Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Evanturel v. *Evanturel and another, from the Court of Queen's Bench for the Province of Quebec; delivered 24th July*, 1874.

Present:

Sir James W. Colvile.
Sir Barnes Peacock.
Sir Montague Smith.
Sir Robert P. Collier.

THE Appellant is the son, and the female Respondent a daughter, of Dame Marie Anne Bédard, who, being then the widow of the late François Evanturel, died on the 18th of November, 1863.

By her solemn testament, passed before two notaries, and dated the 18th of May, 1861, she gave the usufruct of all her estate to her son, the Appellant, for his life, but "à la charge," or subject to the obligation of paying a life annuity of 25*l.* to each of her four daughters, and two smaller annuities to her sisters. Subject to this disposition the testatrix bequeathed "la propriété de ses dits biens meubles et immeubles" to the children born and to be born of the marriage of the Appellant with his then wife, equally, constituting them her "légataires universels en propriété."

The 6th clause of the testament, on which all the questions now to be determined depend, is in the following words.—

"Sixièmement. Je veux et ordonne et ma volonté expresse est que si mes dites filles, ou aucune d'elles, venait à faire soit directement ou indirectement aucune démarche quelconque, pour contester mon présent testament, qu'alors et dans ce cas mes dites filles, ou aucune d'elles qui voudraient ainsi chercher à

contester mon présent testament, soient privées, ou soit privée de tous droits quelconques dans ma dite succession et de la rente viagère susdite, et que quant à celles ou celle qui voudrait contester mon dit testament, le legs à elle fait de la dite rente soit non avenu et caduc; car telle est mon intention expresse."

The legal heirs of the testatrix were the Appellant and her four daughters, viz., Dame Marguerite Evanturel, the wife of Alfred Paré, Dame Sophia Evanturel, wife of Louis T. Suzon, the Respondent, Dame Emilie Malonia Evanturel, wife of the Respondent, Edouard Remillard, and Demoiselle Elmira Algré Evanturel, who alone of the four was unmarried at the date of the will and that of her mother's death.

On the 7th of December, 1863, within one month of the death of the testatrix, an action was commenced in the names of the Respondents, claiming in right of the lady, as one of the coheirs of her mother, one-fifth of the succession, or, in the alternative, 2.500*l*., with interest and costs, and alleging that the Respondent was in possession of the whole estate. It is unnecessary to go with any particularity into the pleadings in that action. It is sufficient to state that, in answer to the claim, the present Appellant set up the testament of 1861; that the Respondents impugned that document by an "inscription en faux," as not having been duly "dicté et nommé" to the two notaries; and, by another pleading, as having been obtained from the testatrix when not of testamentary capacity by the fraud and "captation," or undue influence of the Appellant. The Superior Court, on the 5th of September, 1864, decided in favour of the Respondents upon the "inscription en faux," declaring the alleged testament to be null and void on the ground of its informal execution, and setting it aside with costs. But this Decree was, on the 20th of June, 1863, reversed by the Court of Queen's Bench by a Decree which set aside the "inscription en faux," and remanded the case in order that the Respondents might be at liberty to prove their allegations as to the incapacity of the testatrix, and the fraud and undue influence practised on her by the Appellant. These issues were decided against the Respondents by the Superior Courts on the 16th of May, 1866 and, on appeal, by the Court of Queen's Bench on the 18th of March, 1867, the result of the two

Decrees of the latter Court being the dismissal of the Respondent's action. Against those Decrees the Respondents preferred an Appeal to Her Majesty in Council, which, on the 15th of March, 1869, was dismissed, both Decrees being affirmed, and the testament finally established, with costs.

On the 28th of December, 1869, the Respondents commenced the action out of which this Appeal has arisen, for the recovery from the Appellant of 700 dollars, in respect of the annuity given to the female Respondent by the will, being 600 dollars for six years' arrears of the annuity, and 100 dollars for interest.

The defence to the action made by the Appellant was in substance that, by means of the contestations by the Respondents of the testament in the former suit, the female Respondent had forfeited, under the 6th clause of that instrument, all right to the annuity, which ought, therefore, to be declared "non avenu et eaduc." To this defence the Respondents replied that the penal clause was bad in law; that the Respondent, Edouard Remillard, had a direct interest in the former action under the "communauté de biens" subsisting between him and his wife; that the penal clause could not affect this right; that he brought the former action against the will of his wife; and that the action was not vexatious, inasmuch as the invalidity of the will had, on the "inscription en faux," been affirmed by three Judges out of six.

