The Legal News.

Vol. XIV. MARCH 7, 1891. No. 10.

A very interesting question came before the English Queen's Bench Division, Nov. 3, 1890, in *Stanley* v. *Powell* (1 Q. B. Div. 86). The defendant, who was one of a shooting party, fired at a pheasant. One of the shot accidentally glanced from the bough of an oak, and injured the sight of the plaintiff, who was employed at the time in carrying cartridges for the party. The jury found that there was no negligence on the part of the defendant, and the question was whether an action lay in the absence of negligence. The Court reviewed the authorities from the time of Henry VII, and came to the conclusion that if the case was regarded as an action on the case for an injury by negligence, the plaintiff had failed to establish that which was the very gist of such an action. Regarded as an action for trespass the verdict of the jury was equally fatal. The action was therefore dismissed.

The folly of testators in neglecting to visit their lawyers before making their wills is illustrated by the case of the Rev. John Hymer, of Brandsburton. This gentleman had a fortune of about a million dollars with which he was desirous of founding a grammar school at Hull. To avoid paying a lawyer's fee he drew the will himself, but it was so worded that it was void under the Statute of Mortmain. An intestacy resulted, and Robert Hymer, to whom the will bequeathed merely an annuity of $300, became the possessor of the estate. The heir who profited so largely by his kinsman's aversion to lawyers, has contributed a quarter of the estate to the original object.

A Bill before the Imperial Parliament proposes a radical innovation in qualification for office. Section 3 reads as follows:—"No person shall be disqualified from being elected or appointed to or from filling or holding any office or position merely by reason that such person is a woman, or being a woman is under coverture." This would open not only Parliament but the bench to women, and we might witness a female prime minister, or a female chancellor on the wool sack, dispensing the patronage which pertains to that position.

COURT OF REVIEW.

MONTREAL, Feb. 24, 1891.

Coram JOHNSON, Ch. J., JETTÉ, MATHIEU, JJ.

CHARLAND v. MALLETTE.

Precedence of hearing—Court of Review.

HELD:—*That cases in the Superior Court, instituted under the Act relating to summary causes, when taken to Review are not entitled to precedence of hearing before that Court.**

The action was on a promissory note, and judgment was rendered in favor of the plaintiff. The defendant inscribed.

JOHNSON, Ch. J.:—

A motion was made yesterday by Mr. Bonin to put the case of *Charland* v. *Mallette* upon what is known as the privileged list, *i. e.* to give it precedence over the cases on the ordinary roll. That motion was useless, because the case was already on the preliminary list of cases which we have been accustomed to call before the others. At the same time it was stated by Mr. Archambault, adversely to Mr. Bonin's pretensions, that the case had no right to be there. As nothing appears to have been ever distinctly settled upon this subject, I will take leave now to give my opinion upon it.

In the first place I have never been able to understand how there came to be any confusion between questions of procedure and questions of precedence, which are obviously very different things. The law has authorized summary procedure for a long time past in certain cases, as, for example, cases between lessors and lessees; but so far from giving those cases a precedent right of being heard before those of other of Her Majesty's subjects, the law has done something very different; it has given them a court and a procedure of their own. The same thing has been done in a numerous class of cases by

* See also *McIntyre* v. *Armstrong*, M. L. R., 4 S. C. 251.