The Local Courts'
AND
MUNICIPAL GAZTTEE.

SEPTEMBER, 1870.

## BYLAWS—NOTICE AND PUBLICATION.

A By-law was passed by the County of Bruce, in the month of December of last year, to aid the Wellington, Grey and Bruce Railway by a free donation of debentures, by way of bonus, to the extent of $250,000.

An application to quash this by-law (*In re Gibson* v. *The Corporation of the County of Bruce*, 20 U. C. C. P. 398,) was made on the following grounds:

First—Because said by-law was passed within less than three months after the same was first published in any newspaper in the said county.

Second—Because said by-law was passed at an ordinary meeting of the council and not at a meeting especially called for the purpose of considering the same, as required by law.

Third—Because the notice required to be given by section 228 of the Act respecting the Municipal Institutions of Upper Canada was not given, nor was any sufficient notice to the effect and purport of such notice given.

Fourth—Because the polls for taking the votes of the electors or qualified ratepayers of the several municipalities were not opened in the proper places in the townships of Greenock and Huron.

Fifth—Because the said by-law was only published, as required by law, from the 8th to 29th October, 1869, inclusive, and not weekly for one month next before the same was passed, and was passed on the 7th December, 1869, and no notice was given of the time and place when and where the said by-law would be considered by the council; and because the said by-law was in other respects passed without the formalities required by law.

And because said corporation acted *ultra vires* in granting a bonus.

As to the first three objections, the Court considered that, in every case in which it is necessary to submit a by-law to the electors for their assent, the provisions, as regards notice, which are required by the 186th section, must be followed, and that section 228 applies only to those cases in which County Councils are authorized to raise money by by-law without submitting the same for the assent of the electors; and that any doubt as to this being the true construction of the sections was removed by the form of notice given in section 228, which is as follows:

"The above is a true copy of a proposed by-law to be taken into consideration by the Municipality of the County of ——, at ——, in the said County, on the —— day of ——, at which time and place the *members of the Council* are hereby required to attend for the purpose aforesaid;"

No reference whatever being made to the *electors*. The Court, therefore, in effect held that the requirements of section 228 had no bearing on this by-law, but that it is governed by sub-secs. 1, 2 and 3 of section 196.

The fourth ground of objection was decided as a matter of fact upon the affidavits, in favor of the municipality.

It appeared from the evidence that the first advertisement was inserted on the 8th October and the last on 29th October, when by mistake they were stopped. The notice was, however, subsequently inserted on the 19th and 26th November, and also on 3rd December. It appeared, also, from the affidavits that every effort was made to give publicity to the proposed by-law, and in fact when the vote of the Council was taken, there were twenty-four out of twenty-five members present, and the twenty-fifth made his appearance in the evening, and no complaint was made by him of want of notice.

It had been held in several previous cases that it is *discretionary* with the Courts to quash a by-law; and, following out this doctrine, the Court in this case refused to quash this by-law, thinking they would not be exercising a wise discretion in setting aside so important a by-law as that before them on so trifling an objection, even if they were of opinion that the publication was insufficient.

The remaining objections depended upon the construction to be placed on the "Act to amend the Act incorporating the Wellington, Grey and Bruce Railway Company," and it was contended that the Act only applied to township and not to county municipalities, but it was considered that the words of the second section of that Act, "any other municipality interested in the undertaking," &c., were sufficiently wide to cover this last objection. The by-law was therefore upheld.

## JURISDICTION OF QUARTER SESSIONS.

The recent case of *McKenna* v. *Powell*, 20 U. C. C. P. 194, brought up a question on the jurisdiction of the Quarter Sessions as to amendments.

On an appeal to the Quarter Sessions from a Justice's conviction, apparently intended to be under C. S. U. C. ch. 105, as amended by 25 Vic. ch. 25, of having, at a time and place named, unlawfully entered the premises of defendant (describing them) with men and teams, and cut down and destroyed certain trees thereon, and taken therefrom a certain valuable walnut log, without stating the premises were *wholly enclosed*, it appeared in evidence that the premises in question were in fact wholly enclosed, but the Chairman of the Quarter Sessions directed the jury that the case, if any, was one arising under C. S. U. C. ch. 93, sec. 25, and he charged them accordingly. The jury found the appellant guilty, but the Chairman, notwithstanding, made an order quashing the conviction, considering that the jury had erred in their verdict, as there was no *averment* or evidence that the damage done amounted to 20 cents, and he refused to amend the conviction under 29 & 30 Vic. ch. 50.

On an application to quash the conviction, or for a writ of *mandamus* to the Chairman of the Quarter Sessions to amend the conviction and reduce the fine, &c., the Court held that the conviction was one under C. S. U. C. ch. 105, as amended by 25 Vic. ch. 22, and that it was not competent for the Court of Quarter Sessions to convert the charge into one under C. S. U. C. ch. 93, sec. 25, but that the Chairman should have submitted the appeal to the jury in accordance with 29 & 30 Vic. ch. 50, notwithstanding the omission of the words *wholly enclosed*, and that having submitted it to them, though with an erroneous charge, their verdict should not have been rescinded, but have been treated as a determination of the appeal, and the Chairman should have amended the conviction, in accordance with 29 & 30 Vic. ch. 50, by the insertion of the omitted words, and have affirmed and enforced the same. A *mandamus* was therefore ordered to issue, directing the order of the Quarter Sessions to be set aside, as in excess of jurisdiction, and the conviction to be amended and affirmed.

## SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

### NOTES OF NEW DECISIONS AND LEADING CASES.

ELECTION COMMITTEE — AMENABLE TO JUDICIAL AUTHORITY—WRIT OF PROHIBITION.—*Held:* that an election committee illegally constituted by the House of Assembly to try the return of members sitting therein, will be prohibited from proceeding in the said enquiry by a *writ of prohibition.*—*Carter et al* v. *LeMesurier*, 6 Can. L. J. N.S., 229.

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MORTGAGE.—1. A. agreed to let B. a house, into which B. was to put fittings worth £500, and then, upon payment of £1000, to take a lease for twenty-one years of the premises so fitted up. A. was also to lend B. on "the said premises as fitted up," &c., £1000. B fitted up the premises, and became bankrupt before the lease was made or money paid. *Held*, that A. was equitable mortgagee of the premises for the £1000, and entitled to the fittings as against B.'s assignee. (Exch. Ch.) — *Tebb* v. *Hodge*, L R. 5 C. P. 73.

2. A mortgagee is bound to convey and to hand over the title deeds to any person having an interest in the equity of redemption, though only partial, by whom he is paid off. But the conveyance should be expressed to be subject to the rights of redemption of all the persons who hold other interests. When the party redeeming has only contracted to purchase an interest in the premises, the mortgagee need not convey until the party has accepted the title.—*Pearce* v. *Morris*, L. R. 5 Ch. 227; s. c. L. R. 8 Eq. 217.

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NEGLIGENCE.—Defendants, in pursuance of a contract, laid down a gas-pipe from the main to a meter in the plaintiff's shop. Gas escaped from a defect in the pipe, and the servant of a third person, a gas-fitter, went into the shop to find out the cause, carrying a lighted candle. The jury found that this was negligence on his part. The escaped gas exploded, and damaged the shop. *Held*, that, irrespective of any question as to the form of action, a verdict in favor of the plaintiff for the damages sustained should not be disturbed because of the negligence of a stranger both to him and to the defendant.—*Burrows* v. *Marsh Gas & Coke Co.*, L. R. 5 Ex. 67.

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PRIVILEGED COMMUNICATION.—Plaintiffs having claimed damages for injuries alleged to have been sustained by them on the defendants' line, defendants sent their medical officer before suit

brought or expressly threatened, to report to them as to said injuries, that they might determine whether or not to yield to the claim. *Held*, that the report was privileged from inspection by the plaintiffs.—*Cossey* v. *London, Brighton & S. C. Railway*, L. R. 5 C. P. 146.

PUBLIC EXHIBITION.—A., on behalf of himself and certain others, made a contract by which a builder was to erect and to let to them a grand stand for the Cheltenham races. Afterwards A., on behalf of the same parties, admitted persons to the stand, and among them the plaintiff, receiving 5*s.* each, which went to the race fund. A. employed a competent builder, and did not know that the stand was negligently built; but it was so, and in consequence fell, and injured the plaintiff. *Held*, that A. was liable. As in the case of carriers of passengers, there was an implied understanding that due care had been used, not only by him, but by independent contractors employed by him to construct the stand. —*Francis* v. *Cockrell*, L. R. 5 Q. B. 184.

WILL.—1. The testator requested one person to attend and witness his will, and another to witness a paper. They both attended at the time and place appointed, when the testator produced a paper so folded that no writing on it was visible, and informed them that in consequence of his wife's death it was necessary to make a change in his affairs, and he asked them to sign their names to it, which they did. The testator did not sign in their presence, nor did they see his signature. The paper had an attestation clause upon it, in the handwriting of the testator, not quite in the ordinary terms, but showing knowledge of what forms were required in executing a will. *Held*, that the will was properly executed.—*Beckett* v. *Howe*, L. R. 2 P. & D. 1.

2. G. made a will, and with it a paper of directions to executors to form a part of it. By a later will, revoking all former wills and codicils, his executors were to dispose of all the chattels in the rooms occupied by G. at the time of his decease, "according to the written directions left by me, and affixed to this my will." There were no such directions affixed; but the above paper was found in G.'s private room. *Held*, that it could not be included in the probate. —*Goods of Gill*, L. R. 2 P. & D. 6.

