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Art. VII.—ON PRESUMPTIONS IN CRIMINAL CASES.

IN turning over the pages of Mr. Taylor's recent edition of his valuable and standard work on the Law of Evidence, we observe[1] that he declines to enter into the controversy respecting which so much has at various times been said and written, in regard to the comparative value of direct and circumstantial evidence, on this ground—that the controversy in question "seems to have arisen from a misapprehension of the real nature and object of testimony, and can moreover lead to no practical end." As speculative discussions, however, are admissible in this periodical, and as the subject here adverted to indubitably possesses much interest, we have been led to put down the arguments *pro* and *con.* which are usually urged in reference to it, and have been further induced to offer some brief observations touching legal presumptions generally, in

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the course whereof we have occasionally availed ourselves of Mr. Taylor's admirable volumes, as well as of the original treatise of Professor Greenleaf, upon which they are to some extent founded.

The term "evidence" includes all the means by which any alleged matter of fact is established or disproved. In Courts of Justice we do not look for demonstration: the evidence upon which in the great majority of criminal cases juries act may be false, but nevertheless they *rightly* act upon it, provided there be sufficient probability of its truth—provided there be sufficient to satisfy the mind as to the guilt of the accused (Greenl. p. 3, 4).

In order, however, that this may be so—in order that juries may thus *reasonably* be satisfied as to the truth of a criminal charge brought before them—in order that common sense may not be shocked by the appliance of vague and fluctuating rules, our law proceeds upon fixed principles in its efforts towards eliciting truth: not in the belief that those fixed principles will always, in every individual instance, conduct to it, but with a well-grounded conviction that, in the great majority of cases on which it may be called to adjudicate, they will do so.

Dr. Paley says, in his Moral Philosophy (vol. ii. p. 310)—"That Courts of Justice should not be deterred from the application of their own rules of adjudication by every suspicion of danger, or by the mere *possibility* of confounding the innocent with the guilty." And this proposition seems undeniable, because if those Courts were never to inflict punishment where there was a possibility of the accused being innocent, no punishment would in *any* case be inflicted. Even where the proof of guilt seems to be most complete, the utmost that can be affirmed of it is that it amounts to a very high probability: no truth depending upon human testimony can ever be properly said to be demonstrated. Human witnesses may testify falsely, or may be deceived. Even where there have been a number of concurrent and unconnected circumstances apparently inexplicable upon any hypothesis save that of a prisoner's guilt, it has yet sometimes been made evident that he was innocent.

Aware of the possibility just adverted to, Courts of Justice

strive anxiously to exclude all possibility of the innocent suffering, and adhere to the much-debated maxim, that it is better that "ten guilty persons should escape conviction than that one innocent man should suffer." Without entering on an extended inquiry as to the correctness of this maxim, we may remind our readers that the arguments on either side respecting it have been thus tersely presented by Sir Samuel Romilly: It should be recollected, he says, that the object of penal laws is twofold—the punishment of the guilty and security of the innocent; that the punishment of the guilty is resorted to only as the means of attaining this latter object. When, therefore, the guilty escape, the law has merely failed of its intended effect: it has done no good, indeed, but it has done no harm. When, however, the innocent become the victims of the law, the law is not merely inefficient—it injures the very persons whom it was meant to protect; it creates the very evil it was designed to cure; it destroys the security which it was instituted to preserve (7 Howell, St. Tr. 1531, note). If, then, the popular maxim just alluded to be applied in favour of upholding the strict application of recognised rules of evidence, and not in favour of relaxing them where there is presented sufficient legal evidence of guilt, it may surely be admitted to be sound.

Bearing in mind, then, that demonstration is not to be looked for in Courts of Justice, we may infer that it is competent to a jury to find matters of fact, without direct or positive testimony of them, upon circumstantial evidence only, although the conclusion to be drawn from the circumstances proved be not absolutely certain or necessary. They may do so where the circumstantial evidence is such as affords a fair and reasonable presumption of the facts submitted for decision; and if the evidence has that tendency, it ought to be received, and left to the consideration of the jury, to whom alone it belongs to determine upon the precise force and effect of the circumstances proved, and to decide whether they are sufficiently satisfactory and convincing to justify them in finding the fact in issue (Gibson *v.* Hunter, 2 H. Bla. 297).

