am paid for my improvements, if I do not get this liberty such as the settlers of the township" The letter goes on to complain of the value set upon the lot, and requesting an early answer. It was proved that Mr Champion was at that time assistant secretary of the Church Society, and was since dead. Mr. Saunders, the clerk of the peace, proved that a note shown to him, dated the 18th of December, 1845, was written and given by him to defendant. It was as follows:

"Sir,—The bearer, Patrick Cantwell, is the person living on lot No. 14, 3rd concession Puslinch township, (the north half,) about which I wrote to you on the 2nd instant. He is about to go to Toronto and will see you there respecting said lot. I can recommend him as a trusty person." Signed, &c, and addressed to Thomas Champion, &c. An entry was also proved in a book kept for the Church Society: "Cash due to sundries, to lands, P. Cantwell, on account of north half of No 13, in the 3rd concession Puslinch, 15s." This was proved to be the book in which Mr. Champion made his first entries The same charge was carried through the books. The society did not own No. 13, but 14, in the 3rd concession, Puslinch A witness proved that he called on defendant in 1855. and in 1858, about it; and that he did not then claim the land as proprietor. The plaintiff first knew the defendant was in possession in 1845.

The learned judge asked the jury to say whether at the time the conveyance was made to the plaintiff (16th March, 1842) the defendant, or those under whom he claims, were in the actual possession of this lot claiming to be owner, or at all events, claiming the right to maintain possession of the land. If the jury were satisfied that the defendant entered as a purchaser from the Crown, and the Crown afterwards granted to the party under whom the plaintiff claims, the title and the possession would be in harmony with each other. That the land being wild land, and no knowledge of the defendant being in possession being brought home to the plaintiff earlier than 1845, the Statute of Limitations would not affect the right to recover.

The jury found for defendant

In Michaelmas Term *Galt, Q C*, obtained a rule *nisi* for a new trial without costs, the verdict being contrary to law and evidence, and the learned judge's charge.

M. C. Cameron shewed cause He contended that under the statute H. VIII, (the Statute of Bracery,) the defendant being in possession claiming as owner, nothing passed to the plaintiff by the deed of 16th November, 1842, as the statute of the province which authorised the conveying of a right of entry was not then passed. He cited *Doe Dunn* v. *McLean*, 1 U. C. Q B 151; *Doe Bonter* v. *Savage* 5 U C. Q B 223; *Doe Peterson* v. *Crank*, 5 U. C Q. B. 135; *Doe Beckett* v. *Nightingale*, 5 U. C Q B 518; *Doe Clark* v. *McInnis*, 6 U. C. Q B. 28; *Doe Simpson* v. *Molloy*, 6 U. C. Q B 302.

Galt, Q C, contra, referred to *Bonns qui tam* v. *Eddie*, 2 U C Q B. 280. He also contended that under the act respecting limitations of actions and suits relating to real property, Con. Stat U. C, ch 88, sec. 3, which was first passed in 1834, the statute of H. VIII. would not apply, unless the true owner had notice that the land was in the actual possession of another person.

DRAPER, C J —The statute of 32nd H. VIII, ch. 9, has been repeatedly held from very early times to have been only in affirmance of common law. The section of our statute of 1834, to which Mr Galt refers, extends only to preventing the lapse of twenty years being a bar to an action to recover any land or rent under certain specified circumstances It cannot be construed to give effect to conveyances of land, which at common law and under the statute H. VIII were void