3. At the foot of his will, the deceased duly executed in the presence of two witnesses a memorandum that "this will was cancelled this day," &c. *Held*, that this was not a will or codicil, but only a "writing" (1 Vic. c. 26, s. 20), which could not be admitted to probate.—*Goods of Fraser*, L. R. 2 P. & D. 40.

4. "Being obliged to leave England to join my regiment in China, . . . I leave this paper containing my wishes. . . . Should anything unfortunately happen to me whilst abroad, I wish everything that I may be in possession of at that time, or anything appertaining to me hereafter, to be divided," &c. The deceased returned from China to England. *Held*, that the above will was conditional on the party's death in China.—*Goods of Porter*, L. R. 2 P. & D. 22.

5. "I appoint my nephew, J. G., executor." There were living at the date of the will a son of the testator's brother, and a nephew of the testator's wife, both named J. G. He hardly knew of the former, while the latter lived with him, managed his business, and was always spoken of by him as his nephew. *Held*, that, as the word "nephew" in a popular sense applied to the latter, the above facts could be considered in interpreting it.—*Grant* v. *Grant*, L. R. 2 P. & D. 8.

TIMBER LICENSES—INTRUDING ON CROWN LANDS—TRESPASS.—Where the plaintiff entered on lands of the Crown, in the summer months, without any right of occupation, and, no one hindering him, cut and cured hay, but was prevented from removing it by defendant, who subsequently took possession, under colour of a timber license, which however was only in force during the winter months, *Held*, that the plaintiff had no right of action against the defendant for the value of the hay so cut, the former shewing no better title than the latter.

*Quære*, as to the rights of licensee during the intervals between successive licenses.—*Graham* v. *Heenan*, 20 U. C. C. P., 340.

PROMISSORY NOTE—STATUTE OF LIMITATIONS — WRITTEN ACKNOWLEDGMENT — SUBSEQUENT HOLDER.—*Held*, that a memorandum in writing, signed by the maker of a promissory note, admitting the amount to be due to the payee, which, in the opinion of the Court, was sufficient, in an action by the payee, to prevent the operation of the Statute of Limitations, enured to the benefit of a subsequent holder of the note.—*Marshall* v. *Smith*, 20 U. C. C. P., 356.

PROMISSORY NOTE — NOTE SIGNED BY DEFENDANT AS PRESIDENT OF COMPANY.—A promissory note, in this form,

"DURHAM WOOLEN MANUFACTURING COMPANY, LIMITED. Capital 40,000.

"$439$\frac{33}{100}$. "Toronto, August 18th, 1868,

"Three months after date promise to pay to the order of Lyman, Elliot & Co., at the

Canadian Bank of Commerce, in Toronto, the sum of $439 $\frac{30}{100}$, value received

J. P. LOVEKIN,
"President,"

was drawn up by plaintiffs, in payment of goods sold and delivered by them to the Company, and intended to be the note of the Company, and when signed by defendant, as president, was delivered to plaintiffs and received by them as the note of the Company, with the blank before the word "promise" not filled up; moreover, on default in payment, the note was charged to the Company:

*Held*, that the promise was that of the Company, and that defendant was not personally liable.—*Lyman* v. *Lovekin*, 20 U. C. C. P., 363.

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NOTICE.—If the purchaser under a contract for the sale of land knows it to be occupied by a tenant, he is affected with notice, as against the vendor, in case the tenant has a lease, although he did not know it in fact; and he cannot maintain a bill for specific performance with compensation against the vendor.—*James* v. *Lichfield*, L R. 9 Eq. 51.

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CHATTEL MORTGAGE—ABSENCE OF RE-DEMISE—SEIZURE BEFORE DEFAULT—RIGHT OF ACTION—MEASURE OF DAMAGES.—*Held*, following *Porter* v. *Flintoft*, 6 C.P. 340, and *Ruttan* v. *Beamish*, 10 C. P. 90. Gwynne, J., dissenting from the former, but concurring in the latter, holding that an action will not lie, at the suit of the mortgagor of chattels against the mortgagee, for seizure of the chattels before default in payment, where there is no proviso in the mortgage for possession by the mortgagor until default; but that even if an action did lie, the jury should be told that the plaintiff could recover only to the extent of his interest in the goods and for the damage done to such interest, instead of, as in this case, for their full value, as in the case of a wrong-doer.—*McAulay* v. *Allen*, 20 U. C. C. P., 427.

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## MAGISTRATES, MUNICIPAL, INSOLVENCY, & SCHOOL LAW.

### NOTES OF NEW DECISIONS AND LEADING CASES.

INSOLVENCY—PAYMENT AFTER ATTACHMENT ISSUED—RIGHT OF ASSIGNEE TO RECOVER.—*Held*, following *Roe* v. *The Royal Canadian Bank*, 19 C. P. 347, that the assignee in insolvency was entitled to recover from defendants moneys paid by the insolvent to the defendants after a writ of attachment, though unknown to defendants, had issued against the insolvent.—*Roe* v. *Bank of British North America*, 20 U. C. C. P, 351.

## ONTARIO REPORTS.

### COMMON PLEAS.

*Reported by* S. J. VAN KOUGHNET, ESQ., *Barrister-at-Law, Reporter to the Court.*)

#### APPLETON v. LEPPER.

*False imprisonment—Justice of the peace—Warrant—Jurisdiction—Separate damages—Admission of improper evidence—Excessive damages—Adding count.*

Defendant, a justice of the peace, on the 5th May, 1859, issued his warrant against plaintiff on an alleged charge of stealing a lease, without any information being laid, upon which warrant plaintiff was arrested and brought before him:

*Held*, that defendant was liable in trespass, as without information on oath he had no jurisdiction over the person of plaintiff.

Defendant, on 11th May, caused plaintiff to be brought before him a second time on said warrant when there was no prosecutor, no examination of witnesses and no confession, and committed plaintiff for trial:

*Held*, following *Connors* v. *Darling*, 23 U. C. Q. B. 541, that it was a new act of trespass for which a second count was well laid in the declaration.

At the Sessions defendant appeared as prosecutor, when plaintiff was tried and acquitted.

*Held*, that a count for malicious prosecution could be added for this.

*Held*, also, 1. That a warrant, though good on its face, will not protect a justice under cap. 126, C. S. U. C. sec. 2, unless issued upon a proper information.

2. That the jury may assess several damages on each count.

3. That the court will not grant a new trial for the improper admission of evidence where there clearly appears to be sufficient evidence to support the verdict independently of the evidence so admitted.

4. That $1,000 damages were not so excessive as to warrant a new trial: see *Berry* v. *DaCosta*, L. R. 1 C. P. 331.

[20 U. C. C. P. 138.]

Trespass for assault and imprisonment on 5th May, 1869. Second count, the same on 11th May, 1869.

Third count, that defendant, on 5th May, maliciously, &c., issued a warrant under his hand and seal for apprehending and bringing plaintiff before him, or some other justice of the peace, to answer to a charge of stealing a lease, and defendant afterwards maliciously, &c., caused her to be arrested and caused her to be imprisoned six days, till he maliciously, &c., caused her to be brought before him as a justice of the peace touching the charge, whereupon he, by another warrant, committed her for trial, when she was afterwards by the county judge admitted to bail to appear at general sessions; and defendant afterwards maliciously, &c., procured plaintiff to be indicted at the sessions for feloniously stealing a lease and piece of paper of one W. Mosley, and for feloniously receiving same, knowing them to be stolen; and defendant maliciously prosecuted the indictment against plaintiff until she at said sessions was tried and duly acquitted by a jury, &c., &c.

Fourth count, slander.

Fifth count, slander.

*Plea*, not guilty, by Con. Stat. U. C. cap. 126, sec. 1 to 20.

The case was tried at Toronto before Galt, J.

It appeared that a summons, at the suit of Mosley, was issued by defendant, calling upon plaintiff to appear before defendant on a charge of trespass to property. It was dated 3rd May, 1869. She appeared the same day and the matwas enquired into. A lease, made by plain-

tiff to Mosley, was produced, which the defendant afterwards, according to one account, took home with him, but according to another account he was talking to plaintiff after the trial, advising her to settle, when he said he would read the lease to her, and while he was getting his spectacles she snatched it up and took it away. Mosley swore that he produced the lease, and that it was his property.

A warrant, dated 5th May, was issued by defendant, stating that "information having been laid before the undersigned, &c., that L. A. Appleton did steal a lease between her and William Mosley, which was entrusted to my care, and now made before ———, substantiating the matter of such information, these are therefore to command you, &c., to apprehend the said L. A. Appleton and bring her before me, &c., &c., to answer to the said information." This warrant was under defendant's hand and seal.

A constable swore that defendant gave him the warrant; that plaintiff was coming down the street and defendant pointed her out to him, and told him to arrest her; that he did so, and afterwards brought her before defendant, who required her to give up the lease, which she refused to do, insisting it was her property. He said it was Mosley's, and he would commit her to jail if she did not. The constable then removed her by defendant's orders, and she was in his constructive custody some days, the constable requiring her to appear before him two or three times a-day. On the 10th May defendant told him to bring her up, and she appeared before him Defendant told her she was charged with stealing the lease, when she said it was her property. He said he would commit her unless she found bail. She refused, and next day he committed her to jail for trial. She was taken to Toronto and there bailed.

It was proved that defendant admitted there was no information laid, and that he himself was the prosecutor.

It was shown that he did not wish to send her to jail, and tried himself and asked her friends to persuade her to give up the lease, and a brother magistrate said he admitted he did not think she had any felonious intention in taking it, that she took it as her own property, and that she was a girl of good character.