And here, accordingly, it becomes at once necessary to distinguish between *direct* and *circumstantial* evidence. In cri-

minal trials, it will generally be found that the main fact to be proved is either directly attested by persons speaking from their own actual and personal knowledge of its existence, or is to be inferred from other facts satisfactorily proved. In the former of these cases, the proof applies immediately to the main fact, without any intervening process, and it is therefore called direct or positive evidence. In the latter case, as the proof applies immediately to collateral facts, supposed to have a connection, near or remote, with the fact in controversy, the evidence adduced is said to be circumstantial. If a witness testifies that he saw A inflict a mortal wound on B, of which he instantly died—this is a case of direct evidence. If a medical witness testifies that, in his opinion, after an examination of the body, a deceased person was shot with a pistol, the wadding of which is discovered, and is found to be part of a letter addressed to the prisoner, the residue of which is found on his person—here the facts themselves are directly attested, but the evidence afforded by them is termed circumstantial, and from these latter facts the jury may presume or infer the prisoner's guilt (Greenl. Ev. pp. 16, 17).

Further: "When one or more things are proved from which experience enables us to ascertain that another, not proved, must have happened, we presume that it did happen, as well in criminal as in civil cases. Nor is it necessary that the fact, not proved, should be established by irrefragable inference. It is enough if its existence be highly probable, particularly if the opposite party has it in his power to rebut it by evidence, and yet offers none; for then we have something like an admission that the presumption is just." (Per Best, J., Burdett's Case, 4 B. & Ald. 121). So, again, in the same case, Bayley, J. observed: "No one can doubt that presumptions may be made in criminal as well as in civil cases. It is constantly the practice to act upon them, and I apprehend that more than one-half of the persons convicted of crimes are convicted on presumptive evidence. If a theft has been committed, and shortly afterwards the property is found in the possession of a person who can give no account of it, it is presumed that he is the thief, and so in other criminal cases; but the question always is, whether there

are sufficient premises to warrant the presumption." (4 B. & Ald. 149).

Circumstantial, then, is, in truth, presumptive evidence; the presumption being, however, of fact not of law; the distinction here noticeable may be thus illustrated. The *presumptio juris* depends upon a rule of law, which says, that from such and such facts a particular and defined presumption shall be drawn. This presumption may or may not be conclusive and indisputable: in the latter case it is a *presumptio juris;* in the former, it is a *presumptio juris et de jure.* A presumption of *fact,* on the other hand, depends upon experience, and is uncontrolled by any positive rule of law. True it is, that a presumption of fact, as that arising from long possession, or from acquiescence and non-claim, may be almost or quite as strong as any disputable presumption of law; but still the distinction between the two is marked: in the one case the jury are free to act according to their convictions; in the other, they are not thus free.

Such being the distinction between a presumption of law and one of fact, it is not surprising that the terms "presumptive" and "circumstantial" evidence are by some writers indifferently applied, and used as convertible. For instance, C. B. Gilbert, in his work on evidence (6th edit., p. 142), thus expresses himself: "When the fact itself cannot be proved, that which comes nearest to the proof of the fact is the proof of the circumstances that necessarily and usually attend such facts, and called presumptions, and not proofs, for they stand instead of the proofs of the fact till the contrary be proved." Now, in the passage just cited, the learned writer, although he uses the word "presumptions," is clearly remarking with reference to circumstantial evidence, and indeed these terms are frequently, though not quite correctly, used as synonymous—circumstantial evidence, in truth, coinciding with one class or subdivision only of presumptive evidence, viz., that which includes presumptions of fact. Understanding the term presumption in this limited sense, we may affirm that every presumption is more or less strong, more or less "violent," according as the several circumstances deposed to do more or less usually accompany the fact

which has to be proved. Without laying any stress at all upon the classification of presumptions of fact insisted upon by Lord Coke and the older writers upon evidence—without admitting that any good can result from arranging presumptions under the three heads of violent, probable, and light—we may concede (Co. Litt. 66), that *violenta præsumptio* is many times *plena probatio;* as if one be run through the body with a sword in a house, whereof he instantly dieth, and a man is seen to come out of that house with a bloody sword, and no other man was at that time in the house. Here, says C. B. Gilbert, commenting upon the above passage, is a "violent" presumption that the person so quitting the house is the murderer; for the blood, the weapon, and the hasty flight are the necessary concomitants of murder, and the next proof to the sight of the fact itself is the proof of those circumstances that do necessarily attend such fact.

