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THE

Canada Law Journal.

September, 1877. Second Number.

CRIMINAL STATISTICS.

COMMUNICATED.

A return to the Legislature of Ontario respecting felonies and misdemeanours brought before "The County Judges Criminal Court" during the year 1876, discloses some very interesting particulars. Owing to the carelessness or want of apprehension of those who were required to make the returns, they are not as complete as they ought to be. It is therefore impossible to make a complete analysis; indeed, the returns for three counties, under the columns, "the *nature* of offences," give merely, so many "felonies" and so many "misdemeanours," instead of setting down, as required, the *specific offence* charged in each case If County Crown Attorneys keep a proper account and record of the proceedings conducted by them, one hour should suffice,* in most cases, to fill in the returns so as to give the detailed information sought for. It is to be hoped that future returns will be more complete.

The return referred to comprehends all the cases of commitment for trial in all the gaols in the Province, for indictable offences of all kinds, except capital felonies and a few others, and is intended to show the particular crimes charged and how they were disposed of, whether tried by judge without a jury, or tried by jury at the ordinary Courts, and the result. The whole number of cases brought before the Local Judges in this Province for the year 1876 was 1181. And, in the option given by law to persons charged with crime, 959 of the number committed exercised their right of choice in favor of trial by judge alone, without a jury; the rest, 222 in number, claimed to be tried by jury for the offences charged against them. In respect to the former class, those tried by judge alone, the number of convictions was 727, the number of acquittals was 232; of those tried by jury in the ordinary Courts, 104 were convicted, and 118 were acquitted. Thus, in trials before the judge alone, the acquittals were in the proportion of nearly one third to the convictions before them. In the trials before the jury more than one half were acquitted. It is difficult to account for this difference in result without additional information; one can only remark, that it is extremely improbable that a judge acting alone, and fulfilling the functions of a jury, would convict in any case in which there was any reasonable doubt of the guilt of the accused; that the tendency with a jury may possibly be to entertain as a doubt

* The writer had occasion recently to obtain a similar and fuller return from a Crown Attorney embracing over seventy cases, and it was prepared within an hour. The officer's books were properly kept.

that which merely involves a thoughtful consideration and reasoning upon controverted facts in evidence before them—a reluctance in some cases to draw a conclusion from facts and circumstances proved, particularly in cases where intention may be inferred from circumstantial evidence. The true causes of difference in result referred to, must after all, in the absence of full facts, be left to the domain of conjecture.

With respect to the *nature* of the cases, owing to the defect already referred to, some 321 of the offences charged cannot be classified; of those that remain and were tried by the judges, no less than 459 were offences of fraud *without violence,* as ordinary larcenies, embezzlement, false pretences, &c. The offences of fraud *with* force, as robbery, burglary, &c., amounted to 55. The offences *purely of force,* as felonious and other assaults, unlawful wounding, stabbing, &c., numbered 93. The offences *against authority,* as rescue, escape, assault on constable, &c., were only 8 in number. Offences touching social relations, as bigamy, child desertion, concealing birth, &c., numbered 9. Miscellaneous cases include 8 cases of arson, 1 of beastiality, one of counterfeiting coin, 3 of malicious injuries of property, and one of sending threatening letter. In all 14 cases.

In looking at this rough analysis, the number of larcenies and of kindred offences of fraud appear to be very large in a new country like ours, with a not over crowded population, and where there is generally work of some kind for all; and the same may be said of offences of fraud with violence. The more serious crimes of violence and force may to some extent be accounted for by our mixed population, and by the moving portion of it, transitory persons, using the great highway through the country; but still they are deplorably large. The recent act against carrying firearms, will, it is believed, tell favourable on this item in future returns. A very prominent and gratifying feature is presented in the few cases of offences against authority, numbering only 8 for the whole Province, seeing that criminal police is executed mainly by the old fashioned sessions-appointed constable in all the rural parts of the country, that only in our cities the modern and improved organized system of police constabulary prevails. The small number of cases of the class referred to tell unmistakably of the respect to law and authority pervading the inhabitants of this free country. It is noteworthy, too, that offences touching natural and social relations, so numerous in other countries, are almost unknown in this Province, only 4 of the 9 cases under this head being of a serious character.

Under the head of miscellaneous offences are 8 cases of arson, a crime almost unknown amongst us a few years ago, but markedly on the increase. Whether this is due to the restless canvass of agents in the keen competition amongst the fire insurance offices from other countries, with the temptations to fraud in cases of over insurance, it is not easy to say, but the fact remains. The crime of arson is on the increase, and it is believed that only a small proportion of such cases come before the courts.

The whole number of cases is by no means equally distributed over the Province or amongst the counties, and population, situation, or age of the counties, gives little clue to an estimate of crime in each. In some counties the cases have been numerous, in others very few. Thus, in seven Counties, namely: Carlton, Lennox and Addington, Peterborough, Prescott and Russel, Prince Edward, Stormont, Dundas and Glengarry, and Algoma (District), the cases in each, tried by judge without a jury, did not exceed 10 in number. Eleven Counties had each over ten, but not exceeding 20 cases, viz:

Brant, Frontenac, Grey, Halton, Hastings, Lanark, Leeds and Grenville, Northumberland and Durham, Peel, Perth and Renfrew. Seven Counties had each over 20, but not exceeding 30 cases, viz: Bruce, Kent, Lambton, Lincoln, Victoria, Wellington and Wentworth. The Counties having over 30, but not exceeding 40 cases were five, viz: Elgin, Essex, Haldimand, Welland and York. Two Counties, Oxford and Waterloo, had each over 40 and not exceeding 50 cases. Three Counties, Huron, Norfolk and Ontario, had each over 50, but under 60 cases, and in two Counties only, Middlesex and Simcoe, the number of cases tried by the judge exceeded sixty. The largest number of cases so tried was in Middlesex. The smallest number in Prince Edward. It is worthy of note that the old Counties of Stormont, Dundas and Glengarry, Leeds and Grenville and Prince Edward, together, had not half as many cases as any of the younger Counties of Huron, Victoria, or Waterloo, and again, the smaller Counties of Elgin, Oxford and Essex, show each, more than three times as many cases as the large Counties of Hastings, Peterborough and Stormont, Dundas and Glengarry. The populations, to a certain extent, were in accordance with the returns. The Counties with the largest populations, such as Simcoe and Middlesex, had the largest number of cases.

In the very imperfect state of the published returns at the present, there is scarcely full data to reason upon, but any analysis of the existing material will at least be interesting to those who make the subject their study, and it is with this aim the present paper has been prepared.

The subject of criminal statistics has received very little attention in Canada till of late years. The Act of 1876 for the collection of criminal statistics, however, must do much to supply this serious omission, and its complete provisions will enable valuable information to be obtained and compiled for the information of Parliament and all concerned with the interesting subject of criminal statistics.

ASSESSMENT APPEALS.

We publish on another page some assessment cases of general interest. Those from the County of Simcoe involve highly important considerations of public policy in relation to the much-vexed subject of exemption from taxation. The judgments of the learned judge will doubtless have a tendency to change many assessments in similar cases where an erroneous impression (founded on a somewhat impudent assumption) has prevailed to the detriment of the public.

The judgment of the junior Judge of Leeds and Grenville in the other case referred to above affects a question of some practical importance; we doubt, however, whether he is right in his conclusion. The decision is to the effect that a person whose name is on the assessment roll for the year 1877, but not for 1876, is not a "municipal elector" qualified to lodge an appeal from the assessment. It is based upon the sec. 77 of 36 Vict. cap. 48, which, in speaking of those who are "the electors of every municipality," says "all which electors shall have been severally rated on the last revised assessment roll for real property in the municipality."

It must be remembered that the appeals were lodged under the Act of 32 Vict. cap. 36, sec. 60, sub-sec. 2, which provides the machinery for "working" appeals to the Court of Revision. Had these appeals been lodged before the Act of 36 Vict., reference, as to who was a municipal elector, must have been had to 31 Vict. cap. 30, sec. 9, which is an amendment of 29-30 Vict. cap. 51, sec. 75—the only amendment (needed here to be noticed), being the omission of the word "then," before "last revised assessment roll."

It was urged that though the appellant's name was on the roll for the present year, the roll was not revised and that perhaps he had no right to be entered on it. The utmost that this argument could be stretched to would seem to be that the possibility of this appellant having no right to be on the roll (although this right so far had not been attacked) should deprive him of the right to see that the franchise, as, it affected him, was *not* improperly or *was* properly, conferred—while a perfect stranger, one who might possibly be living elsewhere, and who might have no interest whatever in the municipality—might come forward and claim such a right. This clearly cannot be the *spirit* of the law—and we should be inclined to look at in this way: the one Act (32 Vict.) relates to the machinery necessary to complete and revise the roll, on which voting is subsequently to take place. The other Act (36 Vict.) relates (*inter alia*) to certain things which are to take place subsequent to the revision of the roll, viz., *voting*, &c. In it, the words "The electors of every municipality" are used, and they are used in reference to those who are *qualified to vote*.