It would seem that defendant took the lease away to his own house after leaving the summons, and plaintiff was there and snatched it up and ran or went away with it, saying to defendant, as she went, "You shall never see this again." Defendant said to the persons present, "She has stolen the lease."

The indictment at the sessions was put in. Defendant's name was the first witness on it. A man named Devlin, who saw her take it in the store, and the constable, were the other names indorsed. A true bill was found.

At the trial defendant was examined, and swore there was no information; that he was prosecutor, and he did not believe she had stolen the lease, but took it as her own property. Plaintiff was acquitted.

For defendant it was objected, that on first and second counts trespass did not lie, as there was a warrant good on its face; that malice was disproved, and no want of probable cause shewn.

Leave was reserved to move as to first and second counts.

The learned judge held there was evidence of want of probable cause, and the jury were so told; that defendant was wrong in endeavouring to compel plaintiff to give up the lease, but that at the same time plaintiff's misconduct should weigh with them in considering damages. For defendant it was objected. that the learned judge should not have said that defendant ought to have applied to another justice of the peace, and not have acted in his own case, and should not have told them to find on each count, as plaintiff could not recover in case and trespass for the same act; if defendant had jurisdiction it could only be in case; if not, it could only be trespass, &c., &c.

The jury found for plaintiff on first count $100, on second count $100, on third count $800, and on fourth and fifth counts for defendants,

In Michaelmas Term *McMichael* obtained a rule on the law and evidence, and for misdirection in ruling there was a want of probable cause, and that plaintiff might recover distinct damages on first, second, and third counts; and in holding that there was evidence on first and second counts, when a warrant was shewn valid on its face, the issue of which was the subject of trespass; and in ruling there were three distinct causes for action; and for admission of improper evidence as to plaintiff's character; and for excessive damages; and because the verdict was inconsistent in treating the same act as both a direct and consequent wrong; that the acts complained of in third count could only sustain a count in trespass and not a count in case. and if count limited to what happened at sessions, then the acts of trespass given in evidence and damages as for those acts under said count, and damages were thereby excessive and erroneous, &c., &c.

*McKenzie*, Q C., shewed cause, and cited *Broad* v. *Ham*, 5 Bing. N. C. 722; *Arch.* Pr. 11th ed. 462; Con. Stat. Ca. ch. 92, sec. 24; *Berry* v. *Da-Costa*, L. R. 1 C. P. 331; *Smith* v. *Woodfine*, 1 C. B. N. S. 660.

*McMichael*, contra.

HAGARTY, C. J.—I have no doubt of the illegality of defendant's conduct. It is quite true that a warrant, valid on its face, was produced; but that warrant fails to protect the defendant, because it had no valid foundation. There was no information whatever laid before him; no complaint lodged either by Mosley or any other person; he had, therefore, no jurisdiction over plaintiff.

Assuming that even a crime had been committed, over which crime he, as a magistrate, might have jurisdiction; still, as was said in *Caudle* v. *Seymour*, 1 Q B. 892, his protection depends, not on jurisdiction over the subject matter, but jurisdiction over the individual arrested; and Coleridge, J., adds, "To give him jurisdiction over any particular case. it must be shewn that there was a proper charge upon oath in that case."

The defendant chose to act solely on his own view of the law. Because he sees the plaintiff snatch up a lease, in which she was the lessor, and say it was her property, he thinks fit to call it stealing, without any complaint or evidence

on oath. After the plaintiff had gone away, and, judging from the dates, on a subsequent day, he issued the warrant.

Dr. McMichael contended that he had a right to act on his own view of a crime committed. Even if the law were so, he would have this further difficulty, that, according to his own repeated admissions, he did not himself believe that what he saw was a felonious taking; and it is not easy to see how any one could venture to pronounce the plaintiff's act, however otherwise improper, to amount to larceny.

In *Powell* v. *Williamson*, 1 U. C. Q. B. 155, a magistrate heard a complaint against the plaintiff, and then allowed him to depart, directing him to appear next morning, and afterwards he sent a constable to arrest him, and he was taken to the station-house. The reason given for this was that he was alleged to have assaulted the justice on the previous evening. Robinson, C.J., says: "If it were true that this plaintiff had assaulted the justice, the latter might, at the time of the assault, have ordered him into custody; but when the act was over and time had intervened, so that there was no present disturbance, then it became, like any other offence, a matter to be dealt with on a proper complaint made by defendant upon oath to some other justice, who might have issued his warrant. Neither a magistrate nor a constable is allowed to act officially in his own case except *flagrante delicto*, while there is otherwise danger of escape, or to suppress an actual disturbance and enforce the law, while it is in the act of being resisted."

There was no pretence here of any necessity for an interference of defendant as a magistrate, *flagrante delicto*, or to prevent escape, or suppress disturbance, &c. The plaintiff was an old resident of the same village and well known to defendant. It would be a strange state of the law if a magistrate could legally interfere as defendant has done.

I think he was unquestionably a trespasser from the beginning. He did not even profess to have acted on view. As the first taking was illegal, I think the first count supported in evidence.

When plaintiff was again brought before defendant on the 11th May, there was no prosecutor, no examination of witnesses, no confession under the statute; yet defendant committed plaintiff for trial.

*Connors* v. *Darling*, 23 U. C. R. 541, is an express authority that even if there had been originally a good information, and proper warrant thereon to arrest, the commitment for trial, in the absence of any examination of witnesses, confession, &c., was an act of trespass without jurisdiction. The cases are reviewed there at some length and the law stated as existing for over three centuries, from the statute of Philip and Mary: "Before he shall commit or send such person to ward, he shall take the examination of such prisoner, or information of those that bring him."

I think this trespass could be given in evidence under the second count. As said by Lord Tenterden, in *Davis* v. *Capper*, 10 B. & C. 28, "Every continuance of a party in custody is a new imprisonment and a new trespass." That was a case in which trespass was held to lie against the justice for remanding for an unreasonable time, on a warrant based on a valid information

As to the third count for malicious prosecution, I am of opinion that it was not improperly separated from the rest of the case. In an ordinary charge laid before a magistrate, the person is arrested, examined, committed for trial, and acquitted. There, everything has been legal on its face; but an action is brought against the original complainant for maliciously, &c., setting the law in motion, and the whole damages are enquired into, and all recoverable in one count properly framed. Here there is nothing of the kind. The defendant began and continued a series of independent wrongs. When he illegally committed plaintiff for trial, no one was bound to appear and prosecute. The plaintiff gave bail to appear to answer any charge at the sessions. The further prosecution, the preferring the bill, the production of the testimony, were the acts of defendant.

In a case like the present, where the facts were so peculiar, and the damages given separately on each count, we see no ground for interference arising from the state of the record.

As to the admission of improper evidence, we agree with the learned judge in rejecting evidence of character. The fact that the question of character was afterwards asked and answered ought not, I think, alone to warrant our interference.

Where it was in evidence that defendant more than once himself bore testimony to her character as good, the fact of another person saying the same thing can have but little, if any, weight with the jury. See on this, *Rose* v. *Cuyler*.

I see no objection to the remarks made to the jury as to reasonable cause It might be quite true that defendant had no personal malice or ill feeling. If his conduct were, as we consider it to have clearly been, wholly illegal, the consequences to plaintiff were just as serious as if his motives were of the worst character. On this head I refer to the remarks made by the court of Queen's Bench in *Connors* v. *Darling*, *ubi supra*.

Nothing remains for consideration except the question of damages.

They are unquestionably given on a very liberal scale; and I think our opinion, individually, would incline strongly to a much smaller compensation. Any number of cases may be cited bearing on this question. All of modern date seem to tend to the views expressed by the court in *Berry* v. *DaCosta*, L. R., 1 C. P 331. Willes, J., says, "The court is called upon to exercise an exceeding nice jurisdiction, and to interfere with that which is the peculiar and exclusive province of the jury, so long as they are not misled by prejudice or gross mistake, or misconduct themselves. I refer to *Smith* v. *Woodfine*, 1 C. B. N. S. 660. The court lay it down that they will not interfere with the discretion of the jury as to the amount of damages, unless there has been some obvious error or misconception on their part, or it is made apparent they have been actuated by undue motives." The court declined to interfere.

We have had this question many times before us, and its consideration generally is embarrassing.

We cannot impute wrong motives to this jury,

nor that the amount awarded is so outrageously large as to be accounted for only on the belief of misconduct of the jurors.

I repeat that I regret the large compensation awarded and would prefer a much smaller amount.

The proceedings of the defendant were so singularly and almost unaccountably illegal, that I am not prepared to interfere with the finding of the jury.

GWYNNE, J.—I think it is clearly established that three separate and distinct torts, committed by the defendant, were proved, in respect of which the plaintiff was entitled to recover separate and distinct damages, and if it were not for the peculiar frame of the third count I should have no doubt that the damages have been assessed properly and should stand. As my learned brothers are convinced that in truth damages have not been given by the jury under one of the counts in respect of the same matter for which they have also given damages under another count, I do not dissent from their judgment. I can only say that I do not see the matter as clearly as they do.

