

THE QUEEN V. MEAL.

(Crown Case Reserved.)

Indictment—Misjoinder of counts—evidence.

An indictment contained two counts, one charging the prisoner with murdering M. I. T. on the 1st November, 1881; the other with manslaughter of the said M. I. T. on the same day. The Grand Jury found "a true bill." A motion to quash the indictment for misjoinder was refused, the counsel for the prosecution electing to proceed on the first count only.

Held, (affirming the judgment of the Supreme Court of New Brunswick,) that the indictment was sufficient. The prisoner was convicted of manslaughter in killing his wife, who died on the 10th November, 1881. The immediate cause of her death was acute inflammation of the liver, which the medical testimony proved might be occasioned by a blow or a fall against a hard substance. About three weeks before her death the prisoner had knocked his wife down with a bottle. She fell against the door, and remained on the floor insensible for some time; she was confined to her bed soon afterwards, and never recovered. Evidence was given of frequent acts of violence committed by the prisoner upon his wife within a year of her death, by knocking her down and kicking her in the side.

Held, (affirming the judgment of the Court *a quo*), that there was evidence to leave to the jury that the disease which caused her death was produced by the injuries inflicted by the prisoner, and that the evidence of violence committed within a year was properly received.

Lash, Q.C., for appellant.

M'Leod, Q.C., for the Crown.

GRAND JUNCTION RAILWAY CO. V. COUNTY OF PETERBOROUGH.

Municipal by-law—Validity of—Remedy—Action at law and not by mandamus—34 Vict. c. 48 (O.)—Construction of.

This was an appeal from the Ontario Court of Appeal, reversing the rule of the Court of Queen's Bench granting a writ of *mandamus*, commanding the corporation of the County of Peterborough to issue debentures for \$75,000 and interest, in accordance with the terms of a certain by-law respecting the said Grand Junction Railway Company and the Peterborough & Haliburton Railway, alleged to have been passed

by the County Council, and adopted by the ratepayers. The Grand Junction Railway Company was amalgamated with the Grand Trunk Railway of Canada. The former railway not having been built within the time directed, its charter expired. In May, 1870, an Act was passed by the Dominion Parliament to revive the charter of the Grand Junction Railroad Co., but gave it a slightly different name, and made some changes in the charter. On the 23rd November in the same year, the ratepayers of the defendant municipalities voted on a by-law to grant a bonus to the plaintiff company, construction of the road to be commenced before the 1st May, 1872. The by-law was read twice only. At the time when the voting took place on the by-law, there was no power in the municipality to grant a bonus. On the 15th February 1871, the Act 34 Vict. c. 48 (O.) was passed, which declared the by-law as valid as if it had been read a third time, and that it should be legal and binding on all persons as if it had been passed after the Act. On the same day of the same year, c. 30 was passed, giving power to municipalities to aid railways by granting bonuses. The 37 Vict., c. 43 (O.) was passed, amending and consolidating the Acts relating to the plaintiff company. Time for completion was extended by 39 Vict. c. 71 (O.).

Held, (1) that the effect of the Statute 34 Vict. c. 48 (O.), apart from any effect it may have of recognizing the existence of the Railway Co., was not to legalize the by-law in favour of the company, but was merely to make the by-law as valid as if it had been read a third time, and as if the municipality had had power to give a bonus to the company, and, therefore, the appellants could not recover the bonus from the defendant.

Per Gwynne, J. (FOURNIER and TASCHEREAU, JJ., concurring).—That as the undertaking entered into by the municipal corporation contained in by-law for granting bonuses to railway companies, is in the nature of a contract entered into with the company for the delivery to it of debentures upon conditions stated in the by-law, the only way in which delivery of the debentures to trustees on behalf of the company, before the company shall have acquired a right to the actual receipt and benefit of them by fulfilment of the conditions prescribed in the by-law, is, in the Province of Ontario, by actions at law or in equity under the provisions of the statutes in