CANADA REPORTS.

ONTARIO.

COMMON LAW CHAMBERS.

Wright v. Wright.

Bills and Notes—Renewal—Statute of Limitations—Pleading.

[Feb. 7, 1876—Mr. Dalton.]

Declaration on promissory note. Plea that there was no consideration for the note, since it was given as a renewal of another note in which the plaintiff's remedy was barred by the Statute of Limitations.

Held, that the plea must be struck out, following the case of *Austin* v. *Gordon* 32 U. C. Q. B., 621, in which it was held that a debt for which a discharge had been given in insolvency was a continuing debt in conscience, and was, therefore a sufficient consideration for a promise to pay it.

Quebec Bank v. Howe.

Wife's separate Estate—35 Vic. c. 16. s. 9—Pleading.

[May 5, 1876—Mr. Dalton.]

Summons to strike out a replication. The action was brought against a married woman on a promissory note. She pleaded coverture at the time of contracting the debt; whereupon the plaintiffs replied that the note was made with respect to property, which was the defendant's separate property within the meaning of the statutes on that behalf.

Brough shewed cause.

Ritchie contended that the replication should be struck out on the ground that a married woman cannot be made liable unless she has a separate estate held to be such in Equity. The plaintiffs have already a replication on equitable grounds, setting up that the defendant had a separate estate, which is all that they require. The replication is embarrassing, as under it the plaintiffs might prove that the defendant had property within the meaning of Con. Stat, U. C., cap. 73, and succeed on such proof. But it has been held in *McGuire* v. *McGuire*, 28 C. P. 123, and other cases, that such property is not separate estate within the meaning of 35 Vic., c. 16, s. 9, so as to make a married woman liable on a contract made with reference to it.

Mr. Dalton thought that the replication was unnecessary to the plaintiffs, and embarrassing to the defendants, and should therefore be struck out.

Order accordingly.

Merchants' Bank v. Moffat.

Discovery—Communications between Attorney and Client.

[June 26, 1876—Mr. Dalton.]

A summons was obtained for the re-examination of the plaintiff's manager in Toronto, and the production by him of a letter of his written to the General Manager in Montreal, and a letter written in reply by the latter. On a former examination, the production of these letters was refused on the ground that they were privileged as containing an opinion by the plaintiff's attorney as to the validity of the defendant's endorsement on certain promissory notes, which endorsement had been given by another party acting under a power of attorney from the defendant.

Rae shewed cause. The affidavit of the attorney for the Bank shews that the first of these letters was in effect his opinion on the point submitted to him, having been taken down by the writer from his verbal statement, and read over to him before it was despatched, and that when he gave the opinion he was convinced that litigation would spring out of the facts on which it was based. It is also shewn by an affidavit of the Toronto manager, that the letter written in reply to his own was written with reference to the opinion and would certainly disclose it. The letters clearly come within the well established rule that makes communications between attorney and client privileged. This rule is of even wider application than it used to be and now applies to all communications made by an attorney in his professional capacity to his client, even though made with reference to no present or prospective litigation. The authorities are collected in *Minet* v. *Morgan* L. R. 8 Chy., 361, where reference is made to the wider application of the rule now than in former times. This case has been followed in *Hamelyn* v. *Whyte*, 6 P. R. 143. The second letter is equally privileged with the first—the opinion was given to the Corporation as a whole, and the letters were both written by its officers and had immediate reference to the same subject-matter.

Biggar contra. The cases relied upon by plaintiff's counsel are all Chancery cases and turn mainly on the question of title. In these cases the liability to produce is much less, and the privilege much wider than in any other. The Common Law jurisdiction as to inspection, under s. 197 of our C. L. P. Act (Imp. Stat., 14, 15, V, c. 99, s. 6) is extended by ss. 189, 190, which are taken from the Imperial Act of 1854 (c. 125, ss. 50, 51), and is now wider than