Looking at the record of the verdict, I find $100 damages awarded on the first count, $100 on the second count, and $800 on the third. Reading this third count as I do, it complains of a trespass and false imprisonment, charging it to have been committed maliciously upon the 5th May, continued for six days until the defendant again, in like manner, maliciously committed another trespass and false imprisonment under which the plaintiff suffered until she was bailed by the county judge, and then the count finally complains of a malicious prosecution by the defendant on an indictment for felony, whereon the plaintiff was tried and acquitted. Then, looking at the evidence, I find that the two trespasses in this count alleged to have been committed maliciously upon the fifth May, and again six days after, are the same identical trespasses complained of in the first and second counts, the only difference being that in the third count they are charged as having been committed maliciously, while in the others they are not. Under these circumstances I cannot say that I see clearly that the $800 given on the third count do not comprehend the $200 given on the first and second counts. As to setting aside the verdict for excessive damages, in other respects, I do not see how we can possibly interfere without invading the legitimate province of the jury. The torts complained of were of a very grave and serious nature, the conduct of the defendant was wholly unaccountable and inexcusable, and although the damages may seem to be large, there is no pretence for attributing to the jury any improper motive, or for saying that they have assessed the damages upon any erroneous principle, and we are not at liberty to say that, in our opinion, they have visited too severely the violations of the law which were proved before them.

GALT, J., concurred with Hagarty, C. J.

*Rule discharged.*

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## MCINTOSH v. BRILL.

*Conditional contract for purchase of goods.*

Plaintiff telegraphed to defendant, in answer to an enquiry about price and quantity of butter on hand, that he had 100 kegs at 20 cents, and defendant replied he would take it, *if good*. Plaintiff did not state, in return, that it was good, or offer to guarantee that it was, but two days after he again telegraphed to come and ship the butter or send $1500, to which defendant answered that he would try and see him the following week. After the lapse of several days plaintiff enquired whether defendant intended taking the butter or not. In an action by plaintiff against defendant, *Held* that there was no binding contract between the parties, and a nonsuit was therefore directed.

[20 U. C. C. P. 426.]

Declaration, on refusal to accept and pay for 100 kegs of butter, bought by defendant and sold by plaintiff, and on the common counts.

*Plea*, non assumpsit.

Trial at Brantford, before Morrison, J.

Plaintiff dealt in butter at Brantford, and defendant lived at Guelph.

The following telegrams passed between the parties:

"To P. McIntosh. "October 26th, 1869.
"Name the lowest for your butter, and quantity.—Answer. "J. T. BRILL."

"To J. Brill. "October 27th.
"100 kegs: 20 cents.
"P. MCINTOSH."

"To P. McIntosh. "October 27th.
"Will take your butter, if good, at 20 cents.
"J. T. BRILL."

"To J. T. Brill. "October 29th.
"Come and ship butter or send $1500.—Answer. "P. MCINTOSH."
"October 29th.
"Will try and be down to see you next week.
"J. T. BRILL."

"To J. T. Brill. "November 5th.
"Will ship butter to-day, and draw on you for amount. "P. MCINTOSH."
"November 5th.
"Don't ship it: if you do, I shall not accept.
"J. T. BRILL."

"To J. P. Brill. "November 5th.
"Do you intend taking the butter or not?—Answer. "P. MCINTOSH."

"To P. McIntosh. "November 5th.
"You had better sell your butter.
"J. T. BRILL."

Nothing else passed between the parties. Plaintiff swore he kept the butter on hand for defendant from 27th October to 9th November; that in the mean time he had refused other offers, and that butter had fallen in price. He also proved that it was good butter.

A nonsuit was moved on the ground that no contract was proved. The learned judge thought otherwise, but reserved leave to move, and plaintiff had a verdict.

In Easter Term *Anderson* obtained a rule on the leave reserved, or for a new trial on the law and evidence.

*Hardy*, shewed cause, citing *Thorne* v. *Barwick*, 16 C. P. 369; Addison on Contracts, last ed., 17, 62, 63.

*Palmer*, contra, cited Benjamin on Sales, 29; Chitty on Contracts, 10.

HAGARTY, C. J., delivered the judgment of the Court.

The whole question before us is whether these telegrams shew a binding contract.

The plaintiff's difficulty arises from what defendant asserts is the introduction of a new term as to the quality of the butter, and that, as nothing further passed on that subject, there was no common assent to a bargain.

Chitty on Contracts, page 9, quoting Pothier, says: "I cannot, by the mere act of my own mind, transfer to another a right in my goods, without a concurrent intention on his part to accept them; neither can I by my promise confer a right against my person, until the person, to whom the promise is made, has, by his acceptance of it, concurred in the intention of acquiring such right."

Chitty, page 10, says: "On the principle that mutual assent is necessary in order to there being a binding contract, it is held that where an agreement is sought to be established by letters, such letters will not constitute an agreement, unless the answer be a simple acceptance of the proposal without the introduction of any new term" See also Sugden V. & P. 14th ed. 132.

It seems well put in Benjamin on Sales, 29: "A mere proposal by one man obviously constitutes no bargain of itself: it must be accepted by another, and this acceptance must be unconditional. If a condition be affixed by the party to whom the offer is made, or any modification or change in the offer be requested, this constitutes in law a rejection of the offer, and a new proposal equally ineffectual to complete the contract until assented to by the first proposer." *Hutcheson* v. *Booker*, 5 M. & W. 535; *Jordan* v. *Norton*, 4 M. & W. 155; *Duke* v. *Andrews*, 2 Ex. 290; *Chaplin* v. *Clarke*, 4 Ex. 403; are cases illustrating the general principle.

Here the plaintiff says he has 100 kegs of butter, and his price is 20 cents. Defendant replies, "I will take your butter, *if good*, at 20 cents" Now here the defendant certainly does not consent to take any butter, but introduces the new term, that it must be good.

Plaintiff might have answered stating its goodness, or offering a guarantee, and then, if defendant accepted, the contcact was closed; but this was not done. Two days after plaintiff writes, "Come and ship butter, or send $1500," to which defendant promptly replies that he would try and see plaintiff the ensuing week.

I cannot see how up to this stage anything can be said to be concluded. Defendant certainly seems not to have considered himself bound, having received no answer as to quality; and several days after plaintiff writes, "Do you intend taking the butter or not? Answer."

I think all remained open between them. Plaintiff argues that the contract was complete, on his shewing his butter was good. I have no doubt that defendant, receiving no answer for two days to his conditional offer, might have considered the negotiation at an end, and supplied himself elsewhere. I also think that plaintiff, after receiving defendant's offer to take the butter, if good, might at once have sold it to any other person, and if defendant had claimed it he could have answered him conclusively, "as soon as you introduced the words as to its being good I did not agree thereto, or did not choose to warrant its being so."

If plaintiff be right, then his right of action vested as soon as he received the telegram that defendant would buy, if good, and his own right to dispose of it elsewhere then ceased. I see insuperable objections to acceding to this view; and although I have met with no case directly in point in its facts, nor was any such cited, I think, on general principles, there is no binding contract shewn, and the rule must be absolute to enter a nonsuit.

*Rule absolute to enter nonsuit.*

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## HICKEY v. CORPORATION OF COUNTY OF RENFREW.

*Corporation officers—Liability to dismissal—Right of action*

*Held*, that the new county council of a municipality may before recognition on their part, dismiss the officers appointed by the preceding council, and that such officers have no right of action against the municipality for their year's salary.

[20 U. C. C. P. 429.]

This was an action for dismissing the plaintiff from his office as Clerk of the Corporation of the County of Renfrew, the first count of the declaration alleging that in consideration that plaintiff would enter defendants' service and serve them for one year, from 7th October, 1868, as their clerk, at the wages of $400 per annum, defendants promised plaintiff to retain him during said year; that plaintiff entered defendants' service and so continued for part of said year, and was always ready and willing to continue in said service during the remainder of said year, yet defendants, before the expiration of said year dismissed plaintiff, whereby, &c., &c. The 2nd count was the same in effect, setting out the passage of a by-law appointing plaintiff. The 3rd count was for work and labour, &c.

*Pleas*, (to 1st count): Did not promise, and plaintiff misconducted himself, and was incompetent. To 2nd: Not guilty, and misconduct and incompetency; and to 3rd count: Never indebted.

The case went down to trial at the last Spring Assizes at Kingston, before Galt, J., when a verdict was found for the plaintiff, subject to the opinion of the Court, on the following admissions agreed upon between the parties; the Court to be at liberty to draw inferences of fact as a jury; the question for the opinion of the Court being, whether, under the facts admitted and under the pleadings, plaintiff was entitled to a verdict.

By a by-law passed in June, 1861, plaintiff was appointed clerk of the then provisional council at a salary of $160. By a subsequent by-law of 11th October, 1866, he was appointed clerk at $160 salary. A by law of 24th January, 1867, repealed the preceding and appointed him clerk at $300 salary per annum; and this was in turn repealed by by-law of 7th October, 1868, which appointed him clerk at $400 salary per annum, commencing from the passing of the by-law, and was also succeeded, on 27th January, 1869, by another repealing all previous inconsistent by-laws, and appointing one Mitchell clerk of the municipal council at a salary of $200 per annum.

Plaintiff had performed the duties of clerk from the beginning under these various by-laws. It was admitted that the effect of the last by-law

was to dismiss him, and that defendants had done so in the exercise of their alleged right, and not for any cause of complaint against plaintiff.

*C. S. Patterson*, for the defendants, contended that, as a municipal corporation, defendants were legally entitled, at their option, to dismiss plaintiff, or remove him from the office of clerk by the passage of the by-law which had superseded him by the appointment of Mitchell; and further that plaintiff had never been hired by them for a year certain; and that the evidence was insufficient to establish his cause of action. He cited *Corporation of Beverley* v. *Barlow*, 10 C.P. 178; *In re McPherson and Beeman*, 17 U C. 99; *Emmens* v *Elderton*, 13 C. B. 495; *Elderton* v. *Emmens*, 6 C. B. 160, s. c. 4 C. B. 479; Municipal Act of 1866, secs. 133, 152, 177, 205.