In the 32nd Vict. the words used are "a municipal elector;" and they are used with reference to proceedings to be taken to determine who are to be the "electors of the municipality" for the current year. Now, if a man's name be on the roll for 1877, even though the roll be not revised, he is, *prima facie*, an elector—the maxim, "*omnia presumuntur rite esse acta*," must have force here. True, there are two contingencies, and contingencies only, which may take place, to deprive them of their *prima facie* right,—those are (1st) that his name *may be* struck off on the final revision of the roll, and (2nd) that an election *may* take place, before the time when the rolls for the present year could be used.

Again, the man whose name is on the last year's roll, but not on this year's, has to all intents and purposes ceased to be "an elector," and he could not be considered such, unless in view of one of the above contingencies happening, viz.: an election taking place before the new roll could, under the Act, be used—a thing which very seldom happens.

Suppose this to be the case of a township newly organized, where there is no "last revised roll," and no *last* roll at all. If the view taken were to prevail, *there could be no appeal*, and frauds to any extent could be perpetrated, or suppose (an unlikely case we admit) that the names on this year's roll were all new and that none of the last year's "electors" could be induced to act as appellants (they having no interest in the matter) the same state of things would prevail.

Finally, the one allowed to appeal *may* have no interest whatever in the matter—the other has every interest, but his mouth is shut. We should, therefore, be inclined to reject all reference to 36 Vict. as not bearing in any way upon the matter in question and as not in any way affecing those parts of 32 Vict. relating to appeals of this sort—and reject it all the more, as, interfering with the just and equitable working of the Assessment Act, and as not intended in any way by the Legislature to apply to, over-rule or explain that act.

LAW SOCIETY.

Easter Term, 40th Victoria.

The following is the *resumé* of the proceedings of the Benchers during this Term.

Monday, 21st May, 1877.

The Treasurer laid before Convocation the reports of the Examiners shewing the results of the examinations for Call, for certificates of fitness and of the Intermediate Examinations.

The gentlemen whose names appear in the usual lists were called to the Bar, and received certificates of fitness.

Tuesday, 22nd May.

The report of the Examining Committee, showing the result of the Preliminary Examinations was laid before Convocation.

The Balance Sheet for the first quarter of 1877 was read.

The resignation of Mr. Kenneth McKenzie, Q.C., was laid before Convocation.

On motion of Mr. Read, seconded by Mr. Irving, it was ordered that Mr. McKenzie's resignation be accepted, and that the Treasurer reply to Mr. McKenzie's letter, expressing the regret of the Benchers for the loss of Mr. McKenzie's assistance, and acknowledging the long and valued services rendered to the Society by him as a member of Convocation and as Chairman of the Library Committee.

The petitions of S. Sutherland and H. C. Jones were refused.

It was ordered, that a special meeting of the Benchers be called for the first Tuesday of Trinity Term, next, for the election of a Bencher to fill the vacancy caused by Mr. McKenzie's resignation.

Mr. Hodgins gave notice that he would on Saturday, 26th May, move that the Treasurer and the Chairmen of the several standing committees constitute an Executive Committee of Convocation with powers to appropriate from time to time such sums as may be required for expenditure by the standing committees, and to have the executive management and control of such portions of Osgoode Hall and the grounds attached thereto as are in the exclusive occupation of the Society. That no standing committee incur any expenditure in respect of the Law Society without the previous sanction of the Executive Committee.

The petition of various students was read, asking that the ensuing Trinity Term examinations be held.

Ordered, That the Preliminary, Intermediate and Final examinations for Trinity Term next be held as usual.

Saturday, 26th May.

Mr. Read moved, seconded by Mr. Crickmore, that the Hon. Stephen Richards, Q.C., be re-elected Treasurer of the Society.—Carried

The Finance, Library, Reporting and Legal Education Committees were elected.

Mr. Osler gave notice that at the meeting of Convocation to be held on the last Tuesday in June, next, he will move that there be a standing committee on discipline.

Moved by Mr. Senkler, seconded by Mr. Martin, that from and after the 1st July 1877, the sum of four hundred dollars annually be paid to Mr. John Molloy during his life by quarterly payments in advance, as a retiring allowance in view of his long and faithful services as Steward of the Law Society, and that he be relieved from the further performance of the duties of Steward.—Carried.

Mr. McKelcan moved, seconded by Mr. Read, that the office of Steward be abolished from and after the first day of July, and that Rule 102 of this Society be amended accordingly, and that Rule 123 be repealed, that the Secretary, under the direction of the Finance Committee, shall have the general charge of the grounds and buildings thereon which may be in the exclusive occupation of the Society, and shall have authority with the concurrence of the Treasurer and Finance Committee to employ such person or persons as may be required from time to time to perform the duties now or formerly appertaining to the office of Steward, and to pay therefor such compensation as may from time to time, with the concurrence of the Treasurer and Finance Committee be agreed upon.

Mr. Robertson moved, seconded by Mr. Crickmore, that the salary of the Secretary be increased to two thousand dollars per annum.—Carried.

On motion of Mr. Martin, seconded by Mr. Lees, it was ordered that the Secretary, for the time being, be required to give security by bond of guarantee company to the extent of five thousand dollars for the due performance of the duties of his office, the Society to pay one half of the premiums therefor.

Ordered, That Mr. Hodgins' notice of resolution, relative to constituting an Executive Committee of Convocation, do stand for the meeting of Convocation to be held on last Tuesday of June, next.

Ordered, That the Petition for Call in accordance with Order number 83 and Form contained in Schedule number 8 shall hereafter be deposited with the Sub-Treasurer at least fourteen days next before the first day of the Term in which the student shall desire to be a candidate.

Ordered, That the report of the Committee to draft rules for the regulation of the proceedings of Convocation be printed for the use of members and be taken into consideration on the last Friday of the present Term.

The petition of Robert Miller was refused.

The petition of Hugh Schliefer was read.

Ordered, That Mr. Schliefer's term of service be effectual from the time of his entering into articles, and that the prayer of his petition be not further granted.

The petitions of Messrs. Hodge and Snider were granted.

Friday, 8th June.

The report of the Law School Examiners was read and confirmed.

The report of the Committee on Reporting was read. The consideration of the communication from the Registrar of the Supreme Court, relative to the reports of that Court was deferred until the next meeting of Convocation. The report of the Committee was otherwise adopted.

The report of the Finance Committee was brought up by Mr. Read.

Ordered, That the subject of all contracts with the Government as to heating and lighting Osgoode Hall, and the care of the grounds be referred to a committee, composed of Messrs. Hodgins, Maclennan, Smith, Irving, Read and the Treasurer. The further consideration of the report ordered to be deferred until next Term.

The petitions of Messrs. Blackstock, Baines, Hardy, Martin and Macnee were disposed of.

The petitions of Messrs. Wilson, Robinson and Shaw were granted.

The petition of Matthew Wilkins, jr. was referred to the Committee on Legal Education.

The petition of the Municipal Council of the Township of Townsend was referred to the Committee on Discipline.

The report of the Committee to draft rules respecting the proceedings of Convocation was adopted.

Mr. Hodgins was elected representative of the Law Sciety in the Senate of the University of Toronto until Easter Term next.

Tuesday, 26th June, 1877.

The report of the Committee on Legal Education on the petition of Matthew Wilkins, jr., recommending the refusal of its prayer was adopted.

The report of the same committee on the petitions of Edward Betley Brown and William Nesbitt Ponton was not adopted.

A letter from the Registrar of the Supreme Court was laid before Convocation stating that the Government were willing to supply the reports of the Supreme Court at one dollar per volume of 750 pages.

Ordered, That the Secretary do subscribe for nine hundred copies of the Supreme and Exchequer Court Reports at one dollar per volume, and that a copy of said reports be supplied by the Society to each member of the profession who has taken out his certificates.

Ordered, That a copy of the Ontario Reports, published by the Society, be furnished to the Registrar, and another copy to the Judges library of the Supreme Court.

Mr. McKelcan moved, seconded by Mr. Bethune, that all the Ontario Reports be henceforth supplied to the Judges of the County Courts of the Province at the expense of the Law Society, commencing with the first numbers of the current volume of each series, and that the Secretary give instructions to the publishers accordingly.—Carried.

Ordered, That Mr. Hodgins' notice of resolution, relative to an Executive Committee, do stand for the meeting to be held on first Monday of Trinity Term.

Ordered, That Mr. Boswell and Mr. Black be appointed Auditors for the current year.

Ordered, That Mr. Evans be appointed Examiner for Matriculation for Trinity Term.

Ordered, That Mr. McCarthy's notice of motion to rescind the standing orders passed under 39 Vict. cap. 31 and to substitute other orders in place thereof do stand for the first Monday of next Term.

SELECTIONS.

CURIOSITIES OF ENGLISH LAW.

(Concluded from p. 250.)

