

Eng. Rep.]

REG. V. COOTE.

[Eng. Rep.]

Documents formerly in the possession of the defendant, and filed by him in a Master's office in another suit, were directed to be produced by defendant upon his being indemnified by the plaintiff against the expense of obtaining them out of court.

LEONARD V. CLYDESDALE.

Representative to a deceased party—Con. Order 56.

[March 2, 1874.—The REFERENCE.]

A bill was filed against an executrix *de son tort*, charging that she had sold the personal estate of the deceased and applied the proceeds in the purchase of certain lands, and praying that she be declared a trustee thereof for the next of kin, and, if necessary, that the estate of deceased be administered.

An application was made under Con. Order 56 for the appointment of some person to represent the estate in the suit, on the ground that there was no personal estate outstanding, and the appointment in this way would save expense.

The motion was dismissed, it being held that the deceased was not "interested in the matters in question in this suit," and therefore the case was not within the provisions of Con. Order 56; and no account having been taken of the personal estate it could not be said that the personal representative of the deceased would be a merely formal party, for a balance might be found due from the defendant to the estate, which it would be the duty of the personal representative to administer.

ENGLISH REPORTS.

*REG. V. COOTE.

Deposition on oath of a prisoner—Admissibility in evidence—Criminating questions—*Ignorantia juris*—Caution to witness—11 & 12 Vict. c. 42, s. 18.

By an Act of the Quebec Legislature, certain officers called "Fire Marshals" are appointed with power to inquire into the origin of fires in Quebec and Montreal, and for that purpose to examine persons on oath. Upon an inquiry, held in pursuance of this statute, as to the origin of a fire in a warehouse occupied by the prisoner, he was examined on oath as a witness. No caution was given to him that his evidence might be used against him. At the time of such examination there was no charge against the prisoner or any other person. Subsequently the prisoner was tried for arson of the said warehouse, and the depositions made at the inquiry before the Fire Marshals were admitted as evidence against him.

* Present: The Right Hons. Sir JAMES W. COLVILLE, Sir BARNES PEACOCK, Lord Justice MELLISH, Sir MONTAGUE E. SMITH, and Sir ROBERT P. COLLIER.

Held (reversing the judgment of the Court of Queen's Bench for the Province of Quebec, Canada), that the depositions were properly admitted.

The depositions on oath of a witness legally taken are evidence against him, should he be subsequently tried on a criminal charge, excepting so much of them as consists of answers to questions to which he has objected as tending to criminate him, but which he has been improperly compelled to answer. The exception depends upon the principle "*Nemo tenetur seipsum accusare*," but does not apply to answers given without objection, which are to be deemed voluntary.

The witness's knowledge of the law enabling him to decline to answer criminating questions must be presumed—*Ignorantia juris non excusat*.

The statute (11 & 12 Vict. c. 42, s. 18), requiring magistrates to caution the accused with respect to statements he may make in answer to the charge, is not applicable to witnesses asked questions tending to criminate them.

[29 T. Rep. 111—March 18, 1873.]

By the Consolidated Statutes of Lower Canada, c. 77 s. 57, it is provided that when any person has been convicted of any felony at any criminal term of the Court of Queen's Bench, the court before which the case has been tried may, in its discretion, reserve any question of law which has arisen on the trial for the consideration of the Court of Queen's Bench on the appeal side thereof, and may thereupon postpone the judgment until such question has been considered and decided by the said Court of Queen's Bench. By s. 58, the said court shall thereupon state in a case, to be signed by the presiding judge, the question or questions of law, with the special circumstances upon which the same have arisen.

The said Court of Queen's Bench shall have full power and authority at any sitting thereof on the appeal side, after the receipt of such case, to hear and finally determine any question therein; and thereupon to reverse, amend, or affirm any judgment which has been given on the indictment on the trial of which such question arose, or to avoid such judgment and order an entry to be made on the record, that in the judgment of the said Court of Queen's Bench the party convicted ought not to have been convicted, or to arrest the judgment, or to order the judgment to be given thereon at some other criminal term of the said court, if no judgment has before that term been given, as the said Court of Queen's Bench is advised, or make such other order as justice requires.

The present appeal was from a judgment of the appeal side of the Court of Queen's Bench for the Province of Quebec, Canada, on a case reserved for that court by Badgley, J., under the powers of the above statute, on the trial of the respondent for arson.