*S. Richards*, Q.C., contra, cited *Broughton* v. *Corporation of Brantford*, 19 U. C. C P. 434; Municipal Act of 1866, sec. 246, sub-sec. 3, secs. 157, 177.

HAGARTY, C. J., delivered the judgment of the Court.

In *Broughton* v. *Corporation of Brantford*, this court decided that corporation officers, under section 177 of the Act of 1866, retain office until removed by the council; that an officer in the position of the plaintiff would be entitled, as between individuals, to be considered as holding an annual appointment, with the usual rights as to notice, &c. There the appointment was from 1st January. The Court said, "It was, we think, certainly valid for one year, even if the council of a succeeding year might refuse to confirm it, and decide on removing the plaintiff."

There the plaintiff performed the duties of his office during the first year of his appointment, and for the first nine months of the ensuing year, when he was dismissed in the end of September. We considered that he held office up to the date of his dismissal under and on the terms of his original appointment, and it was held that he was entitled to his salary up to the end of the year, as in the case of an individual hired for that period, and as he had been allowed at *Nisi Prius* by Richards, C.J., who tried the case without a jury.

The point remains, whether, the succeeding council, before any recognition of the plaintiff as their officer, at once, on commencing their business as a new council in January, can dismiss him without having to pay him up to the end of the year from the time of his appointment. Were this the case of individuals, or of any ordinary trading corporation, plaintiff's right would be clear. It is, however, open to most serious question whether the municipal law will sustain his claim.

It appears that this county council met for the first time on January 26th, 1869, and the following day dismissed the plaintiff.

Section 135 of the Act of 1866 directs that at their first meeting the county council shall organize themselves and elect their warden. Section 13 directs that the clerk shall preside, and if there be no clerk, the members present shall appoint one of themselves to preside.

Section 152 says, "every council shall appoint a clerk."

Then section 177: "All officers appointed by a council shall hold office until removed by the council."

The inhabitants of the county are constituted a body corporate, and the powers of every body corporate shall be exercised by the council thereof (see secs. 1 and 6) and the council consists of members annually elected in each January.

We think the power of removal of officers clearly belongs to the council. They may accept or reject the officers appointed by the preceding council.

When a council appoints an officer like a clerk he enters upon his duties with the fullest knowledge of his dependence on the pleasure either of the present or any future council.

In the case before us the existing council did not affect to appoint the plaintiff for any specific time. We have to decide whether the exercise by the succeeding council of their undoubted right to remove him at once, compels that council to pay him his salary to the end of a year from the date of his appointment; or, in other words, can a council at any period of the year appoint a clerk or other officer, at an annual salary, which must thus in substance become a charge on the county funds, if the new council do not adopt him as their officer?

If such a power exists, it is open to the most serious abuse. A retiring council might thus in the last few weeks of their year of office reappoint at increased salaries all their officials, and their year's salaries, say from some day in December, would be recoverable by suit from the municipality, if the new council resist the appointment.

I cannot believe that such is the law governing our municipalities. Their powers are defined with reasonable clearness, and great precautions are taken to protect the public funds from misapplication. Conceding the right of each council to choose its own officers, the adoption of the plaintiff's view of the law must seriously interfere with the practical exercise of such right.

I have arrived at the conclusion that, on the true construction of our municipal law, the plaintiff's case fails.

I think each council can appoint, but always subject to have its appointment rejected by its successors, and that each person accepting office adopts that contingency as part of his contract. He takes his chance of being acceptable to the new council, and I see no hardship whatever in applying this construction to the plaintiff's case.

If the new council once accepted him as their clerk, I think, as already intimated, they cannot dismiss him without cause, except on incurring the usual liability for removal of an officer, appointed for the year, before the expiration thereof.

It is admitted that plaintiff has been paid his salary up to the day of his dismissal.

The fact that the existing clerk presides by law over the first meeting at which the new council organizes itself, by the election of a warden, is quite consistent with the view I have expressed.

*Judgment for defendants.*

THE CORPORATION OF THE TOWNSHIP OF BARRIE v. GILLIES ET AL.

*Road allowance—By-law of municipality—Right of action against timber licensees.*

After the passage of by-laws by a municipality, in accordance with the statute in that behalf, (29 & 30 Vic. ch. 51), for the preservation of the timber on government road allowances, such municipality may maintain an action against timber licensees of the Crown for cutting such timber, even though the licenses were granted before the passage of the by-laws, the licensees at the time of cutting having had notice of the by-law.

*Quære*, whether such licenses confer the right to cut timber on the road allowances; *Semble*, not.

[20 U. C. C. P. 369.]

This was an action against the defendants, as licensees of the Crown, for cutting timber on the original road allowances, surveyed and laid out on the survey of the township of Barrie, in 1856.

The defendants pleaded not guilty, and that the timber was not the property of the plaintiffs; also, leave and license, and payment.

The following facts appeared:

The township of Barrie was surveyed in the year 1856, under instructions from the Commissioner of Crown Lands. In this survey concession roads were surveyed, and also road allowances along every fifth lot and round certain lakes. The manner in which the roads round lakes were laid down was this; at the extremity of every road which, if produced, would intersect the lake, and at either side of such road, at the distance of 66 feet from high water mark, a post was planted and the roads were all delineated on the map of the survey. Prior to June, 1864, the united townships of Barrie and Clarendon constituted a municipality in the county of Frontenac. In June, 1864, Clarendon was separated from Barrie, leaving Barrie a single township municipality. On the 1st May, 1867, Crown timber licenses, numbered respectively, 16, 19, 20, 21, and 22, were granted to the defendants, expiring on the 30th April, 1868. These licenses cover the whole township of Barrie, east of a line in continuation of the division line between Kaladar and Kennebeck, until it intersects the Mississippi river; bounded on the west by the Mazinau lake and the waters of the Mississippi river, and the line above mentioned to the easterly boundary of the township and beyond the township. There is no exception of road allowances from the licenses. On the 6th July, 1867, the municipal council of the township passed a by-law to protect the timber on these allowances, a copy of which was filed. On the 17th August, 1868, the licenses numbered respectively, 16, 19, 20, 21, and 22, were renewed until the 30th April, 1869.

At the close of the plaintiffs case the following objections were taken by the defendant to the plaintiffs right to recover:

1st. That the plaintiffs' had shewn no such right or title in the property claimed, or in any of it, as would enable them to recover in this suit, the freehold of the road allowances not being in them, but in the crown. 2nd. That there was no sufficient evidence of an original survey laying out the road allowances claimed; that this should have been proved by the record in the Crown Lands Department, or a copy certified by law. 3rd. That there was no evidence that Perry's survey was adopted by government, or that patents were issued according thereto. 4th. That there was no evidence of dedication of the road allowances by user, and that there was no evidence that the road allowances were taken possession of by plaintiffs, or opened or used as public roads. 5th. That the defendants had a right to cut the timber under their licenses which covered the land in question. 6th. That the reservation along the lakes were not road allowances within the provisions of the Municipal Act, and were never laid out or defined on the ground. 7th. That the Municipal By-law could not abridge the rights of the Crown to dispose of the timber on the road allowances, nor could the Municipal Act do so, not being empowered for that purpose, the Crown not being named in the Act 8th. That at all events the defendants were protected by their licenses issued before the passing of the by-law for all timber cut under such licenses, that is, in the winter of 1867-8.

The question was, were the plaintiffs entitled to recover for any, and if any, which of the amounts found by the jury?

In answer to certain questions submitted to the jury, they found that in the winters of 1867, 1868 and 1869, the defendants cut upon the side lines and concession roads in the township, 573 trees. 2nd. Of the value of $429 75. 3rd. That of this number two-thirds were cut in the winter of 1868 and 1869. 4th. Equal in value to $286.50. 5th. That in the same winter the defendants cut upon the lake shore roads, or roads round lakes, 2197 trees. 6th. Of the value of $1867.45. 7th. Of which two-thirds were cut in the winter of 1868 and 1869. 8th. Being of the value of $1244 97;—and the jury further found that before cutting the timber trees which were cut in the winter of 1867 and 1868, the defendants had notice of the by-law of July, 1867.

Upon this finding a verdict was entered for the plaintiffs on all the issues, and $2297.20 damages, and leave was reserved to the defendants to move to set aside this verdict upon the issue traversing the plaintiffs property only, and to enter a verdict for the defendants upon that issue, or to reduce the verdict to the amount found by the jury to be the value of the timber cut in 1868 and 1869, or to such amount as found by the jury as the Court should be of opinion the verdict upon the issue of not plaintiffs' property should be entered for, in view of certain objections taken by defendants to the plaintiffs' right to recover; the plaintiffs to be at liberty to object to the sufficiency of the evidence of defendants licenses, if they could shew it to be insufficient, the court to be at liberty to draw such inferences as a jury should, and to mould the verdict upon the above issue, if not plaintiffs' property, as the court should think fit upon the evidence, in view of the objections, having regard to the finding of the jury as to quantities, value and period of cutting; the verdict in any case to stand for the plaintiffs on the other issues.

In Michaelmas Term, 1869, *R. A. Harrison*, Q C, on behalf of the defendants, obtained a rule *nisi* accordingly, to which *Anderson* (with him *Frank C. Draper*), in Hilary Term last, shewed cause, citing *The Corporation of Burleigh* v. *Hales*, 27 U. C. R. 72; Broom's Legal Maxims, 73, 76; 29 & 30 Vic. ch. 51, sec. 333, sub-sec 5.