By creating a forfeiture to take place on the happening of any specified event, the intention of the testator, in whatever terms the clause of forfeiture may be framed, is that the legatee shall enjoy his bounty until the happening of that event, and no longer, and such intention is rendered neither more nor less evident by the circumstance of its being expressed in terms importing a limitation rather than a condition. The most disheartening part of the business is that this silly verbal quibble is not a legacy of the past, but, on the contrary, has only been fully established within the last forty years. There are several cases where a condition expressed in terms bearing a remarkably close resemblance to a limitation has been held to be void, and we have been unable to find any definite authority (except some dicta in an old case of *Low* v. *Peers*, Wilmot, C. J., 369) affirming the validity of limitations in general restraint of marriage, until the well-known case of *Morley* v. *Rennoldson* (2 Hare, 570) before Vice-Chancellor Wigram, in 1843, who says (p. 579): "Until I heard the argument of this case I had certainly understood that, without doubt, where property was limited to a person until she married, and when she married then over, the limitation was good. It is difficult to understand how this could be otherwise, for in such a case there is nothing to give an interest beyond the marriage. If you suppose the case of a gift of a certain interest,and that interest sought to be abridged by a condition, you may strike out the condition, and leave the original gift in operation; but if the gift is until marriage, and no longer, there is nothing to carry the gift beyond the marriage."

With all due deference to the learned Judge, we fail to see how any difficulty, much less any insuperable difficulty, can arise from the circumstance "that in a gift until marriage and no longer, there is nothing to carry the gift beyond the marriage." On this point we may observe, first that this remark does not apply to gifts "until death or marriage," which words are held to create a valid limitation, and secondly, that when a testator gives an estate until marriage, he must be held to contemplate even if he has not in terms provided for, the contingency of the donee never perpetrating the proscribed offence of matrimony, and therefore a gift until marriage, although it does not in so many words confer a life interest, is clearly equivalent to an estate until death or marriage. This construction is, in fact, a simple application of the doctrine of estates by implication, a doctrine well known to the

Court of Chancery. If there is a gift over on the death or marriage of a donee, the intention becomes, if possible, even more obvious; if, on the other hand, the estate of the donee is enlarged by means of a power or otherwise in the event of his or her dying unmarried, such a disposition is equivalent to an original gift of such enlarged interest subject to a condition in restraint of marriage. But supposing a difficulty might arise, though in no case that we are aware of could any such difficulty have in fact arisen, as to the amount of the estate given in the event of celibacy, surely rather than allow a rule of policy to be evaded by the silliest of quibbles, the difficulty should be boldly faced, as many difficult points of construction have before now been faced, by the Court. We think that the arm of the Court, which is constantly represented as being long enough to reach, and strong enough to defeat, any attempted evasion of its rules whereby a person purports to effect indirectly what he could not have effected directly, has in this case been paralysed by excess of caution. It is not every Judge who regards the present state of the law with as much complacency as Vice-Chancellor Wigram. Lord Justice Knight-Bruce said (*Heath* v. *Lewis*, 3 D. M. & G., 954): "It must be agreed on all hands that it is by the English law competent for a man to give to a single woman an annuity until she shall die or be married, whichever of these two events shall first happen. All men agree that if such a legatee shall marry, the annuity will thereupon cease. But this proposition has been advanced—a proposition which, if true (and I do not deny its truth), is perhaps not creditable to this English law—that if a man give an annuity to a woman who has never married, for life, and afterwards declares that, if she shall marry, the annuity shall be forfeited, the condition is void, and she may yet marry as often as she will, and retain her annuity." We are unable to see the logical necessity for a distinction, of which the absurdity was apparent to the Lord Justice. We hold that a trifling modification of the doctrine applicable to conditions would suffice to meet the case of limitations.

Where a void condition purports to bring an estate to a premature end, the law interferes, and, by ignoring the condition, allows the estate to run its course. Now let us suppose that an estate purports to come to an end, not through the instrumentality of a void condition, but by the occurence of an event which the Law has decided ought not to be permitted to have an injurious effect on the interest of the donee, surely the simple and obvious plan of vindicating the policy of the Law would be to ignore the occurrence of the event, and to let the estate run on just as if nothing had happened; if a gift is limited until marriage, let it run on in spite of marriage, just if the donee had remained single. We venture to say there is not a man of ordinary intelligence, outside the profession, who would hesitate for five minutes in casting aside, as so much hurtful rubbish, all the fine-spun distinctions between conditions and limitations which have been at once the delight and perplexity of the Bench from time immemorial, and by means of which the law of conditions in restraint of marriage has been deprived of every claim to indulgence. To the vice of perplexing and unnecessary distinctions, resulting in absurd and contradictory decisions, must be added this, the sufficient condemnation of any law, however perfect in every other respect, namely, that all its provisions may with ease and certainty be evaded. In vain do the Jndges decide, in vain do Counsel argue, if every principle contended for by the latter and enunciated by the former can be set aside by the machinations of a draftsman.—*Law Magazine*.

Baron Dowse preserves in Ireland that directness of speech and forcible way of putting things that endeared him to the House of Commons. The other day he was trying a shoemaker who was charged with having stabbed his wife. The guilt was brought home to the prisoner beyond all dispute, and indeed the man did not deny having committed the offence. Some of the jury, however, sapiently observed that he "did not see any clear evidence that the knife produced had inflicted the wound." "If you were trying the knife," said Baron Dowse, "such evidence might be very essential, but you are trying a prisoner, and the question is whether or not he inflicted the wound with that or any other knife." Then the jury began to see it, and the man was eventually convicted.—*Mayfair*.

CANADA REPORTS.

ONTARIO.

ASSESSMENT CASES.

(Reported for the *Canada Law Journal*).

In re Appeal of the Very Rev. Dean O'Connor, from the Court of Revision of the Town of Barrie, County of Simcoe.

Exemption from taxation—Parsonage—32 Vict. cap. 36, sec. 9, sub-sec. 22, O.

The appellant was a Roman Catholic "Parish Priest" for the town of Barrie, and resided with the Rev. J. Giprie on the property in question, which was assessed to the appellant at $2,800. The appellant claimed that there should be an exemption of $2,000 as to each occupant, the property not exceeding in the whole four acres. Mr. Giprie boarded with Mr. O'Connor, who had control of the premises, acting generally as his assistant, and doing duty as well at some stations outside of the town.

Held, that there could only be an exemption to the extent of $2,000, in favour of the person having the dominant right or interest in the property.

[Barrie, August 27, 1877.]

The facts of the case appear in the judgment of

Gowan, Senr. Co. J. — This appeal is made on the ground that the property assessed to the appellant, being valued at $2,800, and the house being occupied by him and the Rev. J. Giprie, and each being entitled to an exemption of two acres and $2,000, which would overrun the whole quantity of land and the assessed value, there is an entire exemption; that is, it is claimed there should be an exemption, as to each, of $2,000, equal to $4,000, both occupying the house.

The appellant was appointed "parish priest" for Barrie, to which office the residence is attached, some six years ago; and entered and continued an incumbent and "parish priest" from that time till now. The Rev. Mr. Giprie came here four years ago. He attends services on Sundays at two places out of town, places not attached to Barrie; but does duty for the appellant during the week, when called upon by him. He has no right or control over the property; this right is in the appellant, who pays the expenses of the establishment. Mr. Giprie eats, drinks, and sleeps in the place. When there he occupies a sleeping apartment, and uses the sitting-room. In the absence of the appellant he would be in control, but is subordinate to the appellant; and, as I understand, the position of Mr. Giprie is that of a curate or assistant to the appellant—the incumbent of the place.

The building is for the priest ministering in Barrie, and the estate is vested in trust for that purpose in the Roman Catholic Ecclesiastical Corporation of the diocese of Toronto.

The question is whether this property not exceeding four acres, and not exceeding $4,000 in value, should be wholly exempt. Any technical difficulties as to this appeal I would not feel disposed to give effect to, unless plainly obliged; nor am I called upon to consider them, for the Corporation, as well as the appellant, desire a judgment on the main point.

Before referring to the particular sub-section under which it is contended the claim of exemption has support, I would observe that the taxation of property in this province is designed to provide means for the payment of the expenses connected with the maintainence of our municipal and educational systems, local improvements, the administration of justice, and other purposes, in the public interest, defined by law. In justice, the burden of taxation should fall equally upon the whole rateable property in a municipality. All property-holders should contribute to pay for benefits which all alike enjoy; and so the rule, as enacted, is, "that all land and personal property in the Province of Ontario shall be liable to taxation;" but this rule is made subject to certain exceptions, *i.e.*, exemptions. Exemptions from taxation, whether in favor of individuals or associations, amount, in effect, to compulsory contributions—a statutory benevolence—from the ratepayers at large for the benefit of certain individuals or associations. When the Legislature has provided for the exemption of certain individuals or certain property from taxation, I think it must be shown that the particular claim for exemption comes clearly within the letter of the statute; for I entirely agree with the learned author of *The Municipal Manual*, that provisions creating exemptions of the kind should be strictly constructed. It is under sub-sec. 22 of sec. 9 of the General Asessment Act (Harr. Mun. Man. 529) the appellant makes claim for exemption. The sub-section reads as follows. "The stipend or salary of any clergymen or minister of religion, whilst in actual connection with any church and doing duty as such clergyman or minister, to the extent of one thousand dollars, and the parsonage or dwelling house occupied by him, with the land thereto attached, to the extent of two acres, and not exceeding two thousand dollars in value."

