selling those remaining unpaid. There are certain restrictions upon the sale of debts by the assignee, of the general effect of which no complaint is made. But there is one particular case in which the restriction upon the sale of debts by the assignee, as well as upon the sale of real estate, is suggested to have operated disadvantageously to the creditor. This appears to have occurred where the creditors thought it for their interest to sell *en bloc* the entire estate of an insolvent, including his debts and real estate, either for a gross sum or at a rate per pound upon his liabilities. It would seem from the information before the committee that this mode of closing an estate might occasionally be advantageously resorted to, and that if the power of doing so be carefully guarded it would be expedient to grant it.

The third point to which the attention of your committee has been directed, namely, the prevention and punishment of fraud and of fraudulent preferences, has been discussed at considerable length in the answers received by your committee. It appears to be considered that there are not sufficient provisions in the act for some of these purposes; and many suggestions have been made with a view to supplement them.

The Act as it now stands, defines and describes what constitutes fraudulent conveyances, and fraudulent preferences. Recent judicial decisions upon the clauses appropriate to these subjects, appear to indicate a necessity for a criticism of their language, but with such amendments as may suffice to give them the offset they evidently contemplate, there would be no necessity for any addition to them. The real difficulty appears to be in compelling the Insolvent to surrender his entire estate; and it is proposed to insure this, by providing for various forms of examination, and of declaration under oath; by punishing concealment as a criminal offence; and by making it a disqualification for a discharge.

(To be continued in our next No.)