*Harrison*, contra, cited *Farquharson* v. *Knight*, 25 U. C. R. 413; *McMillan* v. *McDonell*, 27 U. C. R. 36; *White* v. *Dunlop*, *Ib.* 237; *Corporation*

*of Burleigh* v. *Campbell*, 18 C. P. 457; *Regina* v. *Great Western Railway Co.*, 21 U. C. R. 555; *Ovens* v. *Davidson*, 10 C. P. 302; *Carrick* v. *Johnson*, 26 U. C. R. 69.

HAGARTY, C.J.—By ch. 23, Con. Stat. Canada, sec. 1, the Commissioner of Crown Lands, &c., may grant licenses to cut timber on the ungranted lands of the Crown. By sec. 2, the licenses shall describe the lands upon which the timber may be cut, and shall confer for the time being on the nominee the right to take and keep exclusive possession of the land so described, &c., and shall vest in the nominee all rights of property whatsoever in all trees, &c., cut within the limits of the license.

The licenses granted from time to time to the defendants in this case describe the limits as commencing at a given point and extending a continuous number of miles.

I understand that the township of Barrie had been surveyed and had its own municipal corporation prior to the granting of licenses to defendants.

The licenses give the right to cut timber upon the location described on the back thereof, and to hold to the exclusion of all others, except as after mentioned; that nothing therein should prevent any persons from taking standing timber of any kind to be used for making roads or bridges, or for any public work; and that persons settling under lawful authority within the location, should not be interrupted in clearing and cultivation by the licentiate.

It was held in *Corporation of Burleigh* v. *Hales*, 27 U. C. 72, that township councils could recover from wrong-doers the value of timber cut on road allowances, and also that they have the statutable right to pass by-laws to preserve or sell such timber.

*Corporation of Burleigh* v. *Campbell*, 18 C. P. 457, decided that no actions can be maintained against the party who cuts timber under license from the Crown, when it is not shewn that the municipality have in any way exercised the powers they have of making a by-law on this subject.

Here there was a by-law passed for the preservation of the timber on the road allowances, and, on the authority of the two cases cited, I think I should hold that, at all events since the passing of the by-law, the plaintiffs are entitled to recover.

The question was not raised whether the licenses actually gave the right to cut timber on the road allowances; nor was it apparently considered by the Court of Common Pleas as a point expressly before them for judgment. The case assumes that such power is given.

Were it necessary expressly to decide that point, I would have great difficulty in holding that any such right was given.

Under a statute authorizing licensees to cut timber on the ungranted lands of the Crown, and to give exclusive possession of the lands described in the license, it is difficult to believe that the public highways, formerly marked out and reserved as such in the original survey prior to the licenses, can possibly be included. Such allowances are declared to be "common and public highways," and, I think, it cannot be intended against the Crown that either a grant or license of a tract of country, measuring, say, five miles square, between certain named points, would pass a right to roads intersecting such tract, previously reserved as public highways.

The "exclusive possession" given to the licensee, on the one hand, and the exceptions in favor of settlers clearing and cultivating within the location on the other hand, seem strongly to oppose such a construction.

In any event, it seems to me that the license must be read as controlled by the existing statute law authorizing the municipality to make by-laws for the preservation of the timber on road allowances; and when such power is clearly exercised by the municipality, the license must cease to protect (if it ever in fact did protect) the licensee in cutting the timber.

GWYNNE, J.—There cannot, I think, be any doubt that not only the side lines and concession roads, but also the roads round lakes, upon which the timber was cut, for which this action was brought, have been all sufficiently laid down and established as road allowances; so that the plaintiff's right, if any, to recover will affect the timber cut on the roads round lakes, as well as that cut upon the side lines and concession roads. The instructions to the surveyor to lay down the roads round lakes were precise, and he swore that he did do so, not only on his map, but also on the ground, in such a manner as that they could be plainly traced. There was abundant evidence to show that there was no difficulty whatever in tracing the roads upon the ground.

By sec. 315 of 29 & 30 Vic. cap. 51, the Municipal Institutions Act of 1866, it is enacted that "all allowances made for roads by the Crown surveyors in any township already laid out, and hereafter laid out, shall be deemed common and public highways." By section 317 it is enacted that, "subject to the exceptions and provisions thereinafter contained, every municipal council shall have jurisdiction over the original allowances for roads, highways and bridges within the municipality."

By sec. 333, subsec. 5, it is enacted that, "the council of every township, &c., may pass by-laws for preserving or selling timber, trees, stone, sand or gravel on any allowance or appropriations for a public road."

Under the corresponding clauses in Consolidated Statutes of Upper Canada, cap. 54, it was decided, in *The Corporation of Burleigh* v *Hales et al*, that a township corporation, without having passed any by-law on the subject, could maintain trespass against a wrong-doer for cutting and carrying away trees growing upon government allowances for road; and in *The Corporation of Burleigh* v. *Campbell* (18 C. P. 457), it was decided by this court that a township corporation could not, *without a by-law*, maintain an action against a person who cuts timber on these road allowances under the authority of a license of the Crown. The court adopted the decision in *Burleigh* v. *Hales*, but held that a person having a timber license was not a wrong doer within the meaning of that decision, so as to make him liable as such to a corporation which had passed no by-law for preserving the timber.

Notwithstanding that the act declares that unless otherwise provided for, the soil and freehold of every highway laid out according to law shall be vested in His Majesty, still, inasmuch as the act, in express terms, gives to every municipa

council jurisdiction over the original allowances for roads within the municipality, and empowers the council to pass by-laws for preserving as well as for selling the timber and trees thereon, we must, I think, hold that after the passing of a by-law for preservation of the timber, a person who cuts the timber, as the defendants have done here, in violation of the by-law, cannot exempt himself from liability by producing a timber license issued under cap 23 of the Consolidated Statutes of Canada. It has been contended that the license is a sufficient protection to the defendants, upon the ground that, as is contended, the Municipal Act, which confers power upon the municipalities over the road allowances, does not name the Crown, and that therefore the Crown is not bound, and that a Crown license, which, it is said, these timber licenses are, must prevail over the by-law of the municipalities. But the power which is conferred by the legislature upon the municipalities is a power specially affecting the road allowances, the soil and freehold of which is in the Crown, and so the estate of the Crown is what is directly affected by the act, and therefore the Crown, in my judgment, is bound. In fact the soil and freehold of these road allowances is vested in the Crown, subject to the rights of the public therein, and subject to the rights of the municipalities to pass by-laws for the preservation or sale of the timber growing thereon. It appears to me, therefore, that whatever right the defendants may have had under the licenses produced, to cut timber growing upon the road allowances in question if there had been no by-law, that right ceased upon the by-law having passed, and the acts of the defendants, subsequently to their having notice of that by-law, cannot be justified under a license then in existence, although issued previously to the passing of the by-law. In *The Corporation of Burleigh* v. *Campbell* (18 C. P. 457) it was not contended, neither was it in this case before us, that the licenses produced did not give any authority to the licensees to cut the timber growing upon road allowances. It was assumed that they did, because the soil and freehold of the road allowances are vested in the Crown, and because they were not excepted in the licenses; but, I confess, it appears to me doubtful that these licenses confer any authority whatever to cut timber growing on road allowances, although there is no exception of them in the licenses. These licenses had no effect whatever, except such as is given to them by the Statute cap. 23 of C. S. U. C. They do not operate as grants from the Crown, in right of the Crown being seised of the soil and freehold: they are issued by an officer named in the statute, and have no operation whatever, except such as is conferred by the statute. Now the statute provides that the Commissioner of Crown Lands, or any officer or agent under him authorised, may grant licenses to cut timber on the *ungranted lands* of the Crown; and the statute further enacts that these licenses *shall confer*, for the time being, on the nominee, the right to take and keep exclusive possession of the lands so described.

Now, can lands which the Municipal Institutions Act declares *shall be deemed common and public highways*, be lands which come under the designation of "the ungranted lands of the Crown," in cap. 23 of C. S. U. C., although the soil and freehold be in the Crown? It appears to me that the lands over which the Commissioner of Crown Lands is given power to grant licenses, are those ungranted lands which it is competent and legal for the Crown to grant, and not lands which are devoted to a special public purpose, which excludes the possibility of their ever being granted by the Crown. So, in like manner, it cannot be that a licensee of a timber license, granted under the statute, can take and keep exclusive possession of *the common and public highways*. As, however, the act declares that the license shall confer on the licensee such right over *all* the lands comprised in the license, it would seem to follow that *common and public highways* cannot be comprised in the license. In this view it would be unnecessary to except them in the license. Neither does there seem to me to be anything unreasonable in holding, where a license describes a large territory, comprising within the description of its limits divers *common and public highways*, that all that the license operates upon is the ungranted Crown lands comprised within the description; that is, those lands capable of being, but not yet, granted; and so excluding from the operation of the license *all common and public highways*. The effect of our judgment in this case is that, as all the acts complained of were committed by the defendants after they had express notice of the by-law, and in defiance thereof, the verdict for the plaintiffs will stand for the whole amount.

GALT, J., concurred.

*Rule discharged.*

## COMMON LAW CHAMBERS.

*(Reported by* HENRY O'BRIEN, ESQ., *Barrister-at-Law.)*

### *In re* RICHARD B. CALDWELL.

*Extradition—Habeas Corpus—Forgery—Warrant—Evidence of accomplice.*

*Held:* 1. It is not necessary under the Extradition Treaty and Act, that an original warrant should have been granted in the United States, for the apprehension in this country of the person accused, to enable proceedings to be effectively taken against him in this Province for an offence within the treaty.