The stipend of every clergyman or minister in actual connection with the church to which he belongs, and doing duty as such clergyman or minister, is exempt from taxation. It is personal to himself, dependent only on his connection with his church and performing the duties of his office. But with respect to the provision in the latter part of the sub-sec., I am of opinion that two or more clergymen or ministers cannot claim occupancy of one parsonage or dwelling so as to entitle each to an exemption of two acres of land attached thereto, each of such two acres of the value of $2,000, for that is not so expressed.

It seems to me clear that the enactment refers only to the particular clergyman, parson, rector, incumbent, or minister having chief position charge or control in respect to the church and parish or place, in connection with the religious body to which he belongs. That two acres of land to the value of $2,000, and no more is all that was intended by the Legislature to be exempted from taxation.

The word "occupied" in this section means something more than that of a person simply eating, drinking and lodging—living—in the parsonage or dwelling house. It means, I think, a legal occupancy by some such person having chief if not dominant right, privilege or interest in respect to the property.

Under the construction contended for by the appellant, the whole value of the property assessed (not exceeding $4,000,) would be exempted. The law could, not, in this way, work out uniform results, and might be made to operate in a way more favorable to one religious body than another, which never could have been designed by the Legislature.

The argument, pushed to its legitimate conclusion, would lead to anything but equitable results; and, referring to what I have before said, I think my duty is to adhere to the words of the statute; and the exemption claimed, as presented to me, I do not think comes within them.

I am of opinion that the appeal must be dismissed. The assessment and the decision of the Court of Revision, are confirmed.

I must express my regret that steps were not taken by those concerned to have the points fully argued before me. I should have been glad to be aided to a conclusion in this way. I am not aware, however, that any material point has escaped me; and I think I have arrived at the only conclusion tenable under the statute.

In respect to costs, it may be that the appellant might have presented his complaint earlier and more fully, but I shall not order him to pay costs: for the Court of Revision gave a not over certain sound in pronouncing their decision; and it appears it was the common wish, both of those representing the Corporation and the appellant, to carry the matter to appeal. The appellant will not pay any costs.

Appeal dismissed.

IN RE APPEAL OF THE SISTERS OF ST. JOSEPH FROM THE COURT OF REVISION OF THE TOWN OF BARRIE, COUNTY OF SIMCOE.

*Exemption from taxation—Incorporated Seminary of learning—Place of Worship—*32 *Vict. cap.* 36, *sec.* 9, *sub-secs.* 2, 4, *O.*

The Sisters of the Community of St. Joseph claimed exemption from taxation of the house and premises occupied by them on the grounds that it was used as a seminary of learning and as a place of worship. The institution to which they belonged was incorporated for the reception and instruction of orphans and the relief of the poor, &c. The building in question was used by the Sisters as a dwelling, and lessons in music were given there, but no school was kept there. A room in the house was set apart for Divine worship.

Held, that the claim for exemption was on both grounds untenable.

[BARRIE, August 27, 1877.]

The facts of the case appear in the judgment of

GOWAN, SENR. CO. J.—The appellants in this case live in a house which is assessed to them at $700; they occupy it as a dwelling-house. They visit the sick and poor, and perform visits in "the offices of charity and religion" in the municipality. They are also engaged in teaching a school or seminary, but the building in which they teach is not the property assessed. Lessons in music, however, are given by the Sisters in the house they inhabit. There is one apartment in the dwelling used as a chapel for the convenience of the Sisters, and in which there is, as I understand it, religious service held by the priest.

Exemption from taxation is claimed in their behalf on the ground, 1st. That they come within sub-section 4 of sec. 9, as "an incorporated seminary of learning." 2nd. That their house is a place of worship within sub-sec. 3.

With regard to the first (under sub-sec. 4) which reads as follows: "The buildings and grounds of and attached to every university, college, incordorated grammar school, or other incorporated seminiary of learning, whether vested in a trustee or otherwise, so long as such buildings and grounds are actually used and occupied by such institution, or if unoccupied, but not if otherwise occupied."

I incline to think that the proper construction of this sub-sec. is, that only buildings connected with the general educational systems of the Province are exempt. That the words: "other incorporated seminaries of learning," in the connection, carries that meaning; at all events, that the "Institution," (to use a term in the sub-sec.), must be one kindred in character to a university, college, or incorporated grammar school. But in any view, I cannot see how this building could be exempt. The school is not held there, but elsewhere. The giving lessons in music in the house cannot make the property a school, and it is not an "incorporated seminary of learning." The Community of St. Joseph is incorporated, certainly. That institution is founded (according to the Act of Incorporation) for the reception and instruction of orphans, and the relief of the poor, the sick, and other necessitous.

There is nothing in these objects to cover or include the idea of a seminary of learning. There may be "instruction," but I fail to see how the fact of giving "instruction to orphans" can give this branch of the Community, in Barrie, as such, the character of a seminary of learning. The actual teaching in their school here may warrant the appellation, but then it is not incorporated as a school held or taught on the assessed premises.

As regards the claim for exemption on the second ground—sub-sec. 3 of the exemption clause is as follows: "Every place of worship and land used in connection therewith, church yard or burying ground."

No doubt the room set apart in the Sisters dwelling may be called a place of worship, as might, in a certain sense, any private apartment in any private dwelling in the town, where there is a family altar, and morning and evening acts of worship performed; but the terms in the Statute are evidently used in their popular sense, i.e., a church, chapel, meeting-house, or other building, intended and used for the public worship of Almighty God. With very few exceptions, such churches or buildings, in this Province, have church-yards and burial grounds attached; such ground is also expressly exempted, and the connection in which the language of exemption is used makes it, to my mind, quite clear what the Legislature intended, in exempting "places of worship" from taxation.

The chief purpose of this building is for a residence. For the convenience of the Sisters, a chapel is fitted up in one part. It would not be easy to say, how an assessment should be made in dealing with an exemption in a case of this kind, if one had to fix the value of the part that is properly a chapel, the dwelling part of the house could scarcely be claimed exempt.

Regarding what I said in the other case, and the considerations I have just adverted to, I can come to no other conclusion than that the property is not exempt on either of the grounds urged; and the assessment and the decision of the Court of Revision is confirmed, without costs, against the appellants.

Appeal dismissed.

IN THE MATTER OF APPEALS FROM THE COURT OF REVISION OF THE TOWNSHIP OF AUGUSTA, UNITED COUNTIES OF LEEDS AND GRENVILLE.

Who is a "Municipal Elector"—Last Revised Assessment Rolls.

The Court of Revision threw out a number of appeals on the ground that the appellant was not a municipal elector within the meaning of sub. sec. 2, of sec. 60, of cap. 36, 32 Vict., inasmuch as his name was not entered upon the Assessment Roll for 1876, although upon that for 1877. An appeal to the County Judge on this point was dismissed.

[PRESCOTT, July 26, 1877.]

One Sidney Rowe lodged a number of appeals against the assessment of the Township of Augusta for the year 1877. Upon the same coming on for hearing before the Court of Revision, they were dismissed upon the ground, that Rowe, whose name was entered upon the Assessment roll for 1877, was not a "Municipal Elector" within the meaning of the Assessment Act, sec. 60, sub.-sec. 2, inasmuch as the name was not entered upon the last revised Assessment Roll, viz: that for 1876. From this decision Rowe appealed to the County Judge.

French appeared for the Township.

Senkler, Q.C. in support of the appeals.

MCDONALD, J.J.—I am of opinion that the words "a municipal elector," must have some legal meaning, and I do not know where to look for an interpretation of such meaning unless in the Municipal Institutions Acts. When the Assessment Act was passed, the Municipal Institutions Act was the Act of the old Province of Canada, 29-30 Vict., cap. 51, and the 75th section thereof defined who were Municipal Electors. One of the qualifications required was "that the party should be assessed on the "last revised assessment rolls for real property." And in my humble judgment the provisions of the 77th section of the present Municipal Institutions Act also require that a Municipal Elec-

tor "shall have been" rated on the last revised Assessment Roll for real property "in the municipality."

Although the reading of the clause is not so clear upon the point as is that of the 75th section of the Act of 1866, in my opinion Rowe was not under either of these definitions a Municipal Elector, and I therefore think that he was not entitled to be an appellant to the Court below in these matters.