The Judge of the Superior Court, M. Taschereau, on the 6th of May, 1871, made a Decree in favour of the Respondents. The full bench of the Superior Court, consisting of him and two other Judges, reversed that decision on review, and dismissed the action by a Decree dated the 7th of December, 1871 (he dissenting). But on the Respondent's appealing to the Court of Queen's Bench, that Court (Mr. Justice Caron dissenting) by a Decree dated the 8th of June, 1872, reversed the Decree of the Superior Court, and confirmed the original Decree of Mr. J. Taschereau in favour of the Respondents.

The present Appeal is against this last Decree.

The questions to be determined are the validity and legal effect of the 6th clause of the testament, and whether the female Respondent, if bound by it, has lost the right to insist on the payment of her

annuity by reason of the proceedings in the former action.

Their Lordships think it will be convenient to follow the course taken on the argument before them, at least, by the Respondents' Counsel; and assuming, for the sake of argument, the validity of the clause, to consider, in the first instance, the nature of the former action, and the part taken by the female Respondent therein.

It has been contended that the action in which the Testament was disputed was the action, not of her, but of her husband; and that it was brought by him against her will, and in respect of his interest under the "communauté de biens," which the 6th clause in the will could not, and did not, purport to affect. To estimate the weight due to this argument, it is necessary to see what were the relations between the two Respondents under their marriage settlement.

By that instrument, which was executed on the 11th of June, 1860, the day before their marriage, it was stipulated as follows:—

"Il y a aura communauté de biens entre les dits futurs époux conformément aux dispositions de la coutûme de Paris, sauf les modifications suivantes, savoir: tous les biens et héritages, mobiliers et immobiliers, déjà échus, et qui écherront par la suite à l'un et à l'autre des dits futurs époux, soit par succession, donation, ou testament, n'entreront point dans la dite future communauté, mais au contraire sortiront nature de propres à celui à qui ils seront échus et advenus et aux siens de son côté et ligne, à l'exception toutefois des intérêts, fruits, et revenus des dits biens qui entreront cependant dans la dite communauté."

The community, therefore, which subsisted between the Respondents was, to use the language of the Civil Code (see Part iv, chap. 2) not "legal," but "conventional," the effect of a legal community being qualified by the important stipulation that the moveable property which had come or might thereafter come to either consort by inheritance, gift, or testamentary disposition, was not to fall, as by operation of law it would fall, into the community. It follows that the share in Madame Evanturel's succession which was claimed by the Respondents in the former suit was a *chose* in action forming part of the female Respondent's separate estate, and that the husband could have no interest in it, except in respect of the income which, after it had been

reduced into possession, might accrue therefrom and from time to time fall into the community. A suit to enforce such a claim would, *primâ facie*, appear to be the suit of the wife, though the law required that, like other suits in respect of her separate property, it should be brought with the sanction of the husband, and that he should join in it for the sake of conformity. Nor have any of the Canadian Judges taken a different view of it. Mr. Justice Taschereau does not seem in either of his judgments to have touched this point. Mr. Justice Badgley, who gave the judgment of the majority of the Court of Queen's Bench, speaking of this former action, says, "The female appellant, assisted by her husband for conformity, sued her brother by an action "en pétition d'héredité." Mr. Justice Caron and Chief Justice Meredith expressly treat this action as a breach of the condition, the latter holding that an action in that form must have been in the contemplation of the testatrix, inasmuch as the will was made after the Respondents' marriage. It is, however, suggested that the action, though technically and ostensibly that of the wife, was, in fact, instituted by her husband in her name, against her will, and that she is, therefore, not responsible for it. If it be true that her name was used without her knowledge, or against her will, or that she was not a free agent in the proceedings taken ostensibly by her, but a person acting under the compulsion of her husband, that case ought to have been established by evidence. But there is nothing to show that she was not a free agent in the proceedings so taken, proceedings which, if successful, would certainly have been for her benefit. She was examined in the course of the suit; she admitted that she was the Plaintiff or one of the Plaintiffs; she took no step to repudiate the claim made in her name; and the solitary circumstance from which an inference that she did not herself dispute the testament is drawn is, that when examined as a witness she admitted that at the date of the will her mother had sufficient intelligence to make a testament.

