his son Joseph until he attained the age of twenty-eight years, at the discretion of his guardians, but the interest was directed to be applied for his maintenance and education. Accordingly in that suit an inquiry was directed as to who had maintained Joseph Cottrell from the date of his father's death, and what was proper to be allowed in that respect, and to what date, and the chief clerk certified that Joseph Cottrell had been maintained by his mother until his death, and £920 was a proper sum to be allowed in respect thereof. In the order made on further consideration the question was left open.

In the present suit the claim was again brought forward against the estate of Joseph Cottrell.

E. Russell Roberts stated the case for the opinion of the Court.

Dickenson, Q. C., and *Lake*, for the widow, submitted that the finding of the chief clerk, which must be taken to have been made on the request of all parties, was decisive, and that the claim must be allowed. They relied upon *Bruin* v. *Knott*, 1 Phillips, 572.

Chapman Barber and *Bedwell*, for a brother of the intestate, the administrator, contended that there was no necessity for the inquiry—no claim could be made by the mother after she had allowed her son to receive his legacy, which she might have retained in respect of his maintenance during his minority. After he attained twenty-one she must show a contract. There was no evidence in support of any such contract.

Langley, for a sister of the intestate, contended that the certificate was not binding. If the son had been maintained by a stranger to the suit of *Cottrell* v. *Cottrell* he could not, as a creditor against Joseph's estate, be bound by a certificate made in a suit when he was not represented on the merits, but the question must in this cause be tried over again. The maintenance was an act of kindness and charity, and the claim must be disallowed: *Worthington* v. *M'Craw*, 5 W. R. 124, 23 Beav. 81; *Grove* v. *Price*, 26 Beav. 105, 8 W. R. Ch. Dig. 84.

Dickinson, Q. C., in reply.

WICKENS, V.C.—The only question in this case is, whether there is or is not a debt against the estate of Joseph Cottrell, in respect of the sums expended for his maintenance by his mother. That question resolves itself into two heads; first, with reference to the sums expended during his minority for maintenance, and secondly, the sums expended after majority.

In general I think it may be said that when a mother maintains a child, although not under any legal liability, she does so under one of three different views—first, with the intention of afterwards claiming the amount as a debt due to her; secondly, as an act of maternal duty, kindness, or bounty, that is, as a gift; or, thirdly, she may make the advance on an intermediate footing, that is to say, in the expectation of being recouped out of some fund under the jurisdiction of the Court, which it would allow to be so applied, although such expenditure had not been previously sanctioned by the Court.

Of course I apprehend that if a mother or any other person confers a gift, intending it as a gift at the time, she cannot afterwards, under a changed state of circumstances, come to this Court and say it was a loan. In the present case the question is, first, did the mother make the advances during the minority with the intention of afterwards claiming as a creditor? I see no reason to believe that she did so, and therefore I hold in this respect that there was no debt for maintenance during the minority. It is probably not necessary to consider whether she made these advances during minority with the intention of afterwards claiming them out of a fund under the control of the Court, but in my opinion it is clear she did not from what took place after the son came of age; for I cannot conceive stronger intimation of an intention not to claim any repayment than is manifested by her handing over the sum of £1,000 as she did. I take it, therefore, as clear for the present purpose that, whether these advances were actually intended as bounty or not during the minority, there was nothing to create a debt. The fund I am now dealing with is not under the control of the Court otherwise than for the purpose of administration of the intestate's estate, and I am now trying the question as against the fund, as a jury would try the question in an action of *assumpsit*.

As to what took place after majority, the claim has entirely failed. What the mother has to show is a contract, and she shows none. I am perfectly convinced in my own mind that she never, during these six years between the minority and the death of Joseph Cottrell, had the smallest idea of claiming repayment of anything from him. Nothing would have surprised him more than if she had intimated such an intention to him, and it would probably have caused an alteration in their arrangements. She was bound to intimate such an intention to him; but she never, as I believe, formed such an intention, and certainly never intimated it.

As to what took place before my predecessor, there is a little difficulty, because some part of the case was dealt with in the former suit; but I do not know that I am technically bound, by the finding upon the certificate that the sum was proper to be allowed, to hold that that constituted it a debt against this estate. Although all the parties were present, the precise question before me could not have arisen in the former suit, and I do not think that the certificate is conclusive upon me to hold that there was any debt, and being convinced that there was none, I dismiss the summons. The claim will be disallowed.

REVIEWS.

LA REVUE CRITIQUE. July, 1871. Montreal: Dawson Brothers.

The July number of this quarterly commences with an extract from the report of the Hon. J. H. Gray, on the assimilation of the Laws of Ontario, Nova Scotia and New Brunswick. The writer thus concludes:—

"The instructions given to me being simply to prepare for a commission hereafter to be issued—not to recommend or propose any form—I have confined my labor solely to pointing out the differences; but there can be no doubt that an excellent practical Code of Law, simple in its language, easily understood, expeditious and eco-