I can see much force in Mr. Senkler's contention, that if this construction prevails, a person may be an appellant who has no interest whatever in this year's assessment, and who, if an appellant, would be at best an intruder. But I must interpret the law as I find it, and entertaining the opinion I do, I must decide that the judgment of the Court below in dismissing the appeals was correct, and I affirm the same and dismiss this appeal. But as the question may be of considerable moment, and it may be considered advisable to have upon it the judgment of a higher Court, I shall not now finally revise the roll but shall adjourn the Court to a future date, with a view of giving the appellant time to take the necessary steps to obtain a mandamus if he be so advised. True the 6th sub.-sec. of the amended 63rd sec. of the Assessment Act provides that "the Judge shall "hear the appeals and may adjourn the hearing "from time to time, and defer judgment thereon at his pleasure, so that all the appeals be "determined before the first day of August," but I think notwithstanding the judge may continue his Court beyond that date if it be found necessary so to do.

The Court was adjourned until the 30th July, but as no proceedings were taken to obtain a mandamus, the appeals were at the adjourned hearing, dismissed.*

NOTES OF CASES.

IN THE ONTARIO COURTS, PUBLISHED IN ADVANCE, BY ORDER OF THE LAW SOCIETY.

CHANCERY.

Cameron v. Spiking & Teed.

F. C.] [Sept. 7.

Specific performance—Part performance.

The defendants had agreed to purchase from the plaintiffs, and signed a memorandum in the following terms: "We the undersigned, do hereby agree to purchase the Collingwood Brewery and premises for the sum of $2,000, subject to mortgage of $1,200; malt to be taken at one dollar and fifteen cents per bushel; new barrels to be taken at cost price; old barrels at valuation; Hops at 12½ per pound, and pay freight on the same; Ale at eighteeen cents per gallon; anything else in connection with the brewery not mentioned above to be taken at a valuation; insurance to be transferred to us. Collingwood, March 18th, 1876."

On the 20th of the month, the plaintiffs gave up possession, and the defendants, through their agent, one Radford, entered into possession, and one of the defendants in his examination stated he understood that he had authorized the plaintiff Cameron to tell Radford to brew in the name of the defendants. On the 22nd, Radford took to Spiking $3.00, saying, "This is the first money taken by the Collingwood brewery." Spiking stated that he made no objection, and afterwards he got a dollar, and towards evening the same day, Radford, while in the brewery, told him he had just booked an account, and had put it down "Spiking & Teed." He could not say whether or not Radford showed him the book. Radford had at one time been in the employ of the plaintiffs, but had ceased to be so for a month previously. Two days afterwards, the 24th of March, the defendants having repented of their bargain refused to complete the purchase, whereupon a bill was filed to compel them specifically to perform the agreement. On the hearing, V. C. Proudfoot made the decree as asked which on rehearing before the full court was affirmed with costs.

Spragge C., in the course of his judgment observed: "As to the alleged misrepresentation and the terms of agreement being other than those in the signed paper: looking at the whole of the evidence, I take these to have been an afterthought. They repented of their bargain on Friday the 24th and wished to get out of it. That they looked upon it as a concluded agreement I think is clear. They were willing to forfeit the deposit they had made and to run the risk of such damages as a jury might give, which they thought would be small, if anything. That was a time and an occasion on which they would give all the reasons and state all the grounds, occuring to persons of their class, for retiring from their bargain. They stated none of them but gave as their only reason that the things to go with the brewery came to more

* See our remarks on this case at p. 267, *ante*.—Eds. L. J.

than they expected. If the signed paper had contained the names of the vendors so that the bill might have been founded upon it, these grounds of defence must have failed. They ought really to have no more weight now when it is shewn beyond question who were the vendors with whom the contract was made, and that it was acted upon by the delivery of possession to the defendants; they also accepting and acting upon it."

Blake, V.C., said "There was a concluded agreement between the plaintiffs and defendants, one which the plaintiffs are entitled to have performed, and as to which the defendants have not shewn any reason why they should be absolved from its terms. For sometime previous to the 18th of March the defendants had been thinking of purchasing a brewery, and had been negociating with the intention of buying the property in question. On the 18th of March they agree to buy and then sign a paper to that effect; on the 20th of the same month possession is delivered to their appointed agent. They proceed to take the inventory needed to show the amount they were to pay; they received two sums for beer sold; they negociate with Radford for his employment in their service in the brewery; they have books opened in the name of Spiking & Co. These unequivocal acts entitle the plaintiffs to prove an agreement between them and the defendants, and entitle them to look at the writing not as an agreement to be supplied by parol evidence; but as evidence of a parol agreement."

Keith v. Keith.

F. C.] [Sept. 7.

Practice—Rehearing—Costs.

This was a suit for alimony, the chief ground for relief being desertion, only one instance of personal violence being charged. The answer denied the statements of the bill and said: "I have always been ready and willing, and I am now ready and willing, and hereby offer to receive the plaintiff as my wife whenever she brings my said children back to me."

At the hearing before V.C. Proudfoot, the plaintiff without calling any evidence, declared her willingness to return and live with her husband, and a decree was thereupon made, the husband undertaking to do what he had offered to do by his answer, and the plaintiff on her part returning to him with their children, and he receiving and providing for them, he to pay full costs: if she failed to return to him with her children, the decree gave her disbursements only.

Acting under this decree, the plaintiff did return with her children to her husband, and he received them and provided for their support. But, insisting that the only costs he should be called upon to pay were disbursements only, the statute (32 Vict. cap. 18), providing that "in no suit for alimony in which the plaintiff fails to obtain a decree for alimony, shall any costs be decreed to be paid by the defendant beyond the amount of the cash disbursements properly made by the plaintiff's solicitor," the plaintiff reheard the cause with a view of obtaining a change as to the payment of costs. It was objected that the parties had acted under the decree, and it was now too late for either to complain of its provisions.

In giving judgment, Spragge, C., said, "It does not seem to me to be a serious difficulty that the defendant has—if he has—accepted the decree in its present shape. It is not a decree *by consent*, nor does it appear by whom it has been taken out. * * * The defendant comes before us complaining of one provision in it. How has he debarred himself from making his complaint? We do not know that it has been acted upon. The party to act was the plaintiff, she was to offer herself with their children to the defendant. Was the defendant to lock his door against them, and, unless he did, so to be taken to have acquiesced in the direction as to costs. To place him in such a dilemma would be against public policy,—making a difficulty in the way of reconciliation between husband and wife. Whether the plaintiff has offered herself with her children we do not know, but if she has and if the defendant has received her, then he has not, in my opinion, barred himself from complaining that the direction as to costs is erroneous. In my opinion it is erroneous—the provision in the statute being imperative. It seems to me a hard case upon the plaintiff's solicitors—a case in which, under the law as it stood before the statute which makes the difficulty was passed, the court would in all probability been given full costs."

Blake, V.C., said, "I do not think it necessary to consider whether the decree pronounced is such a one as the court should have granted at the hearing. The defendant submitted to take his wife, the plaintiff, back to live with him—the court granted costs in pronouncing this, otherwise, consent decree. In pursuance of the decree the defendant has, it is alleged, received back the plaintiff as his wife. It is impossible for the court, after the decree has been thus acted on, to open it up. If the defendant was dissatisfied with the addition made to his

consent whereby costs were charged against him, he should have asked that the time specified should be enlarged in order that he might appeal against the decree with which he was dissatisfied: not having taken this course, but having changed the position of the parties by, in the meantime, receiving back his wife, I think he cannot now ask the court to interfere with the decree. The decree must be affirmed with costs."

Proudfoot V. C., concurred in the view expressed by Blake V. C.

Per Curiam—Decree affirmed with costs.—Spragge C., dissenting.

Ontario Bank v. Sirr.

F. C.] [Sept. 7.

Mortgagor and Mortgagee--Priority of Claims.

This was a creditor's suit, in which a conveyance from William Sirr to Alexander Sirr was attacked as fraudulent. The decree set it aside, and directed accounts of what was due to the plaintiffs and other incumbrancers except prior mortgagees. The decree also directed an account of the rents received by Alex. Sirr or to fix an occupation rent, and to make him just allowances in respect of taxes, lasting improvements and payments made by him in respect of the lands or of a certain mortgage thereon, and if a balance should be found in favor of Alex. Sirr the same was declared to be a lien upon the lands *prior to the claim of the plaintiffs.* In default of payment a sale was ordered, the proceeds to be applied in payment of the amounts found due to Alex. Sirr and to the plaintiffs and other incumbrancers in their order of priority. But in the event of the purchase money being found insufficient to pay the amount found due to the plaintiffs, it was ordered that Wm. Sirr should pay the deficiency; and it was further ordered that the amount of such deficiency to the extent of the costs taxed to the plaintiffs should be paid by both the defendants, Wm. Sirr and Alex. Sirr.

The accounts were taken and the land sold under the decree. The land was bid off by Alex. Sirr for $1850, but he failed to carry out the purchase. It was afterwards sold a second time when it produced only $1350.

The Master by his subsequent report of 21st March 1876, found due to the plaintiffs for principal, interest and costs $1143.12, of which the sum of $808.79 was for costs.