2. The evidence of accomplices is sufficient to establish a charge for the purposes of extradition.

3. Where the crime comes within the treaty, it is immaterial whether it is, according to the laws of the United States, only a misdemeanour and not a felony.

4. A magistrate here holding an investigation for the purpose of extradition should not go beyond a bare enquiry as to the *primâ facie* criminality of the accused, and should not enquire into matters of defence which do not affect such criminality.

[Chambers, March 25, 1870—*A. Wilson, J.*]

A writ of *habeas corpus* was obtained on behalf of the prisoner, directed to the Sheriff of the County of York and others.

The return stated that the prisoner was detained under the warrant of the police magistrate of the City of Toronto, on a charge of forgery committed in the United States, against the laws of that country.

*J. H. Cameron*, Q. C., for the prisoner, urged the following points in favour of his discharge.

1. There was no charge made in the United States before or since this charge.

2. The charge is only on the evidence of an accomplice.

3. The offence charged is not forgery within the law of the United States.

4. The charge is not within the treaty, and is condoned by a statute of limitation in the United States, which period (two years) had expired before the charge was made.

See 1 Parker, Crim. Rep. 108: *Ex parte Martin*, 4 C. L. J. N. S., 198; 29-30 Vic. cap. 45, sec 3. *M. C. Cameron*, Q. C., *contra.*

The remedy is not by habeas corpus.

It is not necessary that the charge should have been made in the United States before proceeding here: *Reg.* v. *Anderson*, 4 C. L. J. N. S., 315; *Ex parte Martin, ubi sup.* : *The Queen* v. *Gould*, 20 U. C. C. P., 154.

Fugitives from justice are not entitled to the benefit of the limitation claimed, 5 Cranch 37; 1 Wharton's Am. Law, sec. 436.

The case was argued before Mr. Justice Adam Wilson, who prepared the following judgment, which, however, was delivered by the Chief Justice of the Common Pleas during the absence of the former learned judge on circuit.

A. WILSON, J.—It was objected that no charge had been made in the United States against the prisoner for the alleged offence, and that until criminal proceedings had been taken there, none could properly, under the treaty and our statutes passed for giving effect to the same, be initiated here.

The statute of the Dominion, 31 Vic. cap. 94, (Reserved Act; see 32, 33 Vic. p. xi.) reciting the treaty, refers to "persons who being charged with the crime of murder, &c., within the jurisdiction of the high contracting parties, should seek an asylum, or should be found within the territories of the other, provided that this should only be done upon such evidence of criminality, as according to the laws of the place where the fugitive or person so charged should be found, would justify his apprehension and commitment for trial if the crime or offence had been there committed, &c."

The *charge* may therefore be made within the jurisdiction of *either* of the high contracting parties, in case the evidence of criminality, "according to the laws of the place where the fugitive or person *so charged* should be found, would justify his apprehension and commitment for trial if the crime or offence had *been there* committed." The language of the enacting part, (sec. 1) is to the same effect.

I should have thought that the statute permitted a charge to be made here against a person who had committed an offence within the treaty in the United States of America, although no charge had been begun there against the person for that offence, and I should have thought it to be free from all doubt but for the second section of the act, which enacts, that "In every case of complaint and of a hearing on the return of the warrant of arrest, copies of the depositions upon which the original warrant was granted in the United States, certified, &c., may be received in evidence of the criminality of the person so apprehended." The Con. Stat. of Canada, ch 89, sec. 2, referred to the original warrant, not as the warrant that *was* granted, but which "*may have been granted.*"

I do not, however, consider the statute to require that no charge should be laid here, when the offence has been committed in the United States, until a warrant has been granted there.

The legal functionary is bound to act here "on complaint under oath or affirmation charging any person, &c," with one of the treaty offences. And when the person charged is brought before the judge or other person who directed the arrest, the judge or other person is to examine on oath, "any person or persons touching the truth of the charge, and upon such evidence as according to the laws of this Province, would justify the apprehension and committal for trial of the person accused, if the crime had been committed here, the judge or other person shall issue his warrant for the commitment of the person charged, to remain until surrendered or duly discharged."

The judge or other person acting may proceed upon original *vivâ voce* testimony in like manner "as if the crime had been committed in this province." He may, however, also receive copies of the depositions on which the original warrant was issued in the United States in evidence of the criminality of the accused.

This, however, is an enabling act. There is no obligation on the prosecutor to produce such depositions. And I do not conceive that the statute requires there shall be first such depositions taken, and a warrant granted thereon in the United States, to give jurisdiction to the magistrate here.

The purpose of the statute was to permit the foreign evidence to be made use of here, and not to make it obligatory in the foreign country to have issued a warrant against the offender as a basis for our authority to act.

When once the foreign officers have the person accused surrendered to them for removal from this country it must be for themselves to justify their detention of the person in their own country.

It may be that in cases of felony there the detention may be justified by any one in like manner, and to the like extent that it may be justified here without a warrant at all. But whether it can or cannot, or whether the offence is there a felony or not, can make no difference here.

Our concern must be to deal with these foreign offences in our own country in like manner as if they had been committed here: to enforce the treaty effectually and in good faith, and to leave all questions of municipal law between the foreign authorities and their prisoner to be dealt with and settled by their own system with which in that respect we have nothing whatever to do.

I am therefore of opinion, that it was not necessary that an original warrant should have been granted in the United States for the apprehension of the person accused, to enable proceedings to be effectually taken against him in this Province, for an offence within the laws of the treaty.

The second objection was, that the direct evidence of criminality was that of two accomplices, and that such evidence was not sufficient to establish the charge without proper corroborative testimony.

I do not attribute much weight to this objection. the evidence of accomplices is admissible, and jurors may when the rule of law with respect to such persons has been explained to them, find a verdict on the evidence of accomplices alone. Justices holding such preliminary investigations, may assuredly do so, when the question is whether the accused shall be put upon his trial or not; and when all such questions, as to how far his accomplices are to be credited, will be

duly and at the proper time considered, the objection is not sustainable.

It was thirdly alleged, that the facts did not shew that the offence of forgery had been committed. It appears to me the offence has been sufficiently charged and proved to constitute the crime of forgery.

If it be under the act of 1823 (see Laws of the United States, Dunlop, p. 678, ch. 38), the offence is a felony.

If it be under the act of 1863 (see United States Statutes at Large, 37th Congress, ch. 67), the offence will I presume be a misdemeanour.

And if it be under the act of 1866, 39 Congress, ch. 24, it is a felony.

But whether a felony or misdemeanour can be of no consequence—it is nevertheless the offence of forgery, and it is with that alone that the treaty and the statute deal.

It was lastly objected that the accused could not be legally apprehended here upon the charge, because the offence, if committed at all, was committed more than two years before the complaint was made against him, and by the law of the United States, the lapse of two years was a bar to the criminal prosecution.

The period of limitation was denied. It was said to be five years in cases which affected the United States revenue. If it be restricted to the term of two years, then it was said the case must fail.

It was answered on the other hand that it was a matter of defence only, and the defence might be repelled by showing that the accused was a fugitive from justice.

It appears to me that what the judicial officer in this country has to do, is to determine the *primâ facie* criminality of the accused, to determine whether the evidence is sufficient to sustain the *charge* or not.

It is not by any means determined in the United States whether a demurrer will lie, or a motion in arrest *of judgment* may be made, if the indictment show the offence to have been committed beyond the statutory period.

The accused is at liberty to take the benefit of the limitation under the general issue, and the prosecutor may show in reply, that the accused is not entitled to the benefit of the protection by reason of his flight from justice.

It appears to me it will be very inconvenient if the magistrate here is compelled to go beyond the law of enquiry as to criminality.

Suppose some pardoning statute to be relied on—with many exceptions and special provisions—and the accused claims the benefit of it on the claim for extradition. Is the magistrate to try this collateral question, whether the accused is or is not within its provisions, or has or has not forfeited his claim to its protection?

The limitation is a matter of defence; the accused is entitled to the advantage of it by plea, or by some proceeding in the nature of a plea, and he may be precluded from getting the advantage of itby a proper replication, or by counter evidence in the nature of a replication.

It affects his liability to be prosecuted or convicted, it does not affect his criminality.

On the whole, I think the accused should be remanded generally to the custody from whence he came, to abide the decision of his Excellency the Governor-General under the statute.

*Prisoner remanded.*

## ENGLISH REPORTS.

### The Queen v. Kilham.

*False pretences—"Obtaining" goods—Larceny Consolidation Act (24 & 25 Vict. c. 29) s. 88.*

To constitute an obtaining by false pretences there must be an intention to deprive the owner wholly of the property.

The prisoner falsely pretended that he had been sent by A. B. to order and obtain a horse for hire for him. The horse was accordingly delivered to the prisoner, who, after driving it during the day, returned it to the owner in the evening.

*Held*, that the prisoner could not be found guilty of obtaining the horse by false pretences.

[C. C. R., 18 W. R. 957.]

Case stated by the Recorder of the City of York.

James Kilham was tried before me at the last Easter Quarter Sessions for the city of York on an indictment containing three counts, the first count of which was as follows:—"City of York to wit. The jurors for our Lady the Queen upon their oath present that James Kilham, on the 13th day of March, in the year of our Lord, 1870, in the city of York, unlawfully and knowingly, did falsely pretend to Henry Burton, then being an ostler in the service of James Thackray and Edward Thackray, then keeping horses for hire in the city aforesaid, that he the said James Kilham, was then sent by Mr. Hartley (thereby then meaning a son of Mr. Thomas Gibson Hartley, then living in Davygate, in the said city), to order and obtain for hire a horse for him, the said first mentioned Mr. Hartley, to drive on a journey to Elvington, to be ready at half-past nine of the clock the next morning, by means of which said false pretences the said James Kilham did then unlawfully obtain from the said Henry Burton a certain horse of the goods and chattels of the said James Thackray and Edward Thackray with intent thereby them to defraud. Whereas, in truth and in fact, the said James Kilham was not then sent by the said Mr. Hartley or any son of the said Mr. Thomas Gibson Hartley, then living in Davygate aforesaid, to order and obtain for hire a horse for him to drive on a journey to Elvington, to be ready at half-past nine of the clock the next morning, as he, the said James Kilham well knew at the time when he did so falsely pretend as aforesaid."