Of presumptions, then, it may be admitted that some are stronger, and some weaker, but *quæ non possunt singula multa juvant;* and where the whole of many trifling facts are joined together and combined, the force of them may be irresistible, even independent of any direct or positive testimony (Douglas Case, vol. 1, pp. 33-4). One ordinary instance alone need here be cited as showing the force of cumulative facts: On an indictment for uttering a bank-note, knowing it to be counterfeit, proof that the accused uttered a counterfeit note amounts to nothing, or next to nothing; any person might have a counterfeit note in his possession: but suppose, further, proof adduced, that shortly before this particular transaction, he had, in another place, and to another person, offered another counterfeit note, or that, when apprehended, he had a bundle of such notes in his possession, the presumption of guilty knowledge in uttering the note would then be very strong. (Best on Pres. p. 248).

Such is circumstantial evidence, the value of which rests on the connection subsisting between collateral facts, or circumstances satisfactorily proved, and the fact in controversy; the process here being identical with that familiar to us in natural philosophy, where the correctness of a particular hypothesis is often shown by its coincidence with observed phenomena: in

each of these cases, we alike argue from known data to an unknown conclusion by the same process of induction.

Let us, in the next place, then proceed to inquire for a moment what may be the relative value of direct and circumstantial evidence when estimated by a jurist? Now, on applying ourselves to this part of the subject, we must at once concede, that if witnesses always spoke the truth, direct evidence would be incomparably the best and most convincing attainable: none of a higher kind, indeed, could, on an inquiry as to the commission of crime, as to the happening of past events, possibly be had. The only risk of its misleading would be where, from circumstances, the witnesses—however honest and *bonâ fide*—might have been mistaken in what they thought they saw take place.

In support of the superior credibility of direct evidence, it may further be urged that conjectures and inferences are not proofs, but, in strictness, rather the consequences of proofs, or of arguments arising from proofs. It being, as just observed, in most crimes difficult to obtain direct proof by the evidence of witnesses actually present at their commission, recourse is had, *ex necessitate rei*, to indirect or circumstantial evidence, the duty of explaining to the jury the weight assignable to each particle of such evidence, when adduced, being imposed upon the judge (Dougl. Case, pp. 41-2); a misconception in whose mind regarding it (not unlikely to happen during the pressure of business at a heavy assize) might seriously affect the verdict. Cases, moreover, frequently present themselves to the practitioner, showing how fallacious may be the inferences drawn from data apparently worthy to be relied on: for instance, the water-mark on paper is often postdated, so that we must not, in a Court of Justice, too hastily infer that an agreement bearing a date prior to that impressed on the paper is necessarily fraudulent.

On the other hand, dicta and authorities are not wanting in support of the superior worth and efficacy of circumstantial, as compared with direct evidence. Indeed, some of the expressions made use of by learned judges in reference to this subject are so strong, and seem so unguarded, that we can scarcely yield assent to them. Thus, in the case of Annesley *v.* Earl of

Anglesea (17 How. St. Tr., p. 1430), it is remarked, that circumstances are, in many cases, of greater force, and more to be depended upon, than the testimony of living witnesses: circumstances and presumptions naturally and necessarily arising out of a given fact cannot lie.

Circumstantial evidence doubtless usually consists of, and brings under the notice of the jury, a wider and more extensive assemblage of facts than direct evidence. Hence it may more easily be disproved if untrue. This remark holds as well with reference to the case for the prisoner, as to that for the prosecution. In general, it will be easier for an accused to disprove —or on cross-examination to throw doubt upon—one or more of many minute circumstances, which in the aggregate might seem to establish the charge against him, than to disprove one of a very small assemblage of facts. If, therefore, he fails in bringing forward such evidence, the presumption will be proportionably strong against him. On the other hand, let us suppose that a prisoner endeavours to establish an *alibi*, by the production of a mass of false evidence; the greater the number of mendacious witnesses who depose to their having seen the accused at the time in question, and at a place other than that in which, on the part of the prosecution, he was shown to have been, the greater the number of false depositions, each of which is exposed to be disproved. And the same remark would seem applicable where false evidence to character is adduced. It is, indeed, scarcely within the reach and compass of human abilities to invent a train of circumstances which shall be so connected together as to amount to a proof of guilt, or to establish the fact of innocence, without affording opportunities of contradicting a great part, if not all, of those circumstances.