The principle contended for on the part of the defendant is too well established to be questioned, until the statute was passed which legalized the conveyance of a mere right of entry into and upon lands whether immediate or future, vested or contingent. Till then the law was settled that while one person was in actual and exclusive possession of land which he claimed as his own, another, though the true title might be vested in him, could not make a conveyance of property so held adversely to him, which would have the effect of passing the fee. The possession must certainly be adverse in its character. If the defendant in this case claimed by any privity with the plaintiff, or had acknowledged him to be the owner; still more if he admitted his seisin, then the principle does not apply: and if the defendant had entered under a contract to purchase, or as a tenant under the Rev G Mortimer, he could not dispute his title or right to convey But the evidence very clearly shows that he or his father took possession before the grant to Mr. Mortimer claiming independently of every one except the Crown. For all that appears, they were intruders upon Crown lands, and continued to be in possession as such intruders when the Crown patent issued. Then as to the grantee, the defendant was in adverse possession. There was, however, some evidence of letters and acts from which, had the jury found an acknowledgment of the plaintiff's title and right to possession, and found thereupon a verdict for the plaintiff, it may be questionable whether we should have disturbed it. But that evidence was left to the jury, and with a direction of which the plaintiff's counsel does not and could not with reason complain

Looking at the length of the defendant's possession—at the extent and value of his improvements—at the lapse of time since it was known, the defendant was in occupation until the action was brought, while the defendant's letter of 1845, showing as it does a consciousness of the weakness of his own title, yet contains a refusal to accept a lease, or to give up possession unless on his own terms, I am not surprised that the jury leaned strongly on the defendant's side, putting on any doubtful circumstances a construction in his favour And I should anticipate that in the event of another trial the same result would follow. I do not think under such circumstances it would be a sound exercise of discretion to grant a new trial.

Rule discharged.

FRASER v HICKMAN.

Railway Clauses Consolidation Act—Railway Company—Stockholders of—Liability for amount of unpaid stock—Execution against company—Return of "nulla bona"

Declaration, under Railway Clauses Consolidation Act against defendant as a shareholder of the Port Hope, Lindsay, & Beaverton Railway Company, setting out the Recovery of a judgment against said railway company; return of writ "*nulla bona*," that the defendant holds 25 shares of stock in said company unpaid.

Pleas —1. Never indebted 2 Never was or is a shareholder in said company. On the trial, among other things, plaintiff proved a judgment against the company for £3000, that a *fi. fa* had been issued and returned "*nulla bona*" also that defendant had signed the stock-book of company for 25 shares and paid 2½ per cent, £6 5s.

The jury having found for plaintiff, on motion for nonsuit, on several grounds, among them that on the trial it appeared that the words "twenty-five" had been written over the word "ten," opposite the defendant's name, and that the alteration should be accounted for Also 9thly, that the contract under which plaintiff recovered his judgment was illegal, being for a loan at a usurious rate of interest *Held* that the first objection was rebutted by the facts proved at the trial as the defendant had paid the sum, £6 5s being the correct sum to be paid on the first call on 25 shares of £10 each, being 2½ per cent And as to the ninth objection *held* that if defendant wished to impeach the plaintiff's judgment on the grounds of fraud or collusion, he should have raised the defence by his plea

Semble, that the court will intend the judgment to be right and well founded in all respects, until the contrary be shewn

The several grounds taken, on motion for nonsuit, not above referred to, have been decided by previous cases in this and the Court of Queen's Bench, as by reference below will appear

The plaintiff declared under the Railway Clauses Consolidation Act, against the defendant as a shareholder of the Port Hope, Lindsay & Beaverton Railway Company, setting out that he recovered judgment against the company; that he has issued a *fi. fa*, which has been returned *nulla bona*; that defendant holds 25 shares of stock on which nothing has been paid

Pleas —1 Never indebted. 5 That defendant did not become nor is he a shareholder in the company.

The trial took place at the assizes for York and Peel, in January, 1862, before *Burns*, J.

The plaintiff proved that he was a judgment creditor of the Port Hope, Lindsay & Beaverton Railway Company for upwards of £3000, and that he has issued a *fi. fa.* against goods which had been returned *nulla bona* It was also proved, independently of the return of the *fi fa* made by the sheriff of Northumberland and Durham, that the Company had no goods or chattels anywhere. The defendant was one of the persons named as forming one of original company, incorporated by the act of 9 Vic., ch. 109 He was also proved to have signed the stock book for 25 shares, and