The Master also computed interest on $1850, the sum for which the land sold first at $370 making in all the sum of $2220; he then added the amount found due to the plaintiffs $1143.12 to the sum of $1330.79; the amount found due by his former report to Alex. Sirr after deducting an occupation rent, but not calculating interest on it from the date of the first report; these two sums making $2473.91, from which he deducted $2220, the amount of first sale and interest, and found the difference of $253.91 as the deficiency Alex. Sirr and Wm. Sirr were to pay to the plaintiffs. He then deducted $870, the difference between the prices for which the land sold at the two sales (including interest), but not calculating interest on the amount of the last sale,—from the amount due to Alex. Sirr $1330.79, leaving $460.79 as the claim of Alex. Sirr, and from that deducted the deficiency of $253.91, leaving to be paid to the representative of Alex. Sirr, $206.88, out of the money in court after paying the plaintiffs their whole claim.

This report was appealed from, and on the 27th of April 1876, Blake V. C., allowed the appeal and ordered the purchase money in court to be distributed as follows: To the plaintiffs, the sum of $808.79, their costs as taxed and the residue of the money and interest accrued to the representatives of Alex. Sirr.

The plaintiffs reheard this order contending that the decree, by its last clause, ordering that the defendants Sirr was to pay the deficiency to the extent of the costs taxed, in effect gave them priority for their whole debt, interest and costs, over Alexander Sirr; that is that the defendants Sirr to the extent of $808.79 were bound to make good to the plaintiffs the amount of *any* deficiency. On the other hand the representatives of Alex. Sirr insisted that it was only in the event of sufficient money not being left to cover the costs of the plaintiffs after the payment of Alex. Sirr's claim, that they were bound to make good any deficiency, and then only to the amount of the difference between the balance remaining in Court, and the sum of $808.79

Blake, V.C., in giving judgment on the rehearing, said that the reason of the priority given to Alex. Sirr was, that his claim was made up of an amount paid to a prior mortgagee on the premises, and that "by the fifth clause of the decree 'in the event of the purchase money being found insufficient to pay the amount found due to the said plaintiffs, . . . the defendant, William Sirr, is to pay to the plaintiffs the amount of such deficiency.' Then follows the clause on which the bank bases the claim it makes, 'And it is further ordered that the amount of such deficiency to the extent of

the costs taxed to the plaintiffs be paid by both the said defendants, Alex. Sirr and William Sirr.' On this decree it was reasonable that as Alex. Sirr obtains, by means of this suit, payment of his claim, if there should not be realized a sufficient sum to answer the costs of the litigation they should be borne, in any event by the proceeds of the sale. As there was not a sufficient sum produced by the sale to pay the claims of the plaintiffs and Alexander Sirr, by the order made 'the amount of such deficiency to the extent of the costs taxed' was in the first instance charged against the fund in favor of the plaintiffs. Then the money, so far as it would go, was applied on the claim of Alex. Sirr. I think this gave the priority to the bank in respect of its costs, while the decree intended and disposed of the balance so far as it would go in liquidating the claim next in priority—that of Alexander Sirr."

PROUDFOOT, V.C., in disposing of the case, said, "I think the order was correct. The whole of the provisions of the decree are to be considered. One of these is that Alexander Sirr's claim is to form a lien on the land prior to the plaintiffs' claim. The first clause makes William Sirr liable for the whole deficiency, but Alexander Sirr only to the extent of the taxed costs. The effect of the whole direction then is: the proceeds of the sale are to be applied first in payment of Alexander Sirr's claim, $1330.79, less the difference between the sales, $870.00, or $460.79, then to pay the costs of the plaintiffs: if insufficient for that purpose, both defendants are to the extent of the costs to make it up, and William Sirr is to pay the remainder: or what comes to the same thing, so far as Alexander Sirr is concerned, pay the plaintiffs costs, then Alexander Sirr's claim, then the plaintiffs' claim.

Per Curiam—Order affirmed with costs.

SMITH V. ROCHE.

F. C.] [Sept. 7.

Insolvent Act—Preferential Assignment—Transferee of Mortgage.

This was a suit to set aside a mortgage, as a preferential assignment to one of the creditors of a trader in insolvent circumstances, which was declared valid by the decree pronounced on the hearing before V. C. Proudfoot on the ground of pressure. Subsequently the Court of Appeal determined in the case of *Davidson* v. *Ross*, 24 Gr. 22, that the fact of pressure did not validate such a conveyance and therefore the plaintiff reheard the cause before the full court. In the course of the argument it was made to appear that since the making of the decree Roche had assigned the mortgage to a purchaser for value.

BLAKE, V.C., in delivering the judgment of the court said that "*Davidson* v. *Ross* in appeal displaces the only ground on which the judgment could be supported, as, apart from the doctrine on which the decree was made as above stated, the transaction is clearly within the Insolvent Act, and is successfully impeached. It is said that the mortgage was, after the decree had been pronounced, assigned to a purchaser for value. The Court cannot interfere with the position of such transferee; and the usual decree, declaring the transaction fraudulent within the Insolvent Acts must be without prejudice to the rights, if any, of such assignee. If the present holder of the mortgage claims to hold it, notwithstanding the present decree, there can be no difficulty in adding him as a defendant and litigating the question in this suit."

SMITH V. MCLEAN.

F. C.] [Sept. 7.

Insolvent Act—Preferential assignment—Mortgage to secure contemporaneous advance.

In this suit a decree had been pronounced by V. C. Proudfoot, declaring valid a mortgage executed by one McArthur, a trader in insolvent circumstances, and made within thirty days of his assignment in insolvency. It appeared that at the time of executing the mortgage, McLean, who was one of McArthur's creditors, advanced money to him for the avowed purpose of enabling him to pay his creditors. No fraudulent purpose was imputed to the parties, and the suit was instituted simply on the ground of preference on the principles enunciated in *Davidson* v. *Ross*, 24 Gr. 22. On rehearing the decree was affirmed with costs.

BLAKE, V.C., in the course of his judgment, observed that the case "was reheard on the proposition that *Davidson* v. *Ross* in appeal governed it—I do not think that this is so. In the present case there was a contemporaneous advance, and an arrangement entered into, which it was supposed would result in enabling the debtor to carry on his business. As the transaction was a *bona fide* one, intended to aid a debtor in discharging his liabilities and to enable him to carry on his business, I think it falls within the principle of *Risk* v. *Sleeman*, 21 Gr. 250, and cases of that class, and not within *Davidson* v. *Ross*, and therefore, that the decree should be affirmed with costs."

SPRAGGE, C., who stated he had read the judgment prepared by his brother Blake, and agreed with him that the decree should be af-

firmed with costs, in the course of his judgment observed, "The evidence appears to me to shew that the transaction was *bona fide*. An advance of money to pay other creditors is not within the mischief of our Insolvent Law. See *Whitmore* v. *Claridge*, 9 L. J. 451.

Exp. Sheen, 1 Ch. D. 560 and *Exp. King*, 2 Ch. D. 256, were cases in which it was held that a security taken for indebtedness and a further advance, the further advance being a substantial one and made in good faith, were not acts of bankruptcy. The case of *Risk* v. *Sleeman*, 21 Gr. 250 was a stronger case for the plaintiff than the one now before us. This bill is filed under section 133 of the Insolvent Act of 1875. If the mortgage had been made more than 30 days before the insolvency of the debtor it would have lain upon the plaintiff to prove that it was made in contemplation of insolvency. Having been made within 30 days it lies upon the defendant to shew it was not done in contemplation of insolvency. In my opinion he has succeeded in shewing this. I think the proper conclusion from the evidence is that the contemporaneous advance was in order to enable McArthur to continue his business, applying the sum advanced in payment of creditors, and in the belief, honestly and reasonably entertained, that he would thus be enabled to continue his business."

Per Curiam, Decree affirmed with costs.

Henderson v. Weis.

Chancellor.] [Sept. 12.

Marriage, reputation of.

This was a suit for redemption of land in the Township of Etobicoke. The liability of the defendants to be redeemed by the proper parties was scarcely denied, the principal, indeed the only question really discussed being whether the parents of the plaintiff, Eliza Henderson, were or were not married, her only claim being as heiress-at-law of Obediah Henderson, his daughter by Cordelia his wife. There was no evidence of the marriage—other than that of repute—of Obediah and Cordelia, who were people of colour, in humble life, and who, it was shown, had come to Canada in 1831 or 1832. It was proved in evidence that Obediah, while on his way to Etobicoke to seek for land in company with Cordelia, who was then about to become a mother, was asked by one Long, at whose place he stopped to make enquiries as to land, if that was his wife, to which he answered in the affirmative; that Obediah and Cordelia went to reside in Etobicoke upon a rented farm where the plaintiff was born shortly afterwards. It was also shown that the child was shortly afterwards christened in a Methodist Episcopal Church in the then town of York, presided over by the Rev. Saml. H. Brown, a preacher of that denomination who was himself a colored man; both the parents being then present. The Rev. gentleman, however, kept no record of the baptism; he thought the ceremony was performed in the year 1833-4 or 5. Other witnesses also proved that they lived together and were reputed to be man and wife. On the part of the defence it was proved that Obediah had stated that Cordelia was not and never would be his wife: that in or about the year 1835 they separated, Cordelia taking up her abode with a colored man of the name of Towns, with whom she resided in the town of York and with whom it was reputed she had married; that she was called Mrs. Towns until her death in 1860. Obediah died in 1865, having in the meantime been married to at least one white woman, the last of whom was examined as a witness in the cause.