Further: if a prisoner, in attempting to contradict the evidence adduced against him in some particular, or to explain it in a manner consistent with his innocence, is convicted of falsehood, the weight of the proofs against him will be seriously augmented, and will very possibly, from having been great, become altogether overwhelming. If, for instance, one in whose possession stolen property is found shortly after its abstraction from the custody of the rightful owner give a reasonable

account as to how he came by it, and refer to some known person as the person from whom he received it, this evidence, if substantiated, may entirely exonerate the accused, and put an end to the charge against him. If, on the other hand, the person thus referred to, on being called as a witness, refutes the statement put forward by the prisoner, the case against him will be materially strengthened, and his conviction probably insured (See per Ld. Denman, C.J., Reg. *v.* Smith, 2 Car. & K. 207).

In regard, then, to the relative value of direct and circumstantial evidence, we may perhaps conclude, that when circumstances connect themselves closely with each other—when they form a large and a strong body of evidence, so as to carry reasonable conviction to the mind, this proof *may* be more satisfactory than that which is direct. Where the proof arises from a number of circumstances which do not seem to have been brought together to bear upon one point, such evidence is less fallible than under some circumstances direct evidence might be, because direct evidence may be false, or may be mistaken (See Wills on Circumst. Evid. p. 30).

Upon this branch of our subject we will merely add the following observations by the Indian Law Commissioners (p. 97, *note* g), which are cited in the fifth Report of our own Commissioners on the Criminal Law (p. 26) :—

"In countries," they remark, "in which the standard of morality is high, direct evidence is generally considered as the best evidence. In England, assuredly, it is so considered ; and its value, as compared with the value of circumstantial evidence, is, perhaps, overrated by the great majority of the population. But in India we have reason to believe that the case is different. A judge, after he has heard a transaction related in the same manner by several persons, who declare themselves to be eye-witnesses of it, and of whom he knows no harm, often feels a considerable doubt whether the whole, from beginning to end, be not a fiction, and is glad to meet with some circumstance, however slight, which supports the story, and which is not likely to have been devised for the purpose of supporting the story. Hence, in England, a person who wishes to impose on a Court of Justice knows that he is likely to succeed best by perjury. But in India, where a judge is generally on his guard against direct false evidence, a more artful mode of imposition is frequently employed. A lie is often conveyed to a Court, not by means of witnesses, but by

means of circumstances, precisely because circumstances are less likely to lie than witnesses."

The remarks already made in this paper naturally lead us to the subject of legal presumptions. These presumptions are of two kinds—*conclusive,* and *disputable,* or such as may be controverted. Of conclusive presumptions there are not many which apply, save incidentally in criminal inquiries; there, indeed, arbitrary presumptions should be very sparingly acted upon, because human actions cannot safely be judged by reference to unbending rules—and it would, moreover, be counter to the spirit of our Constitution to require juries to act in accordance with, and pay implicit obedience to, such rules.

Presumptions of law, indeed, have a peculiar force and power: they are inferences drawn by the Common, or by force of the Statute Law, which are obligatory, partially or altogether, as well upon the judge as upon the jury. These presumptions are distinguishable from presumptions of fact, by the application of this test: that where an inference has to be drawn from circumstantial evidence, a discretion as to whether it shall be so drawn or not is vested in the jury; whereas, in the case of a legal presumption, the law peremptorily requires that a certain inference shall be made whenever those facts are established in evidence, which the law assumes as a basis whence such inference should, with a view to the ends of justice, be drawn. If, therefore, in a civil case, a judge direct a jury contrary to a presumption of law, a new trial is grantable, *ex debito justitiæ.* Where, however, an inference is to be drawn from circumstantial evidence, the Court above, in adjudicating upon a motion for a new trial, can but endeavour, by placing themselves, so far as possible, in the situation of the jury, to determine whether the former verdict can—regard being had to the weight of evidence on either side adduced—properly and fairly be sustained. But again: presumptions of law being in reality rules of law, it is competent to—indeed, incumbent on—the Court to draw inferences required by law from facts alleged and admitted in pleading, as well as from facts proved in open Court (Steph. Pl. 5th ed. p. 392).

