law, even though the evidence would fully have warranted a different finding. (*Wilkins* v. *Row*, 1 U. C. L. J., N. S, 151.)

PARTNERSHIP — ASSIGNMENT FOR BENEFIT OF CREDITORS.—When a partner has absconded, the remaining partners may make an assignment for the benefit of creditors, without his consent. (*Palmer* v. *Myers et al*, 1 U. C. L. J., N. S., 165.)

UPPER CANADA REPORTS.

COMMON PLEAS.

(*Reported by* S. J. VANKOUGHNET, Esq., M.A., *Barrister-at Law, Reporter to the Court.*)

SQUIRE QUI TAM v. WILSON.

Property qualification of Justices of the Peace—Con. Stats. C. ch 100, sec. 3—Conflicting evidence—Judge's charge.

In a *qui tam* action against defendant for acting as a Justice of the Peace without sufficient property qualification, where the evidence offered by plaintiff as to the value of the land and premises, on which defendant qualified, was vague, speculative, and inconclusive, one of the witnesses in fact, having afterwards recalled his testimony as to the value of a portion of the premises and placed a higher estimate upon it; while the evidence tendered by the defendant was positive, and based upon tangible data:—

Held (*A. Wilson, J., dissentiente*), that the jury were rightly directed, "that they ought to be fully satisfied as to the value of the defendant's property before finding for the plaintiff; that they should not weigh the matter in scales too nicely balanced; and that any reasonable doubt should be in favour of the defendant."

Observations on the principle of the valuation of land with a view to determining the property qualification of Justices of the Peace.

[C. P. H. T., 1865.]

This was a *qui tam* action against the defendant for acting as a Justice of the Peace in and for the United Counties of Huron and Bruce without being qualified, according to "The Act respecting the qualification of Justices of the Peace," Con. Stats. C. cap. 100

The declaration contained eleven counts.

The defendant pleaded not guilty to all, and as to ten counts, an action *qui tam* pending against defendant at the suit of one David Paulin.

The plaintiff joined issue on the first plea, and replied to the second that the action of Paulin was commenced and prosecuted by fraud and collusion between Paulin and the defendant.

On this replication the defendant joined issue.

The cause was tried before Hagarty, J., at the last assizes held at Goderich, and a verdict found for the defendant.

In Michaelmas Term last, *Robert A. Harrison* obtained a rule *nisi* to set aside the verdict and for a new trial on the grounds of misdirection in this, that the learned judge told the jury that if there was any doubt as to the sufficiency of the defendant's property qualification as a Justice of the Peace, to give him the benefit of the doubt; and for non-direction in this, that the judge refused to tell the jury that by law the onus of proving a sufficient qualification was cast upon the defendant, and that if the jury doubted as to its sufficiency the verdict should be against the defendant; and upon grounds of improper rejection of evidence in this, that he refused to hear the testimony of Charles A. Harte, a witness called on the part of the plaintiff; and on grounds of surprise, and grounds disclosed in affidavits and papers filed.

During the present term, *C. Robinson*, Q.C., shewed cause —There is no reason for complaining of non-direction, for the presumption is always in favor of the good faith of a public officer. Before acting the defendant had to make oath that his property was worth $1,200. This he did, and he has proved by two witnesses that the property is of this value. It is true that the plaintiff produced as many and more witnesses to prove that in their opinion it was worth less, but they had not seen the property so fully as to be able to estimate its value, and after all it was but their opinion. It is true, too, that the statute requires the property qualification to be $1,200, but it is easy to get witnesses honestly to undervalue the property, and thus cast a doubt upon its value; but a doubt thus cast should be in favor of the defendant, because the presumption always is that a man is acting rightly, not wrongfully.

As to the rejection of the evidence of Harte, it must be admitted that his knowledge of the circumstances as to which he was called to speak was derived from the defendant during the relationship of attorney and client, and the evidence was, therefore, properly rejected. As to the affidavits filed by the plaintiff, they disclose no new facts, but a repetition of opinions of value, which are met by affidavits on the part of the defendant representing its value to be $1,200. There is no surprise, and no ground on which a new trial ought to be asked for or granted, for the defendant was the owner in fee of the land.

On the question of misdirection he referred to Con. Stats. Canada, ch. 100, secs. 3, 6; on the alleged non-direction to *Great Western Railway Company of Canada* v. *Braid*, 8 L. T. N. S. 31, S. C. 9 Jur. N. S. 339; *Taylor* v. *Ashton*, 11 M. & W. 401, 417; Taylor on Ev. 4 ed. 366-369; *Connell* v. *Cheney*, 1 U. C. R. 307; and as to the surprise, *McLellan q. t.* v. *Brown*, 12 U. C. C. P. 542.

Harrison, in support of the rule, animadverted upon that part of the judge's charge, wherein he directed the jury not to weigh in scales too nicely balanced the value of the defendant's property. He argued that the statute required the qualification to be $1,200, and that the legal presumption was against the defendant if doubt was thrown upon its value; for he was bound without reasonable doubt to have property of the clear value of $1,200, and the whole onus of proving this lay on the defendant. He cited *The Lexington F. L. & M. Ins. Co.* v. *Paver*, 16 Ohio, 324; Best on Presumptions, 29, 57.

J. WILSON, J.—The 6th sec. of the Con. Stats. C., cap 100, enacts that "the proof of his qualification shall be upon the person against whom the suit is brought." The defendant, in answer to the plaintiff's charge, that he had acted without the proper qualification, put in his oath of qualification, dated 17th of April, 1861, on certain property in Clinton, described therein. He called the person from whom he purchased the property in January, 1865, who proved that the defendant had then paid for it $1,200, and had since expended $400 more upon it, and that it was worth as much at the time of trial as it was when he