

should we go out of our way to presume such intentions? It is not very easy to meet this mode of putting the case, except by stating the opposite argument. Looking first to an unbroken cohabitation extending over a period of twenty-two years after a marriage by consent might lawfully have been contracted, recognized as marriage by all contemporary witnesses, and accepted as such ever since by parties whose interest was hostile to the Glenfalloch title, we cannot but acquiesce in the justice of the view adopted by the majority of the judges. The enjoyment of an "undisturbed and undisputed status of legitimacy" for more than half a century is certainly a safer and sounder basis of judicial inference than any position which can be taken on the other side. It is far more improbable that James Campbell and his reputed wife intended their children to be bastards, although every act of their lives points the other way, than that, on finding the legal impediment to their union removed, they should have mutually renewed their vows, without revealing to others the secret of their former adultery. Where the presumption of law against the marriage, under such circumstances and after such a lapse of time, we cannot agree with Lord Ardmillan that it would conduce to the interests of morality, and it would assuredly conflict with those of public policy.

—*Times.*

## UPPER CANADA REPORTS.

### COURT OF ERROR AND APPEAL.

(Reported by ALEX. GRANT, ESQ., Barrister at Law, Reporter to the Court.)

ON AN APPEAL FROM THE COURT OF QUEEN'S BENCH.

HODGINS v. THE CORPORATION OF THE UNITED COUNTIES OF HURON AND BRUCE.

(Continued from page 139.)

The question then is, whether the word "person," used in chapter 126, Consolidated Statutes of Upper Canada, is to be held to include the various corporations, municipal and other, in Upper Canada; in other words, whether the protection given by chapter 126 to justices of the peace and other officers and persons fulfilling any public duty, extends to corporation.

The appellants are a municipal corporation, and are prosecuted in this suit because, as the plaintiff alleges, and the jury must be taken to have found, the defendants duly assumed a highway running between two townships in the county of Huron, which made it their duty to cause that highway to be planked, gravelled or macadamized; and that in constructing a gravel road on this highway, they, for the purpose of drainage, cut a drain and led the water through a new culvert, stopping up an old one, and thereby wrongfully caused the water collected in the drain to flow on to the plaintiff's land. This work was completed in 1858, since when, in times of freshets, the water overflowed the plaintiff's land from year to year. In 1862 this action was brought. I do not connect this injury

with any illegality in the by-law, assuming the highway as a county road, none is suggested or complained of, nor does it appear that any ground existed for quashing the by-law. The 202nd and 203rd section of the Municipal Act will not therefore apply; and if the defendants are entitled to notice of action, and that the action be brought within six months after the act committed, it must be by virtue of the extension of the provisions of chapter 126 to them. It is to be remembered that the question, whether by force of the interpretation acts the word "person" includes a municipal corporation, is not limited to a case where the act done is illegal and yet was authorized by a by-law which is also illegal; but extends to all cases where the act producing injury to another party, is nevertheless within the scope of the authority given to, or duties imposed upon, municipal corporations by statute. If chapter 126 applies to this case, it must also apply to the case of an act done under an illegal by-law, and then the argument of *Burns, J.*, in *Snook v. The Town Council of Brantford*, 13 U. C. Q. B. 626, applies, and with increased force, since long after the Interpretation Act of 12 Victoria, and after the two superior courts of common law had given opposite judgments upon this question, the Legislature passed the Municipal Corporation Act of 1858, which contains the same provisions as the preceding act upon which that argument was founded, and which, by renewing the special protection as to acts done under illegal by-laws, tends strongly to negative the conclusion that the legislature had given or were giving a more general protection to municipal corporations under the acts for the protection of magistrates.

It is unnecessary to repeat or review the conflicting decisions in the two superior courts, which were cited on the argument. They were all decided on the application of the 14th and 15th Victoria, chapter 54. No reference was then made to any provision of the 16th Victoria, chapter 180, as affecting the point in dispute. I presume because the statute 14 and 15 Victoria was in terms repealed by the 16th Victoria only so far as related to justices of the peace, though the 16th section of the last act provided that the act should apply for the protection *all persons for anything done in the execution of their office.* It may possibly have been thought that these words prevented the 16th Victoria from applying to corporations, as the "context" would exclude the interpretation "corporations" being given to the words, all persons for anything done in the execution of their office. In *Reed v. The Corporation of Hamilton, Macaulay, C. J.*, makes a passing reference, but without any special remark, to the statute 16th Victoria.

But as the Interpretation Acts declare that the word "persons" includes corporations, the Consolidated Statutes, chapter 126, must include them also, unless we find that the context and obvious intent of that statute, excludes them, or at least excludes municipal corporations from its purview. The language used in every section, except the first and last, would seem to point to justices of the peace only; and the first section, in defining the other officers and persons included in the protection thereby given, uses language to which forced construction must be given to make it apply to corporations; while the last