Spragge, C., thought the evidence of a marriage was too slight to found a decree upon in favor of the plaintiff, and dismissed the bill with costs, observing in the course of his judgment that "It is to be borne in mind that all these—conduct, habit, repute, are no more than items of evidence as to a fact, that fact being marriage—they do not of course constitute marriage. * * * It is not necessary to say how the case would have stood under different circumstances, *e. g.*, if Obediah had by his silence and conduct left his neighbors in the belief that he and Cordelia were husband and wife so that the repute would be that they were so, and if they had lived together until separated by death. As it was, the repute was not uniform or even general except for a short time, and the conduct of both parties was such as in my judgment to outweigh what little repute there was at one time in favor of marriage."

Murphy v. Murphy.

Chancellor.] [Sept. 12.

Will—Dower—Election by widow.

The testator by his will devised as follows: "To my beloved wife Ann Murphy I give and devise a full and sufficient support for her natural life; or in case of any disagreement between her and other members of the family I give and bequeath the north part of my house, with an annuity of eighty dollars in cash, to be paid half-yearly. I give and bequeath to her also the use of the well to which she must have free access without any hindrance whatever. I give and bequeath also to my beloved wife all the furniture

in the north part of the house." *Held*, that this had not the effect of putting the widow to elect between her dower and the provision made for her by the will; and that she was entitled to an inquiry as to the sufficiency of the estate to allow her the bequests in her favor, as also her dower, as in the case of *Lapp* v. *Lapp*, 16 Gr. 159.

PATON V. HICKSON.

CHANCELLOR.] [Sept. 12

Will—Bequest to executor.

The testator in this case after making some specific bequests devised the residue of his estate, real and personal, "unto William Paton of Johnstone, in Renfrewshire, in Scotland, manufacturer; Joseph Hickson, of the City of Montreal, Esquire; and Thomas Symington, also of Montreal, Esquire; in trust to convert the same; and to divide it into three equal parts * * * And I appoint the said William Paton, Joseph Hickson and Thomas Symington Executors of this my will; and to the said William Paton I bequeath the sum of $5,500; and to the said Joseph Hickson I bequeath the sum of $500, and to the said Thomas Symington I bequeath the sum of $1,500 over and above any expense to be incurred in the nature of travelling expenses, or expenses incidental thereto. and generally in the management of my estate." One of the executors named, for the convenience of the others in carrying on the affairs of the estate, renounced probate of the will and afterwards claimed to be paid the amount of the legacy in his favor. On a bill filed to obtain a construction of the will,

SPRAGGE, C., held that the sum bequeathed was so given to him in his character of executor, and having renounced the executorship he could not call upon the other executors for payment of his legacy.

WILLIAMS V. REYNOLDS.

CHANCELLOR.] [Sept. 12.

Administration suit—Dower.

This was an administration suit. The testator left real estate in which the defendant, the widow and executrix of the will, claimed dower—who, by the Master's report, was found indebted to the estate in $310, and the widow's dower had not been assigned to her, and the plaintiff in the suit—a creditor of the testator—sought to make the dower and arrears of dower available for satisfaction of her indebtedness to the estate.

SPRAGGE, C., thought that if sec. 11 of cap. 90 (C.S. U.C.), or sec. 3 of the Act of 1861, (24 Vict. cap. 41), were in force a question would arise whether sec. 35 of the Administration of Justice Act (1873) would not apply, or rather the principle embodied in it. But these sections have been repealed, and the creditor is without remedy, unless sec. 37 of the Amendment Act of last session will help him. That section revives sec. 8, and amends it so as to read thus: "Any estate, right, title or interest in lands, which, under the 5th section of cap. 90 of the C.S. U.C., may be conveyed or assigned by any party, or one which such party has any disposing power which he may without the assent of any other person exercise for his own benefit, shall be liable to seizure and sale under execution," etc.

This suit had been instituted before the passing of the Act, and a question arose whether its provisions applied to it.

The Chancellor referring to Kent's Com. p. 455, said, "The inclination of my opinion is in favor of the application to this case of the provisions of the Administration of Justice Act, of 1873, and of last session to which I have referred . . . the language of the Act of last session is more comprehensive than that of sec. 8 of the Act of 1861 . . . and the added words were evidently intended to embrace, and I should say do embrace any and every interest which the execution debtor may possess for his own benefit disposable by himself. If that be so, it may be reached under sec. 35 of the Act of last session, (assuming that it may not be reached directly by *fi. fa.*), and if so may be reached in this Court."

BROUGH V. THE BRANTFORD & PORT BURWELL RAILWAY CO.

CHANCELLOR.] [Sept. 19.

Costs on lower scale.

A bill was filed to enforce an agreement with a Railway Co., and the Master found due the plaintiff in respect of the money compensation agreed to be given a sum of only $187, and the Master allowed him full costs. On appeal the Court held that the Master was right as the suit involved the right of the plaintiff to have fences and farm crossings made and maintained.

SPRAGGE, C., observed. "It appears therefore clear to me that subject matters were involved in this suit, outside of and beyond a pecuniary claim to the extent of $200, and that the suit was, therefore, not within the jurisdiction of the County Court."

IRISH REPORTS.

COMMON PLEAS.

Magrath v. Finn.

Privileged communications—Words spoken from the pulpit.

Words spoken by a clergyman from the pulpit concerning a parishoner, though in good faith, and for a commendable purpose, are not privileged.

[May 8, 1877.]

The summons and complaint contained three counts, the first of which was as follows: "That the defendant falsely and maliciously spoke of the plaintiff the words following—that is to say (setting out the words in the Irish language), which said words, being translated into the English language, have the meaning and effect following, and were so understood by the persons to whom they were so spoken and published, that is to say: 'Let no man, woman, or child, keep his (meaning the plaintiff's) company, nor talk to him (meaning the plaintiff), and if he (meaning plaintiff) comes into any town-land, tie a kettle to his (meaning the plaintiff's) tail, as the people used to do of old;' the defendant meaning by the said words that the plaintiff had committed an indictable offence of so grave and disgraceful a description as to deserve that the public should avoid and reject the company and conversation of the plaintiff." The second count complained of the speaking and publishing of the words following: "Can any one of you tell me where he (meaning the plaintiff) gets the money to spend? Is his mother foolish enough to give it to him, or does he (meaning the plaintiff) steal cows and horses?" The defendant meaning by the said words that the plaintiff had frequently feloniously stolen, and was in the habit of feloniously stealing, the cows and horses. The third count complained of the speaking and publishing of the words following: "I'll go to his (meaning the plaintiff's) mother to make him (meaning the plaintiff) leave the country, and if not, I'll go to the landlord to make him (meaning the plaintiff) do so." The defendant meaning by the said words that the plaintiff had committed an indictable offence.

In answer the defendant pleaded that he was at the time of uttering the words the Roman Catholic parish priest of the parish where the words were spoken; that at the time plaintiff was a parishioner; that he believed that plaintiff had been guilty of improper conduct; that the conduct was a matter of notoriety, and caused in the parish great annoyance; that at the time of speaking the words he was performing his duty as clergyman in the presence of his assembled parishioners, and that he uttered the words in good faith, believing them to be true, and for the sole purpose of rebuking sin, and preventing a repetition of the acts complained of. To this plaintiff demurred.

Peter O'Brien (with him *Murphy, Q. C.*), in support of the demurrer.

Anderson (with him *Heron, Q. C.*), *contra*, cited *Buckley* v. *Keernan*, 7 I. C. L. R. 75; *Cooke* v. *Wilde*, 5 E. & B. 341; *Spill* v. *Maule*, L. R. 4 Ex. 232; *Harrison* v. *Bushe*, 5 E & B. 344; *Whitley* v. *Adams*, 15 C. B. (N. S.) 392; *Davies* v. *Snead*, L. R., 5 Q. B. 608; *Somerville* v. *Hawkins*, 10 C. B. 583; Starkie on Slander (4th ed.), 526, 527.