Another point to be considered is the nature of the proceedings taken to dispute the will. It is said (and this assumption is the foundation of the Judgment which Mr. J. Badgley delivered on behalf of

himself and the Judges who concurred with him) that, although the will was originally disputed on the grounds of fraud and captation, as well as on that of its informal execution, the former grounds must be taken to have been abandoned, and the testament to have been really disputed only upon the objections to its due execution which were raised by the "inscription en faux." The Respondent, however, after the order of remand of the 20th of September, 1865, disputed the will on the issues of fraud and undue influence; they appealed from the adverse decision on those issues from the Superior Court to the Court of Queen's Bench, and from the latter Court to Her Majesty in Council; and in the printed case filed by them as Appellants in the Privy Council, insisted upon all the grounds on which the will was originally disputed. The suggested abandonment, therefore, rests wholly on the fact that, on the hearing of that Appeal, their learned Counsel, exercising therein a sound discretion, declined to argue the issues of fraud and undue influence, on which, being questions of fact, he had the concurrent judgments of the two Canadian Courts against him. Mr. Justice Badgley, indeed, cites a text of Forsyth to the effect that, if the contesting party desists from his objection before "jugement définitif," he does not incur the penalty. The fallacy of the learned Judge's argument consists in treating the Order of Her Majesty in Council as the first definitive judgment. The Decree of the Superior Court on the trial of these issues of fraud and captation would clearly have been a definitive judgment if the Respondents had not themselves protracted the contest by going first to the Court of Queen's Bench and afterwards to the Privy Council. A party cannot put himself in a better situation by prolonging vexatious litigation than that in which he would have been had he submitted to the first judgment against him.

Their Lordships are therefore of opinion that the former action must be taken to have been the action of the female Respondent, and that she must be taken to have therein disputed the will, not only upon the objections to its execution raised by the "inscription en faux," but also upon the grounds of fraud and undue influence.

The legal effect and validity of the conditional or penal clause are now to be considered.

It has been argued that this particular clause is so vaguely expressed that it should be held to be void for uncertainty. Their Lordships cannot accede to this argument, which seems to be principally founded on the words, "faire, soit directement ou indirectement, aucune démarche quelconque pour contester mon présent testament." The terms, though general, seem to their Lordships to point to a contestation of the testament in a Court of Law, and to be made so general in order to embrace every form of legal proceeding wherein or whereby such contestation might take place. There is, therefore, no such uncertainty in the clause as might prevent its application.

A graver question raised is whether the law permits, or will give any effect to such a claim.

The reasons assigned in the formal judgment of Mr. J. Taschereau of the 6th of May, 1871, for treating the clause as "non écrite" (see Record, p. 8), may be shortly stated as follows:—

1. That in the circumstances of the case such a clause is contrary to public order ("l'ordre public"), inasmuch as the law requires the observance of certain formalities in the execution of wills, the testable capacity of the testator, and the absence of fraud and undue influence; and the strict application of such a clause would favour the non-observance of what the law requires and the commission of what the law forbids by deterring persons from disputing wills which on one or other of the above grounds ought to be declared void.

2. That such a clause, unless under exceptional circumstances, and in the absence of probable or reasonable cause for disputing the disposition, ought to be considered as inserted only *in terrorem* and deemed to be comminatory.

3. That the Respondents in contesting the will had not acted in the spirit of chicanery, but had a just and probable cause for suspecting the validity of the will and requiring it to be proved by legal proceedings; and that the application or non-application of such a clause is, in the discretion of a Court of Justice, to be exercised upon its view of the whole of the matters in dispute "l'ensemble du litige."

4. That in the opinion of the Court it was not

the intention of the testatrix to deprive her daughters of their small legacies if they disputed the very valuable gift to their brother, on all or any of the grounds upon which the validity of the testament was in fact disputed, but only in the event of their disputing the justice of the distribution which she made of her property, and in particular the clause by which she discharged her son from the liability of rendering any account as her agent.

