Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Janvrin v. *De la Mare, from the Royal Court of Jersey; delivered 15th March*, 1861.

Present:

LORD KINGSDOWN.
SIR EDWARD RYAN.
MASTER OF THE ROLLS.

IN this case two objections to the judgment below were urged at our Bar.

It was said:—

1. That by the law of Jersey, *inimitié* on the part of a witness is no objection to his admissibility.

2. If it be, that such *inimitié* as is necessary to found the objection was not shown to exist on the part of the witness whose testimony was rejected.

As to the first the result of the authorities produced to us seems to be that there is a difference in the old Norman law between objections to witnesses and objections to Judges, and that the term "Jureurs" applies to the latter.

On the other hand it is to be collected from the Reports of the Commissioners of Inquiry in 1789 and 1860 that in Jersey the two have been confounded, and that objections properly applicable only to the latter have in some cases been extended to the former. That this is the case with respect to affinity seems to be clear.

If this practice of the Court, though erroneous in its origin, has prevailed for a long series of years, the Judicial Committee would not lightly alter it.

The objection, from its nature, must be one as to which in practice there can hardly be a doubt: its existence or its non-existence must be quite familiar to everybody engaged in law proceedings.

It is difficult to conceive that if such an objection was stated for the first time in this case there should not have been an immediate outcry against it. But an examination of the proceedings shows not only that the objection excited no surprise, but that its validity was not contested.

The fact assigned for proof was the promise to pay the bill in question, although due notice of dishonour had not been received.

Lesbirel is admitted to have been the most material witness for this purpose. His name was first on the list of persons summoned for the purpose who all appeared on the 17th March, 1854.

Lesbirel was not then examined; whether he was sworn or not is immaterial.

Five other witnesses were examined for the Plaintiff, and cross-examined as to the *inimitié*. It must be inferred that the objection was then taken, and that the examination of Lesbirel was postponed in order to see whether the objection was sustained in evidence.

Nearly a twelvemonth elapsed before anything further was done. But at a meeting of the Court for the further examination of witnesses on the 5th March, 1855, the attempt to examine Lesbirel was renewed, and the objection underwent full discussion.

The Plaintiff did not for a moment pretend that *inimitié* was not a ground of "recusation;" but he insisted :—

1. That as there was no note on the record of any objection having been taken on the 17th March, 1854; it could not now be received, and that the non-insertion of the note must be considered as an abandonment of the objection.

2. That the "recusation" was insufficient from not specifying the date, or the cause, or the nature of the *inimitié* imputed to the witness.

The Court overruled those objections on the ground that the recusation of the Defendant was conceived in the ordinary terms ("conçue dans les termes ordinaires"), and that it would be for the Court, after hearing witnesses in support of the recusation, to judge of its validity.

All these proceedings seem to show that the ground of recusation now insisted on is one familiar to the practice of the Court of Jersey.

In the printed case of the Appellant it is not suggested that the point now relied on was taken below, nor is it distinctly stated in the case itself.

One of the reasons indeed is, that Lesbirel was competent, and ought to have been admitted as a witness; but that reason would be sustained if the *inimitié* was not established in fact.

We do not think, in this state of things, we can treat the point as open to the Appellant.

There remains the second question.

Assuming *inimitié* to be a ground of recusation, what is the sort of *inimitié* which is sufficient for the purpose?

The expressions used in the text-writers "grande, grave, capitale," are too vague to afford any assistance. The reasonable interpretation would seem to be such enmity as, in the opinion of the Judges who try the case, would be likely to prevent the witness from giving impartial testimony.

This must of course depend very much on the character and credit of the witness, and in some degree on the state of moral feeling prevailing in the country, the respect paid to the sanctity of an oath, and the extent to which party or personal feeling would be likely to exercise influence.

How differently these considerations prevail in different countries, and in the same country on different subjects, is strongly illustrated by a comparison of the value of testimony in Hindoostan with that in England, and in England on political questions—bribery for instance, with those of private right.

The books cited in the argument referred to these distinctions, and laid it down that the objection must depend upon the circumstances of each particular case, and must be left to the discretion of the Judge.

Now in this case two Courts, consisting, I believe, of a large number of the principal people in the Island, to whom probably, from the smallness of the community, both the parties and the witnesses are known, and who certainly must be familiar with the present feelings and morals of the Island, have come unanimously to the conclusion that this state of *inimitié* has been established. It would be a very strong thing for us on such a point to come to an opposite conclusion. There is no imputation of any

party or personal feelings influencing either Court. As the points previously decided in the case had been determined in favour of the Appellant, the unanimity of the Court seems to exclude the suspicion of any private feeling in favour of the Respondent.

The question, therefore, which we must deal with is not whether the evidence is such as, if we had to decide the case in the first instance, would, in our opinion, sustain the objection; but whether it is not such as might lead reasonable men, fairly looking at the case, to the conclusion at which they have arrived? If so, we ought not to disturb it.

The evidence stands thus:—

Lesbirel, by his default, had subjected the Respondent to a demand on this note, which Lesbirel ought to have paid.

Disputes arose between them on this and other subjects, but in December 1851 they are said to have been reconciled. In 1852 Lesbirel became a bankrupt, and he attributed his bankruptcy to the Respondent, and said that he should repent of it.

He said "that he had to thank M. de la Mare for it, who boasted that he would keep him in prison; to avoid which he had made the cession of his goods, and M. de la Mare should repent of it." He indulged at the same time in violent abuse of the Respondent in general terms.

He seems, therefore, in his own view to have had grave and continuing ground of complaint against the Respondent, and to have entertained and expressed strong feelings of enmity against him on a subject connected with the matter on which he was to give evidence. These feelings he had expressed several times and on several occasions.

The witness says that these feelings had not been expressed recently, and he cannot exactly say whether or not within a year.

A conversation to the same effect is spoken to by Amy which goes more into detail as to the course taken by the Respondent on the occasion of the bankruptcy.

These are not mere loose words of abuse, but show a permanent enmity resting on reasonable and continuing grounds.

This conversation, however, took place two years before the witness was examined, and more than

one year before the objection was taken, and it is said that after a year and a day the discontinuance of the enmity will be presumed.

The strength of the presumption, and the evidence by which it must be encountered, must necessarily depend on the nature of the enmity, the cause out of which it has arisen, and so on.

If a quarrel takes place on a particular day between two persons, and nothing further appears, it may not be unreasonable to suppose that the feelings which occasioned it, or grew out of it, have ceased after twelve months.

But if the enmity has arisen from a serious cause —an attack (to use the language of some of the books) on the life, the honour, or the fortune of a man, and the injury still continues, and nothing appears to have occurred likely to produce a reconciliation, the presumption would seem to be the other way. At all events, very slight evidence would be sufficient to rebut the legal presumption if it applies to such a case.

What is said by De Grouchy (page 9), standing alone, would be nothing; but, under the circumstances, it is evidence to show that the feelings of Lesbirel towards the Respondent had not been changed. Lesbirel supposed himself to have been treated with great cruelty by the Respondent, and he had threatened to be revenged (for that is the effect of his words—that De la Mare "s'en repentirait"). He had now an opportunity of revenging himself arising out of the very same transactions. Was it unlikely that he would avail himself of it?

Two Courts have come unanimously to the conclusion he was likely to do so, and we cannot say that their conclusion is without grounds to support it. On the whole, therefore, we must humbly advise Her Majesty to affirm the judgment complained of, with costs.