Of conclusive legal presumptions, having direct application in

criminal cases, the following are amongst the instances ordinarily exhibited by text-writers:—That an infant under the age of seven years is incapable of harbouring a felonious intention—for example, of being actuated by an *animus furandi;* and that a wife committing a felony in the presence of her husband, must—save where it amounts to treason or homicide—be presumed to be acting under his coercion. With regard to this latter presumption, the precise words of Sir M. Hale deserve attention. He says: "It hath generally now obtained, that (the wife) cannot be guilty of larceny jointly with her husband, because presumed to be done by his coercion. *But this I take to be only a presumption* till the contrary appear; for I have always thought, that if upon the evidence it can clearly appear that the wife was not drawn to it by her husband, but that she was the principal actor and inciter of it, she is guilty as well as the husband" (1 Hale, P. C. 516). The authority of this passage would seem, however, to be very questionable; and on a recent occasion where it was cited, the Court of Criminal Appeal held that a married woman, whose husband delivered to her property which he had stolen, could not be convicted of receiving stolen goods (Reg. *v.* Brooks, 1 Dearsl. Cr. Cas. 184). The decision in this case may, however, clearly be supported on another ground, viz.: that the husband and wife being one person in law, the wife could not, under the circumstances proved, be said to have received the stolen property from her husband.

If it be asked on what grounds or foundations these conclusive legal presumptions may be supposed to rest; the answer will be —mainly on grounds of public policy and expediency, and sometimes because experience and abstract reasoning tend to show that truth is more likely to be arrived at by acting uniformly upon fixed principles, than by drawing inferences in each particular case from facts proved. Hence it is, that even a conclusive presumption of law may be notoriously opposed to truth—the presumption, for instance, that "every one knows the law." Thus a foreigner, a native of a country in which duelling is tolerated, shortly after landing on these shores engages in such an affair, which terminates fatally for his antagonist, and is

apprehended on a charge of murder: vainly will he plead—however well-founded in fact such a plea might be—his ignorance of our laws. Ignorance of the law cannot in the case of a native be received as an excuse for a crime, nor can it any more be urged in favour of a foreigner (per Coleridge, J., 1 Dearsl. Cr. Cas. p. 59). Not more true is it that a slave who sets foot on British soil that instant becomes a freeman, than that an alien here arriving is at once presumed to be gifted with a knowledge of our law (Reg. *v.* Barronet, 1 Dearsl. Cr. Cas. 51). Can it, however, with any colour of reason be said that in such a case as this any real hardship results from the dogmatic inference of law? It would seem not, for every social community is first called upon to provide for its own security; and this can only be effected by claiming from all equally implicit obedience to its laws, which could not with tolerable certainty be enforced if a plea of *ignorantia juris* were admissible.

In illustrating the nature of conclusive presumptions of law, we have purposely put forward a somewhat strong case: there was, however, no occasion for so doing, it being obvious that our Criminal Law, dependent as it is in a very great measure upon the wording of particular statutes, is very imperfectly known to the great mass of our fellow-countrymen. It is to be lamented, indeed, that means have not long since been devised for bringing home a knowledge of this branch of law—at all events of its leading principles—to all whom it so nearly touches and so vitally concerns. Steps, however, are happily being made to some extent in this direction by the teaching of the elements of law in many of our schools; and the time perchance may come when a plea of ignorance of Criminal Law, at least in its broader outlines and features, will be as false in fact as it now is inadmissible in a Court of Justice.

The second branch of legal presumptions comprises those which are *disputable,* to which the maxim of law applies, *stabit presumptio donec probetur in contrarium.* The presumption will here take effect, and may even decide a criminal case, if uncontradicted; though it seems reasonable that presumption, not being founded on the basis of certainty, should yield to evidence, which is the test of truth. Of this class of presumptions an

example quite in point may be adduced, founded on the recent statute 14 & 15 Vic. c. 99, s. 8, which requires that from certain facts, when established in evidence, certain inferences shall be drawn, in the absence of counter-proofs on the part of the accused. Various statutes, indeed, might be specified, by which the presumptions of guilt are made legally deducible from certain acts; the onus of proving matter of defence—being thus cast on the accused party (Wills on Circumstantial Evid. p. 25).

Of disputable presumptions, perhaps, the most universally applicable in Criminal Courts is that in favour of the innocence of one accused of crime. It is, moreover, a general rule, closely allied to the above, and of very wide applicability, that where a person is required to do an act, the not doing of which would render him guilty of a criminal neglect of duty, it shall be presumed that he has duly performed it, unless the contrary be shown (per Lord Ellenborough, C.J., Rex *v.* Haslingfield, 2 M. & S. 561).