The formal judgment of the Court of Queen's Bench (Record, pp. 274, 275), in support of the conclusion that "the clause, under the circumstances of the case, and considering the nature of the contestations of the testament by the Respondents, ought to be deemed 'non écrite,'" adopts and specifies the second and third of the above reasons. It is to be observed, however, that this document, which is the judgment under appeal, does not expressly declare the clause to be contrary to "l'ordre public," though many of the reasons given by Mr. Justice Badgley in the Judgment delivered by him seem to favour such a conclusion; and further, that the words "vu la nature de la contestation du dit testament," taken in connection with the judgment delivered, make it uncertain how far the final judgment of the Court of Queen's Bench proceeded on its erroneous view of the supposed abandonment of the grounds of fraud and undue influence which has already been adverted to.

The 760th Article of the Code Civil (by which it is agreed on all hands that this case is governed), is in these words: "Gifts, *inter vivos* or by will, may be conditional. An impossible condition, or one contrary to good morals, to law, or to public order upon which a gift *inter vivos* depends, is void, and renders void the disposition itself, as in other contracts. In a will such a condition is considered as not written, and does not annul the disposition." This clause must be read in connection with the 831st, which declares that "every person of full age, of sound intellect, and capable of alienating his property, may dispose of it freely by will without reserve, restriction, or limitation, saving the prohibitions, restrictions, and causes of nullity mentioned in this Code, and all dispositions and conditions contrary to public order or good morals."

It appears to their Lordships that these Articles

suffice to dispose of several of the conclusions on which the judgments under appeal have been shown to be founded, of much of the reasoning of the learned Judges in support of those conclusions, of many of the authorities cited at the Bar from ancient French writers, and of the arguments founded on those authorities.

For example, these articles of the Code, of which the terms are, in substance, hardly distinguishable from those of the texts of Justinian, leave no ground, if ground there ever were, for the proposition, repudiated, as Merlin (titre "Peine Testamentaire"), shows, by the best authorities, that the Theodosian Code, and, therefore, the Law of the Antonines on this point, ought to prevail over that of Justinian, in countries governed by the Code of Paris. They also sweep away all the fine distinctions between penal, and purely conditional dispositions which civilians have founded on the motives, real or supposed, of testators. But they do more. By declaring that a testator may impose upon his gift any condition not prohibited by the Code, and not contrary to law, public order, or good morals; they seem to cast upon Courts of Justice the duty of giving effect to all conditions, which do not fall within the above exceptions, according to the plain meaning and intention of the testator to be collected from his language. This consideration would dispose not only of the fourth, but of the second and third of the above-mentioned grounds for Mr. J. Taschereau's original judgment. Of the fourth, it may be remarked that it proceeds on one of those forced constructions of a testament which are tantamount to the making of a new will for the testator; and that it would in effect make the whole clause nugatory, since it would be idle to dispute particular clauses in a will duly executed by a testator of undisputed capacity, having a testamentary power over the subject matter disposed of, on the mere ground of the alleged injustice or unfairness of the disposition.

The second and third of the above-mentioned reasons, being those adopted by the Court of Queen's Bench, are closely connected together. It is stated by Merlin ("Répertoire de Droit," vol. ix, p. 227, titre "Peine Testamentaire") that little effect is given in practice to clauses of this kind;

that "Paul de Castres and a number of other authors regard them as purely comminatory; so that the penalties which they prescribe are not incurred as of absolute right by a breach of the condition, but are inflicted only in the very rare cases in which the suits brought by those whom the testator has forbidden to bring them, are found to have no other foundation than a spirit of calumny and vexation."

This implies not that the condition is in itself unlawful, or against public policy, but that either by an arbitrary rule of construction it is to be taken to import, however general may be its language, that the testator intended only to forbid the contestation of his will upon frivolous and vexatious grounds, or that there resides in the Court of Justice a discretionary power of giving or refusing to give effect to it, according to their view of the motives and conduct of those who shall be found to have infringed its letter.

There is nothing in the Code to warrant either of these propositions. The latter seems to rest upon the practice of the old French Parliaments; but the sort of dispensing or qualifying power so claimed and exercised by them has been condemned by the best Jurists, and repudiated in the Courts of Lower Canada, as is shown by the authorities cited by Chief Justice Meredith, and in the notes of Mr. Justice Carons' Judgment. And as the decisions of Courts claiming to exercise this anomalous power are the foundation of the rule of construction assumed in the former of the two propositions, and the rule itself is opposed to the ordinary principles of construction, their Lordships think that that also, if it ever existed, must be treated as obsolete; and that, in order to support the Judgment under appeal, the condition in question must be shown to fall within the exceptions expressed by the Code as being impossible, or contrary to good morals, to law, or to public order.

