

Q. B.]

NOTES OF CASES.

[Q. B.]

and registration of a memorial of the will were satisfactory proof of the latter, as being a declaration against his proprietary interest, he being dead at the time of the trial.

Ferguson, Q. C., for plaintiff.

McCarthy, Q. C., for defendant.

Rule discharged.

REGINA V. SMITH.

Forcible entry—Restitution.

Defendants, employees of the Great Western Railway Co.,—in obedience to orders from the Company went upon the land in question, then in possession of the Stratford & Hamilton Railway Co., and occupied by its employees. No actual force was used, but the latter had good reason to apprehend that sufficient force would be used to compel them to leave, and they left accordingly.

Held, that this was a forcible entry within the statute relating thereto.

The judge at the trial having granted a writ of restitution, *Held*, that such writ is in the discretion of the presiding judge, and that it had been properly exercised here.

M. C. Cameron, Q. C., for defendant.

Smith for the Crown.

Conviction confirmed.

PRINGLE V. CORPORATION OF THE TOWN OF NAPANEE.

Christianity part of the law of Ontario.

Held, that Christianity is part of the recognised law of this Province, and therefore that to an action for breach of contract to let a public hall, a plea setting up that the purpose for which said hall was intended to be used was for the delivery of certain lectures containing an attack upon Christianity was a good defence, and plaintiff was not entitled to recover.

Bethune, Q. C., for plaintiff.

Reeve for defendants.

Rule discharged.

LUCAS V. MOORE.

Highway—Want of repair—Death resulting from contributory negligence—Evidence.

Plaintiff's husband was found dead in a ditch along defendant's highway, the hub of his waggon-wheel resting upon him, the waggon being in a dilapidated condition, and he fastened down very tightly. One of his horses was dead. The ditch was about 12 feet deep and 32 feet wide, much wider at the top than

at the bottom, and extending about half way into the travelled road, which it appeared had been in this condition for several years. There was no railing or other guard round the ditch, nothing to indicate its situation on a dark night, such as the night in question was. It appeared that deceased was under the influence of liquor, though there was contradictory evidence on this point; but there was no distinct evidence as to how he fell into the ditch. *Held*, that there was evidence for the jury of non-repair of the road within the meaning of the present Municipal Act, and that such non-repair was the cause of the death; and that assuming there was a breach of duty on defendant's part, deceased having been lawfully using the highway, it might be fairly inferred that but for such breach of duty the accident would not have occurred.

The question of contributory negligence having been left to the jury and found in plaintiff's favour, the Court refused to disturb the verdict.

F. Osler for plaintiff.

Robinson, Q. C., and *Ferguson, Q. C.*, for defendant.

Rule discharged.

DILLARCE V. DOYLE.

Gratuitous loan—Increase.

In the case of a gratuitous loan all the increase of and offspring of the loan, and everything accessional to it belong to the lender, and must be returned at the determination of the loan, and are not subject to seizure under execution against the bailee.

Spencer for plaintiff.

Campbell for defendant.

Rule absolute to increase verdict by \$208.

MCARTHUR V. EAGLESON.

Ejectment—Estoppel en pais—Statute of Limitations.

Plaintiff, intending to return after a short interval, left his wife and home more than 30 years ago, and went to the United States, where he remained until a short time before this action. He had never communicated with his wife or friends whilst absent, and was until his return, two or three years ago, believed to be dead. Several years since, and within seven years after his departure, his wife, acting on this belief, married again, and lived with her new husband on plaintiff's farm. They both