the nonsuit. If the plaintiff should get his witness, he may himself, if he pleases, give notice of trial; or if he cannot get his witness he can, if he pleases, renew his motion to put off the trial.

Order accordingly.

CHANCERY.

(*Reported by* F. W. Kingstone, Esq., *Barrister-at-Law.*)

Re Tate.

Dower Act of Ontario.

The Dower Act of Ontario, 32 Vic. c. 7, sec. 3, is retrospective in its effects.

[V. C. M., Sept., 1869.]

One Tate applied, under the Act for quieting titles, for a certificate of title to a lot of land in the county of Kent. It appeared that one Ludovick Hartman, on the 29th March, 1840, conveyed the said lot of which he was then seized in fee, to a person through whom Tate claimed.

There was no evidence to show that Hartman was single when he conveyed, or that, if then married, his wife had since died. But on behalf of the petitioner it was submitted, that such evidence was unnecessary, as it was sworn that on the 1st March, 1860, ten years subsequent to Hartman's conveyance, the lot was in a state of nature and unimproved, and that consequently Hartman's widow (supposing her to exist, and to otherwise be entitled to dower) would be deprived of her right to dower in this lot by 32 Vic. c. 7, s. 3, Ontario, the first part of which enacts that "Dower shall not be recoverable out of any separate and distinct lot, tract, or parcel of land, which at the time of the alienation by the husband, or at the time of his death, if he died seized thereof, was in a state of nature and unimproved, by clearing, fencing or otherwise for the purpose of cultivation or occupation."

On the papers being laid before Mowat, V.C., for a certificate, he expressed a doubt whether the above clause of the Dower Act was retrospective in its operation, and directed that the point should be argued before him.

Accordingly on the 2nd September, 1869,

Kingstone, appeared for the petitioner.

The general rule that statutes ought not to be construed retrospectively is admitted, but the ground of that rule was the injury to vested rights that would be occasioned by a different construction, and therefore when provision was made for vested rights, the rule did not apply. In the statute under consideration, such provision was made, for 1st. The period for the Act taking effect was postponed from ths 19th day of December, to the 1st day of February following: and 2nd By the 24th sec. all actions of dower which should be pending when the Act *comes into force* may be continued and carried on to judgment in like manner as if the Act had not been passed. It is clear, therefore, that some provision was made for vested rights, and the court could not enter on the question of the sufficiency of the provision made by the Legislature. See *Towler* v. *Chatterton*, 6 Bing 258; *Reg.* v. *Leeds & Bradford R. Co*, 18 Q B. 343; *Dwarris* on Statutes, 542; *Doe dem. Evans* v. *Page*, 5 Q. B. 772.

The rule will yield to the intention of the Legislature where that intention clearly appears. And such an intention clearly appears here, for, 1. The words of sec. 3, are unlimited and are applicable to vested interests, the word "was" being used instead of the words "shall be." 2. By sec. 24 pending actions, and by sec. 42 certain vested interests, are excepted from the operation of the Act, even where it does come into force generally, and there would have been no occasion to make such exceptions if it was not intended that the Act should be retrospective in other respects. 3. Some portions of the Act, for instance sec. 23, must on the face of them have been intended to be retrospective.

Mowat, V.C., reserved judgment, and subsequently instructed the Referee to make the certicate free from any reservation for dower.

ENGLISH REPORTS.

CHANCERY.

Black v. Jobling.

Wills Act (1 Vict. c. 20, s. 26)—Will and Codicil not found at death—Presumed to be revoked—Probate granted of subsequent Codicil.

A. died having made a will and codicil, neither of which on his death was found. But a second codicil duly executed was found. It recited that the testator had already bequeathed to his grandchildren everything upon or relating to a certain farm. The question was whether that second codicil could be admitted to probate, or whether it fell with the will.

Held, that as this codicil had not been revoked by any of the modes indicated by the Wills Act (1 Vict. c. 20, s. 26) as the only means by which a codicil can now be revoked, it was entitled to probate.

[17 W. R. 1108].

The testator, Ebenezer Black, late of Grindon, in the County of Northumberland, died on 8th of May, 1868.

He made a will in February, 1865, and added a codicil in October, 1866. The codicil gave an annuity of £100 instead of a bequest of fifty shares in the West Hartlepool Dock and Railway Company which he had given in the will to his daughter Ann Jobling, and directed his trustees to dispose of his interest in his farm in Tenhamhill, together with the farming stock, &c., and to hold the proceeds arising therefrom in trust for the five children of his daughter Ann Jobling. Subsequently, by a deed of gift dated May 27, 1867, he "gave and devised" the same farm of Tenham-hill to his daughter and her children.

On the 19th of October in the same year he executed another codicil as follows:—

"I Ebenezer Black farmer Grindon in the parish of Norham in the County of Northumberland having already bequeathed to my five grandchildren issue of my daughter Ann Jobling to wit Mary Thomas Jane William and Ann Jobling the lease stock and profits with everything upon or relating to the farm of Tenham-hill they paying all rents taxes and whatever charges may come against the said farm of Tenham-hill in addition to which I now bequeath to each of the above-named children of my daughter Ann the snm of £300 sterling money when they attain