Impossible, or contrary to good morals, it clearly is not; it is not prohibited by any positive law; the disposition which it is designed to protect is neither contrary to law nor public order, since the testatrix had an absolute power of disposition over her whole estate; and the question is, therefore, reduced to this, viz., Is this clause contrary to public order, because it is designed to prevent the doing of that

which it is against public order to discourage. In considering this question their Lordships will treat "public order" as identical with what in this country is termed "public policy," though the latter is perhaps the larger of the two terms. And they must deal with the proposition laid down by Mr. Bowring, and indeed involved in the judgment of Mr. Justice Taschereau, viz., that every condition which implies the prohibition to dispute a will as a whole, as distinguished from a particular clause in it, upon any grounds which affect the legal validity of the instrument as a testamentary disposition sins against public order, and must be treated as "non écrite." They must do this because as they have already shown there is no ground for treating, as the majority of the Judges of the Court of Queen's Bench have treated, the Respondents as having contested the validity of the will merely on the grounds taken by the "inscription en faux;" and also because there does not seem to be, in principle, much reason for the distinction taken by those learned Judges. For if society has an interest in securing the trial of the question whether all legal formalities have been observed in the execution of a will, it seems to have an equal interest in the trial of the question whether a will has been obtained by fraud, or the exercise of undue influence from a person of imperfect capacity.

The question may be considered on principle, and on authority. Upon principle, it is to be observed that the prohibition cannot be absolute, and can be invoked only where the validity of a will has been unsuccessfully contested. If there be a clear and patent defect in the formalities attending the execution of the instrument; or if the incapacity of the alleged testator be clear and notorious, the heirs or other parties interested will, of course, contest the will, and, contesting it successfully, will set it aside with the clause of forfeiture. On the other hand, it is not easy to see why a testator may not protect his estate and representatives against unsuccessful attempts to litigate his will, by saying to a legatee, "I, being master of my own bounty, and free to give or to withhold, give you this legacy subject to the condition that you do not dispute the general disposition of my estate. You may contest the validity of my will if you please; but you will do so at the

peril of losing, if it be established, what it gives you."

Then, is this view of the question opposed to the authorities?

The French authorities are reviewed at great length by Chief Justice Meredith on the one side, and Mr. Justice Badgley on the other.

The result of them seems to be—

First. That such a clause would unquestionably be a *conditio rei non licitæ*, and therefore of no effect, if it were designed to protect a disposition contrary to public order, which is not here the case.

Secondly. That in the ancient jurisprudence there may be found texts which favour either side of the question, whether effect ought to be given to such a clause, when it goes to prohibit the contestation of the will as a whole; and some authorities which seem to recognize a distinction between contestations founded on the non-observance of the formalities for the execution of wills; and contestations upon other and more general grounds. But,

Thirdly. That it is clearly established in France, by the concurrence of the best modern text-writers, and the decided cases, that such a condition is not contrary to law; and will be applied if, on any ground, the will be disputed unsuccessfully; or, in other words, that the party disputing it does so at his own risk and peril.

Upon the second point it is, however, to be observed that one, at least, of the most important authorities cited by Mr. Justice Badgley, is capable of an explanation which would bring the case supposed within the first category. He cites from Furgole the following passage:—"Si dans un testament qui est nul par quelque défaut de formalité, le testateur dit, 'Je veux que mon testament soit exécuté, et si quelqu'un de mes successeurs légitimes l'attaque pour le faire casser, j'institue héritier un tel hôpital,' une telle disposition sera nulle et inutile quand même par quelque privilége de l'héritier institué, en cas de contravention, le testament ne manquerait d'aucune formalité, pour le faire valoir à son égard." It is obvious that this is a case in which the testator, having no original intention of bounty towards the hospital, makes the hospital, which under a special law was capable of taking

under an informal will, his heir, in the event only of his legal heirs disputing the dispositions of his will, on the ground of its informal execution. The object, therefore, of the condition is to enable the real objects of his bounty to take under an instrument which the law declares to be invalid, and so to protect a disposition contrary to public order.

