Regina v. *Bedingfield*, 14 Cox 341, and *Regina* v. *Goddard*, 15 Cox, 7, followed.

3. That upon the evidence the statements made by H. after being taken into the house were not made under a settled hopeless expectation of death, and were, therefore, not admissible in evidence as a dying declaration.

J. R. Cartwright, for the Crown.

W. R. Meredith, Q.C., and *Pegley*, for the defendant.

Div'l Court.] [Dec. 21, 1889.

WALKER *v.* BOUGHNER.

Specific performance—Contract to make provision by will for granddaughter—Action against executors—Uncertainty of promise and consideration—Services rendered to testator—Remuneration for.

Where a contract on the part of a testator, founded upon a valuable and sufficient consideration, that he will leave by his will to the other contracting party a sum of money as a legacy, is clearly made out, the representatives of the testator may be compelled to make good his obligations.

But where the testator, the grandfather of the plaintiff, took her from the home of her parents at the age of twelve, adopted her, and maintained her, while she worked for him, for nine years, but left her nothing by his will, and paid her nothing for her services, and she sued his executor for specific performance of an alleged contract or promise to make the same provision for her by his will as he should make for his own daughters, and in the alternative for wages;

Held, upon the evidence, that the case did not fall within the rule; the promise alleged to have been made, and the consideration for it, being both of too uncertain a character to entitle the plaintiff to come to the Court for a performance of the promise: but that the circumstances gave rise to an implied contract for the payment of wages, and took the case out of the ordinary rule that children are not to look for wages from their parents, or those in *loco parentis*, in the absence of special contract, whilst they form part of the household.

Decision of PROUDFOOT, J., varied.

Lash, Q.C., for the plaintiff.

Moss, Q.C., for the defendants.

Div'l Court.] [Dec. 21, 1889.

HUBERT *v.* TOWNSHIP OF YARMOUTH.

Municipal corporations — Action to compel maintenance of road—Assumption of road by corporation—Statute labour done with consent of municipal officers—Remedy by indictment.

In an action to compel a municipal corporation to maintain and repair a street laid out by private persons, it appeared that such street was not established as a highway by by-law nor assumed for public use by any corporate act of the municipal corporation; but it was contended that the performance of statute labour thereon with the consent of the pathmaster, and on one occasion with the consent of the councillor for the ward and of the reeve, was evidence that it was otherwise assumed for public use.

Held, that the acts required to work such an assumption must be corporate acts, clear and such as clearly and unequivocally indicate the intention of the corporation to assume the road; and the acts relied upon in this case could not bind the corporation nor work such an assumption.

Held, also, following *Hislop* v. *McGillivray*, 15 A.R. 687, that even if the street had been assumed for public use, the plaintiff's only remedy was by indictment, and the action was not maintainable.

G. T. Blackstock, for plaintiffs.

Glenn, for defendants.

Practice.

MACMAHON, J.] [Jan. 6.

MACDONELL *v.* BAIRD.

Costs—Judgment by consent referring to arbitration—Omission to provide for costs—Powers of arbitrator—Rule 550—Amendment of judgment.

In an action on a bill of costs the parties consented that judgment should be entered for a certain sum "subject to the award" of a named person. When the action came on for trial this consent was filed, and the trial Judge indorsed the record, "I order that judgment be entered for the plaintiff for the sum of, etc., subject to the consent filed herein." Nothing was said about costs, and they were not provided for in