There were two other counts, slightly varied in form but the same in substance. The evidence on the part of the prosecution was that the prisoner had called at the livery stables of Messrs. Thackray, who were duly licensed to let out horses for hire, on the evening of the 13th of March last and stated to the ostler that he was sent by a Mr. Gibson Hartley to order a horse to be ready the next morning for the use of a son of Mr. Gibson Hartley, who was a customer of the Messrs. Thackray. Accordingly, the next morning the prisoner called for the horse, which was delivered to him by the ostler. The prisoner was seen in the course of the same day driving the horse, which he returned to Messrs. Thackray's stables in the evening. The hire for the horse, amounting to seven shillings, was never paid by the prisoner. Mr. Hartley and his son denied that they had authorised the prisoner to hire any horse for them, or that the prisoner had used the horse for any purpose of theirs. The prisoner was found guilty, but I respited the sen-

tence and admitted him to bail till the opinion of the Court for Crown Cases Reserved could be taken. I desire the opinion of the Court as to whether the prisoner could properly be found guilty of obtaining a chattel by false pretences within the meaning of the statute 24 & 25 Vict. c 96, s 88. The case of *Reg* v. *Boulton*, 1 Denison's Crown Cases, 508, was relied on on the part of the prosecution.

EDWIN PLUMER PRICE, Recorder.

April 19, 1870.

May 7.—No counsel appeared for the prisoner.

*A. Simpson*, for the prosecution. Obtaining money by way of loan by a false pretence has been held to be within the former statute, 7 & 8 Geo. 4, c 29, s. 53; *Reg.* v. *Crossley* 2, Moo. & R. 17, Patteson, J., laying it down that the terms of that Act embrace every mode of obtaining money by false pretences, by loan as well as by transfer. *Reg.* v. *Boulton* (1 Den C. C. 508), is very like the present case. There the prisoner obtained by a false pretence a railway ticket for a journey from Bendford to Huddersfield, which would have had to be given up at the end of the journey; though in fact the prisoner was stopped on the line and the ticket taken from him. What the prisoner obtained there was the use only of the ticket for the time during which the journey would last; and it appears from the judgment, which was a considered one, that the fact that the ticket was to be returned was present to the mind of the Court. The learned editor of Russell on Crimes (vol. 2, p. 645, note *p.*) questions that decision, and puts the very case now before the Court as on the same footing with it. In that he is right, but it is submitted that the case cannot now be questioned, and is binding on the Court. This Court has already, in *Morrison's case*, 7 W. R. 554, Bell, 158, 167, held itself bound by *Reg.* v. *Boulton*. The statutes relating to false pretences were originally passed to avoid the difficulty which existed of convicting of larceny any person who had obtained the property in the goods by fraud, and "they were not intended to mitigate the common law:" 2 East, P. C. 689. The first statute was 33 Hen. 7, c. 1, and was confined to the case of obtaining goods by false tokens, and that was extended by 30 Geo. 2, c.8, to all cases where goods were obtained by false pretences of any kind. [WILLES, J.—The words in the preamble of 33 Hen. 8, c. 1, are "get into their hands or possession." The note to 2 East, P. C. 689, goes to show that that was not meant to apply to a case of obtaining the use only, but rather to cases where actual possession was obtained.]

*Per* CURIAM.—The question raised by this case is a very important one, and the rule to be laid down will be one of general application. The Court is much indebted to the learned counsel for the prosecution for his able argument, and will take time to consider its judgment.

*Cur. adv. vult.*

June 4.—The judgment of the Court was now delivered by

BOVILL, C.J.—We are of opinion that the conviction in this case cannot be supported. The statute 24 & 25 Vict. c. 96, s. 88, enacts that, "whosoever shall, by any false pretence, obtain from any other person any chattel, money, or valuable security, with intent to defraud, shall be guilty of misdemeanour." The word "obtain" in this section does not mean obtain the loan of, but obtain the property in any chattel, &c. This is to some extent indicated by the proviso, that if it be proved that the person indicted obtained the property in such manner as to amount in law to larceny, he shall not, by reason thereof, be entitled to be acquitted; but it is made more clear by referring to the earlier statute from which the language of section 88 is adopted. The 7 & 8 Geo. 4, c. 89, recites that "a failure of justice frequently arises from the subtle distinction between larceny and fraud," and for remedy thereof enacts that if any person shall by any false pretence, obtain, &c. The subtle distinction which the statute was intended to remedy was this, that if a person by fraud induced another to part with the possession only of goods, and converted them to his own use, this was larceny; while, if he induced another by fraud to part with the property in the goods as well as the possession, this was not larceny. But to constitute an obtaining by false pretences it is equally essential, as in larceny, that there shall be an intention to deprive the owner wholly of his property, and this intention did not exist in the case before us. In support of the conviction the case of *Reg.* v. *Boulton*, 1 Den, C. C. 508, 19 L. J. M. C. 67, was referred to. There the prisoner was indicted for obtaining by false pretence a railway ticket with intent to defraud the company. It was held that the prisoner was rightly convicted, though the ticket had to be given up at the end of the journey. The reasons for this decision do not very clearly appear, but it may be distinguished from the present case in this respect, that the prisoner by using the ticket for the purpose of travelling on the railway, entirely converted it to his own use for the only purpose for which it was capable of being applied. In this case the prisoner never intended to deprive the prosecutor of the horse or the property in it, or to appropriate it to himself, but only intended to obtain the use of the horse for a limited time. The conviction must, therefore, be quashed.

*Conviction quashed.*

## CORRESPONDENCE.

### *Division Courts — Subpœnas — Fees to Attorneys.*

TO THE EDITORS OF THE LOCAL COURTS GAZETTE.

GENTLEMEN,—Section 100 of the Division Court Act allows parties "to obtain from either of the superior courts of common law a subpœna requiring the attendance of witnesses residing out of the county," but no provision is made either in the Act or Rules for its cost.

Some time since, on behalf of a plaintiff, I issued a superior court subpœna, on which the witness attended, and a verdict was given for the plaintiff. The clerk now refuses to allow him the fees taxable thereon, according to the superior court tariff, stating that he has no

authority to allow more than the $1 paid for it, and 50c. for the copy.

It seems to me there is a case reported in your Journal, to the effect that a subpœna, being a writ, must be issued by an attorney, and endorsed with his name, &c.; but whether or not, I think that no one but an attorney can issue such process. The fact of the act requiring it, is sufficient authority for the allowance of the fees properly taxable thereon, according to the tariff of the court from which issued.

As the clerks of this court look to your *Gazette* for information and precedent in their practice, your remarks on the above, either as to the law or the practice of the Division Court clerks generally, will be accepted as a favor. Yours, &c., LEX.

[If the clerk has taxed the amount disbursed for the subpœna and the proper allowance for the expenses of witnesses according to the scale settled in the Superior Courts, he has done all that the 100th section of the Division Court Act justifies (see O'Brien's D. C. Acts, p. 50, note *g*). There is nothing whatever provided by the Division Court Acts which sanctions the allowance of fees to an attorney for suing out a subpœna, nor is it at all essential that an attorney should be employed for the procuring of either a Superior Court or a Division Court subpœna. "Lex" must be well aware that there is no tariff whatever of fees taxable to an attorney as against the opposite party in the Division Courts,—nor is such a thing contemplated, but the reverse (see *Ib.*, p. 14, sec. 36, and note (*m*).—EDS. L. C. G.]

To THE EDITORS OF THE LAW JOURNAL.

GENTLEMEN, — A man bequeaths his personal property to his daughters, leaving his real estate to an only son, making a proviso that the son shall maintain his mother during life, or so long as she remains the widow of the testator. Please state in the next number of the *Journal* if she will be obliged to comply with the conditions of the will, or will she have power to set aside the will and claim one-third of the real estate. Also, if a work entitled the "Canadian Domestic Lawyer" is recognised by the profession as good authority.

Hoping that you will favor with an early reply, I remain your obedient servant,

INQUIRER.

Sheffield, Sept. 7th, 1870.

[The question of law put by our correspondent is not one that comes within our rule to answer. He must consult a lawyer. We are not acquainted with the book referred to, and therefore can give no opinion upon it. The profession have, however, in a measure, a kindly feeling to the authors of "law made easy" books, as their tendency is in a general way (not from any mistakes that may be in them, but from the "penny wise and pound foolish" economy of those who trust them alone) to put money in the lawyers' pockets.

EDS. L. J.]

## REVIEWS.

*The Canadian Illustrated News.* George E. Desbarats: Montreal.

This illustrated weekly makes its regular and welcome appearance. We are glad to see the marked improvement in its illustrations, and to hear that the enterprising publisher is encouraged by the patronage he has received to increase his exertions to make it a first-class periodical. The difficulties in starting, and when started, in keeping up an illustrated paper, especially when its circulation must of necessity be somewhat limited, are great, but success, we trust, will be the result. As a Canadian paper we wish it success, which its intrinsic value, especially in the reading matter it contains, fully merits.