The Respondents meet the modern authorities by saying that, as they consist of the texts taken from the works of commentators on the Code Napoleon and the decisions of the French Courts since the promulgation of that Code, they have little or no application to the present case. They are certainly not authorities which bind the Courts of Canada. But they seem to their Lordships to be, nevertheless, extremely valuable aids towards the right determination of the question whether the clause under consideration is contrary to public order. The question is certainly not conclusively determined by the ancient authorities. On this point it is sufficient to observe that Ricard himself, who is one of those most in favour of the Respondents, admits that a penalty is allowable when designed to defend a lawful disposition, although he goes on, in Article 1548, to show that the penalty is often, though not always, treated as comminatory. And the very fact that, under the old system, Courts of Justice exercised a discretionary power in the application of such clauses, shows that they were not absolutely void, or (in French phrase) to be deemed "non écrites," as being contrary to law or public order.

We find, then, the modern French jurists, whether writing as commentators or actually administering justice in the courts of law, dealing with the question whether, after the old discretionary jurisdiction had been exploded, and the law reduced, as in Canada, to a written Code, such a condition is contrary to law. They have solved that question in the manner above stated; and the solution is, in their Lordships' judgment, agreeable to reason. The phraseology of the French Code differs only from that of the Canadian Code in that it does not use the words "ordre public," but declares only that conditions shall be "reputées non écrites" if "impossibles ou contraires aux lois ou aux mœurs." "L'ordre public" is, however, only the spirit or policy of the

law, and the phrase is still used in some of the modern French cases when the question is whether the disposition to be protected is *res licita*. Demolombe, too (tom. 18, p. 319, art. 287), after stating that the penal clause is applicable to the heir who fails in his contestation of the testament, says expressly, "Et telle est, en effet, la doctrine qui nous paraît devoir être admise, lorsqu'il s'agit d'une action en nullité, *qui était fondée sur un motif d'ordre public*."

It was well observed during the argument that the determination of what is contrary to the so-called "policy of the law" necessarily varies from time to time. Many transactions are upheld now by our own Courts which a former generation would have avoided as contrary to the supposed policy of the law. The rule remains, but its application varies with the principles which for the time being guide public opinion. And, in dealing with the question before them, their Lordships think that very great weight is due to the opinions and decisions of modern French jurists.

Though the question is one to be determined by the law of Lower Canada, and not by that of England, their Lordships think it right to say something upon the English authorities which have been cited before them.

There are undoubtedly dicta and even decisions in some of the earlier cases to the effect that conditions of this kind were to be held to be *in terrorem* only, and, in the language of the Touchstone, "against the liberty of the law." But, in the case of personal legacies, effect was given to the condition if there was a gift over on the breach of the condition. The whole law on this subject appears to their Lordships to have been considered and put upon a sound foundation by the Court of Exchequer in Cooke *v.* Turner, 15 M. & W. upon the case sent to them by the Court of Chancery. It was suggested at the Bar that that ruling was not acted upon by the Court of Chancery in the particular case. But, from the Report of that case in the 15th volume of Simon's Reports, it appears that though pressed to send the case before another Court of Law, the Vice-Chancellor of England declined to do so, but directed, in the interest of the unborn issue of a marriage, an issue so framed as not

to involve the forfeiture by the legatees of their legacy under the clause assumed to be valid. The case of *ex parte* Dixon, 20 Law Journ. Chanc. N. S., which was decided by Lord Cranworth as Vice-Chancellor, after his judgment in Cooke *v*, Turner, is supposed to conflict with the latter. But it does not really do so. No doubt the learned Judge says of such conditions as the present that they had been "considered (whether justly or not it unnecessary to inquire) as contrary to the policy of the law." But he was not in any way called upon to decide that question; he was dealing with a condition of a very different kind, to which he gave effect. The real effect of his judgment is only that, if the condition be *conditio rei licitæ*, it ought to be enforced. It does not affect the authority of Cooke *v*. Turner.

Upon the whole, their Lordships have come to the conclusion that the preponderance of authority is, as well as principle, in favour of the Judgment of the Superior Court on review, and they will humbly recommend Her Majesty to reverse the judgment of the Court of Queen's Bench, and to affirm the Judgment of the Superior Court, with the costs incurred in the Court of Queen's Bench, and those of this Appeal.

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