Morris, C. J. This action is brought against the defendant, a parish priest, complaining of his use of expressions toward the plaintiff of a slanderous character, and the defence is one of privileged occasion, based on the fact of defendant being a parish priest, and of the duty arising from that office of rebuking and admonishing sinners by name. The argument of the junior counsel in support of the plea, rested the privilege on the relative position of the plaintiff and defendant, and, as flowing from it, a duty to admonish the plaintiff, which, by the demurrer, it is admitted defendant did *bona fide* and believing in the truth of the statement. The case of *Somerville* v. *Hawkins*, 10 C. B. 583, was cited, where a master spoke of a servant in presence of other servants, in words which under other circumstances would have been actionable, but which were there held privileged. But Mr. Heron, for the defendant, claimed a privilege as arising to the defendant as a clergyman, *virtute officii*, of rebuking sin, and, by way of illustration, naming a particular person. There is no authority for such a proposition, and indeed Mr. Heron, when asked was the rule to be confined to Roman Catholic clergymen, and, if extended to clergymen of other denominations, where he would draw the line, answered that he would confine the rule to clergymen having the cure of souls, whom he defined as Roman Catholic priests and clergymen of the late Established Church. Such a distinction is merely arbitrary, and if the privilege existed at all, it should be extended to all clergymen of every denomination who preached sermons, or indeed to laymen, many of whom also preach sermons. We cannot adopt the analogy of the privilege of the members of the House of Commons, and of barristers, which has been also pressed upon us. Such a privilege is founded upon other and different principles, and we can find no public benefit in

extending this class of cases to persons preaching a sermon, and naming or plainly pointing at particular persons. The moral duty of the defendant has been much pressed upon us ; but it is admitted that the defendant, in denouncing the plaintiff by name, was violating the provisions of one of the decrees of his own church. It is therefore, a solecism in reasoning to say that there was a duty incumbent on the defendant, when in the very speaking of the words he was violating his duty: Apart, however, from any such question, we are of opinion that the plea of privilege cannot be extended to the occasion of delivering or preaching a sermon, and on this ground we must allow the demurrer.

LAWSON, J. I never thought this case arguable, and feel some surprise that in the year 1877, for the first time, such a privilege should be claimed, which would not be tolerated in these countries even at a period when ecclesiastics were hardly subject to the laws of the land. I am of opinion that neither from pulpit nor altar can slander be uttered, and if it is, the person who does so must justify its truth, or be prepared to take the consequences.

KEOGH, J. I never entertained a doubt about this case from the moment it was mentioned.

Demurrer allowed.

FLOTSAM AND JETSAM.

OFFICIAL REPORTS IN IRELAND.—Complaints have been made, from time to time, in many parts of this country, of the manner in which official reporters do their work. The profession have oftentimes, with good reason, blamed these gentlemen for a lack of promptness in issuing their volumes, or because they publish too much useless matter, or because cases were carelessly prepared, but there has, except in one or two instances, never been a claim made that the decisions given were erroneously reported. And in all our criticisms we have, with a remarkable unanimity, pointed to the experiments which have been made in Great Britain as a sure means of getting rid of such evils as we labour under from improper official or unofficial reporting. It seems, however, that the "Council of Law Reporting" has not, in Ireland, at least, done away with all that is to be condemned in law reports, and if it has proved a cure for what was wrong before, it has introduced other evils of as bad or even a worse character than any we endure. For this statement we have the authority of the Lord Justice of Appeal, who took the pains to give the *Irish Reports* a broadside, in delivering judgment on the 17th July, in the case of *Mackey* v. *Scottish Widow's Fund & L. Assur. Co.* He said : "The last place in the world from which I would advise counsel to think of procuring a correct report, is in the pages of the present *Irish Reports.* I take this opportunity of informing the members of the practising bar that I shall regard it a favour if they throw wholly aside anything which, at any time hereafter, or which since the last May number has been or shall be attributed to me in that publication, whether in this case or any other, I now, by anticipation, disown and repudiate as spurious and unauthorised " The Lord Justice sets forth at length, and with examples, his reasons for this language, which are in substance that, in the publication named, the statements of decisions are not accurate ; that the selection of cases is bad, and the head-notes are not well made. The London *Times*' Dublin correspondent says that the "Council of Law Reporting" has held a special meeting to consider the observations made by the Lord Justice, and resolved to publish a statement in reply, &c. The *Irish Law Times* says of the quarrel that, while it sides with the *Irish Reports* and deprecates the personalities in which the Lord Justice indulges, it must admit that there is one grave charge which he makes, which, "if well-founded and incapable of explanation, would go far to justify the severest strictures.'

We have no interest in the quarrel, but the remarks of the Lord Justice have probably much truth, and confirm us in a belief which we have often expressed—namely, that the "Council of Law Reporting" has not proved to be a success even in England. What was promised by the originators of this plan, as we have understood them, was this ; That the work of reporting would be well, throughly, and promptly done, so that there would be no chance or reason for unofficial volumes. There are now in existence, howeeer, three or more series of outside reports, one of which is, in our judgment, much better done in every way than is the official one, as it certainly is more promptly done. In Ireland the *Irish Law Times* has published reported decisions, under the name of the *Irish Law Times Reports,* and this publication, so far as value in this country is concerned, is much better tnan the regular official reports, though we would not go as far as the Lord Justice did and say that these latter reports are a "parcel of trash, a wanton waste of ink, paper and printing."—*Albany Law Journal.*

THE LATE LORD JUSTICE MELLISH.—The loss sustained by the country in the death of Lord Justice Mellish can scarcely be exaggerated.

He was the very type of man that is wanted in the Court of Appeal. In him were combined the highest judicial qualities required for the due and proper consideration and decision of cases on which the judgment of a Court has already been rendered. He lacked some of the qualities essential to a judge 'of all work." He lacked none of those which are expected or desired in an appellate judge. He displayed his wisdom alike in declining to be a judge of first instance, and in accepting a seat by the side of his illustrious friend and colleague, Lord Justice James.

Only seven years have elapsed since Mr. Mellish became Lord Justice, and, therefore, his career at the bar is fresh in the recollection of lawyers. Most of us can remember the dexterity with which he instructed the mind of the Court in Banco; how his acute and subtle intellect seized the point of the case, and presented it in the manner most favorable to his client; how he would take the statute book in his hand, and turn the doubtful section this way and that way, exhibiting the various meanings of which it was capable, and proving that his construction was the only possible one which the Court could safely adopt. So also would he deal with the ascertained facts in a special case, casting a flood of legal light on them, and fixing the eyes of the bench on the side which he desired to present. Yet with all this subtlety of brain, this wonderful dialectic skill, this extravagance of casuistic force, Mr. Mellish was always and above all things fair, honest, and clear, and bright as the sun at noonday. He could play the forensic game against any man; but he played it always like a man and a gentleman.

Added to this Intellectual strength, displayed alike at the bar and on the bench, was an array of moral qualities, calculated not only to adorn and beautify his professional career, but also to lend lustre to the man himself. The balance of his mind was ever held in equal poise; he was altogether free from selfish pride, from conceit, from weak passion. In his relations with his rivals at the bar, and with those who had to address him as judge, he preserved the same equable, unruffled temper, the same courtesy, the same tranquil and easy manner. When we consider the infirmity of his physical frame, the torture under which he labored from a lifelong disease, we can only wonder that his unconquerable will subdued every force antagonistic to the full play of his great moral and intellectual powers. To him death was rather a release from suffering than an end of worldly happiness. For the bench, the profession, and the public the same death leaves a void, which we can hardly hope to see filled in our day.—*English Law Journal.*

The death of Brigham Young, it is said, will give occasion to a vast amount of litigation. Not to speak of the difficulties liable to arise out of the peculiar relationship existing between the decedent and the women and their offspring who are called his wives and children, the tenure under which he held a large share of the real estate of which he died possessed, cannot be determined except by an appeal to the tribunals of justice. As the head of the Mormon church, he acquired a large amount of property, which he held in a sort of trust for that organization. It is said that the law in force in Utah does not recognize such an individual as the head of the church, but that the ownership of lands follows the title. It is said that the heirs of the deceased prophet will insist upon the strict construction of the law in this matter, but there may arise a question as to heirship which may puzzle the courts. There is one thing, however, which is certain to result, and that is, business for the Utah lawyers, who, if they cultivate this field well, need not continue the business of vending divorces for use in other States and territories.—*Albany Law Journal.*

The Middlesex Registry in England.—Previously to the closing for the holidays on Saturday, May 19th, and on the re-opening on the 28th, the accommodation was so deficient that a solicitor might have had to wait the best part of an hour before reaching the desk of the overworked clerk who attended to the crowd of applicants. On Monday week the string of solicitors and clerks, every one of whom was either in charge of, or expecting the return of, valuable title-deeds, reached into the street. The attendant clerks are certainly all that could be wished for in the way not only of assiduity, but politeness. But they are egregiously and shamefully overworked. Within the memory of even junior members of the profession two of the principals have broken down. As to the search, it is in many cases a farce. No prudent mortgagor or assignee advances or pays money for or upon the security of leasehold property without a manual transfer of the deeds, or a good reason for their non-delivery. Here is another point. By the last section of the Act, "no Member of Parliament shall be capable of being registrar. . . or take any fee or other profit whatsoever. . . out of the said office, or in respect thereof." Who are the registrars? All the certificates of registry are signed by some one as "Dep. Reg." It is said that the enormous funds derived from this overworked and undermaned office are now the monopoly of a partnership of two sinecurists. Who are they? Surely this is a matter on which some active member of Parliament might well bestir himself.—*Pictorial World.*