Disputable presumptions of law are of different degrees of strength. That this is so reason would tell us, and a careful examination of them would in many cases suffice to convince us: it is proved, however, by the fact that not unfrequently conflicting presumptions present themselves in Courts of Justice, of which one is allowed to prevail over the other. Cases of the kind just adverted to, when they present themselves, will be found worthy of careful examination. The effect of these conflicting presumptions of law it is, so far as may be practicable, exceedingly interesting to trace out. A suggestion or two upon this subject must, however, here suffice. The law presumes in favour of legitimacy—it presumes in favour of possession, *i.e.* of the title of the actual occupant of land. Possession is in every case held to be legal till the contrary is proved. Again, the rules of law are *actori incumbit probatio,* and *actore non probante reus est absolvendus.* To apply these rules and maxims: let us suppose that the individual whose legitimacy, and consequently whose title, has been impeached, is in possession of the estate descended to him; that he was born subsequent to the lawful marriage of his assumed parents, and had been treated

by them as legitimate: here both the presumptions of law, to which we just now referred, would be in favour of the defendant, and it would obviously require a strong and convincing chain of circumstantial evidence to oust the occupant of his land. *Probat denique is qui non possidet, utpote quo deficiente in probatione possessor vincit ac absolvendus est* (Douglas Case, vol. i. p. 35). Let us next suppose that the party whose legitimacy is impugned seeks to recover possession of his patrimony (which on the assumption of his illegitimacy has passed to some collateral branch) : here, although one of the two presumptions of law just stated might be in favour of the claimant, the other would undoubtedly be against him, and he would be driven to rely upon the inherent and prevailing strength of his own title, and upon the cohesion of the links in the chain of evidence which he might bring together and exhibit.

Having now specified, and to some extent illustrated, the various classes of presumptions, let us endeavour, from what has been said respecting them, to deduce some conclusions in regard to their respective weight and value. Now, in the first place, we think it must be admitted that, in cases where direct evidence is not producible, presumptions of fact are more satisfactory to the mind, and more convincing, than presumptions of law; for without going so far as to affirm that circumstances cannot lie, we may reasonably contend that facts, when closely linked and connected together—when shown to be severally probable and consistent with each other—serve as a very safe guide and index to the fact unknown. Further, presumptions of law, save in some few instances, are not intuitively recognised as sound, nor as specially well calculated to lead to the discovery of truth; they cannot unreservedly be accepted without being first well weighed, scrutinized, and subjected to the strictest tests. Conclusive presumptions are indeed but arbitrary rules of law, the policy of which is open to discussion; though they can hardly be said under any circumstances to work injustice, inasmuch as their existence is known and understood beforehand, and they operate impartially upon all. Disputable presumptions, again, stand on a somewhat different footing: they are oftentimes, however, so much blended and mixed up with

inferences of fact, that it is very difficult, or altogether impossible, to trace out precisely their operation, and to determine what degree of weight—whether too much or too little—they may in any given case have had with a jury. And this remark would seem to apply, *à fortiori*, where conflicting presumptions of law are presented to notice, conjointly with direct and with circumstantial evidence. Nevertheless, upon the whole, we may concede that the disputable presumptions recognised in our law are supportable on solid grounds, and practically tend to produce correct results.

Art. VIII.—THE SUMMARY PROCEDURE ON BILLS OF EXCHANGE ACT, 1855.

THIS measure having now become law, it is desirable that we should lay before those of our readers on whom the practical working of the new process must principally devolve, an explanatory account of its character and provisions. The Act, as is well known, is the result of the deliberations of the select committee to whom the Bills of Exchange Bill, presented to the House of Lords by Lord Brougham, and the Bills of Exchange and Promissory Notes Bill, prepared and brought in by Mr. Keating and Mr. Mullings, were referred. It purports to be for the prevention of frivolous or fictitious defences to actions on bills and notes; and that, no doubt, was the object its framers had in view; but the Act does more,—it takes away from the defendants in such actions, when commenced within a specified period, and under the Act, the ordinary right which defendants in other actions have of entering an appearance as of course, and putting the plaintiff to proof of his case, and thus gives a preference and advantage to creditors holding such securities over other creditors, and in this respect runs counter to the tendency of modern legislation, which has laboured for the fair and equal distribution of the assets of the insolvent or embarrassed debtor, and which, in many instances,