THE DAILY EXAMINER

DECEMBER 6, 1892.

The New Cabinet

It appears by the amended list of members forming the Cabinet of Sir John Thompson that the Hon. W. Carling is retained, with Sir John Abbott and Hon. Frank Smith, as ministers without office, and that instead of Colonel Tisdale, Hon. J. F. Wood, of Hamilton, is Comptroller of Inland Revenue.

History of P. E Island.

How our fathers drove out their enemies and subdued the forest and established an organized Government; their labors and struggles while overcoming the difficulties by which they were beset; how means for internal and external communication for our people were supplied; the evolution of our system of popular education; the conditions of our union with Canada; the expulsion of our landlords,—in short the various phases of our little Island story ought to be intensely interesting to us and ought to be imparted to our children. The Rev. Fred. E. J. Lloyd has made a brave attempt to gratify our desires in this respect. He has written a history—a short readable history. We are informed that it embraces records of Governor Patterson, some of which have never been published, and that it affords many particulars concerning the early immigrants, the French occupation, and the founding of our religious denominations. Chapters on our educational system and our mail service—which have been submitted to the editor of THE EXAMINER—are well written and very interesting. The history, as a whole, seems to be one which might well be used in our schools as well as in our homes.

Judge Alley's Judgment.

EXCEPTION has been taken to some of THE EXAMINER'S remarks in respect to Judge Alley's decision *re* Joy vs. Palmer and others. It is needless to say that THE EXAMINER has no desire to misrepresent Judge Alley or any other man. In proof of this, we publish all that part of Judge Alley's decision which refers particularly to the appointment of Mr. Fitzgerald as Judge of the City Court. The other part is, like that which we reproduce, exceedingly well written, but it does not bear so particularly upon that phase of the case which is of public interest and importance, and to which THE EXAMINER referred. It may be remarked that Judge Alley's decision raises a question not only as to the legality of the appointment of the Judge of the City Court, but also to that of the Judge of Probate—recently made by the Provincial Government. We have already pointed out that the law explicitly states that in all the Provinces, except Nova Scotia and New Brunswick, Judges of Probate shall be the appointees of the Dominion Government:

"On the part of the defence, it is contended by Mr. Duncan McLeod, counsel for D. A Bruce, that this court has no jurisdiction to enquire into the regularity of these proceedings. In support of this objection, he examined Mr. Hedley Palmer as witness, who produced what purported to be a minute of a judgment in the city court in a suit of Donald A. Bruce vs. John Joy; and Mr. McLeod, claimed that, as the city court is a court of competent jurisdiction, its record of the judgment of that suit being good on the face of it, cannot be impeached in this court, either indirectly or collaterally. This argument does not appear to me to be entitled to much weight, for in the plaintiff's contention nothing is averred against the record as produced, his objection being to the execution—a proceeding subsequent thereto. Mr. Palmer proved that the minute or record produced by him was that of a judgment given by Mr. Fitzgerald on the third September, last on the capias produced in evidence by him, and the facts in evidence before me do not, in my opinion, warrant the issuing of such an execution on a judgment of this nature, whether the judgment as such be legal and sufficient or not. But this ground of defence involves another point which, to my mind, is a fatal one to the regularity of the whole proceedings, namely—whether the City Court as at present constituted is a court of competent jurisdiction as alleged by Mr. McLeod; whether, in fact, it has any legal existence as a court at all; and there can be no doubt that this is a matter in which it is not only my right but my duty to enquire into when its proceedings are pleaded as a ground of jurisdiction and defence in the suit before me; and particularly so when a minute or what is called a record of its judgment is produced in evidence and pleaded as an estoppel. The law on this subject is as follows: "The Supreme Courts take judicial notice of their own jurisdiction, but the jurisdiction of inferior courts must be alleged and proved as matter of fact." See Bullen & Leake p. 629, also p. 9. "A plea of justification under the process of an inferior court must set out all proceedings beginning with the plaint and must allege the jurisdiction of the court as to all material proceedings." Pitt vs. Knight, 1 Wm. Saunders—87-90 (1) See also forms of pleas Bullen & Leake, 774. It has been proved in evidence that Mr. Fitzgerald as Stipendiary Magistrate of the City of Charlottetown acts as judge of the City Court, and in proof his right to act as such a certified copy of an extract from a minute of council was produced in evidence by Mr. Arthur Newbery, Clerk of the Executive Council which reads as follows:

"Extract from minutes of Executive Council of Prince Edward Island, of 18th December, 1889.

"Ordered that Rowan Robert FitzGerald, Stipendiary Magistrate of the City of Charlottetown, be appointed Judge of the City Court of the City of Charlottetown."

Mr. Newbery further proved that no commission was issued upon this order, and he could not state whether it was ever communicated to Mr. FitzGerald, or acted on by the Council in any way. Upon this evidence, Mr. McLeod contended that Mr. FitzGerald must be presumed to have authority to act as Judge of this Court. Now, it is a rule of law that, when acts are done of an official nature, or require the concurrence of official persons, a presumption arises in favor of their due execution under the maxim *omnia praesumantur rite esse acta*. Hence it is to be presumed that a man acting in a public capacity is properly appointed and duly authorized so to act in the absence of evidence to the contrary. But in all acts of this nature the evidence is merely *prima facie* and presumptive, and may be rebutted when the regularity of the appointment is a pertinent enquiry. Here, the Acts of the Legislature relating to the subject plainly show that Mr FitzGerald, as Stipendiary Magistrate, is not and cannot be Judge of the City Court, and that the order in Council above mentioned can have no legal effect whatever. "The City of Charlottetown Incorporation Act," passed in 1888, provides by its 147th section that "the Stipendiary Magistrate of the said city, for the time being, shall hold a Court for the recovery of small debts, to be known as the City Court, and he shall be the Judge of such Court," but this section is expressly repealed by an act passed the following year (52 Vic, cap. 14), and the following substituted therefor:

"There shall be in said City a Court of Record, to be called the City Court, over which one Judge shall preside." Now, it is provided by the 143rd section of the City Act of 1888 above quoted that the person who shall be appointed Stipendiary Magistrate for the said City shall not fill any other office. Hence it is clear that when, under the act of 1889, a new office of Judge of the City Court was created, distinct from that of Stipendiary Magistrate, the Magistrate was rendered ineligible to fill that office by the section I have just quoted. The order in council of December, 1889, made nine months after the Act of that year came into force, appointing the Stipendiary Magistrate a Judge of the City Court, is therefore ultra vires, and would in effect, if not in express terms, revive the 147th section of the Act of 1888, which the Legislature had expressly repealed.

"Apart from the disqualification of Mr. Fitzgerald to act as Judge of this Court under the Provincial statutes, there is also the further question whether the Provincial Government have, under the constitution, any power to appoint a judge to this or any other court in this Province. It will be observed that, under the law now in force, the Provincial Legislature have enacted that a City Court shall exist, over which one judge shall preside, but they have not provided who that judge shall be, or how or by whom he shall be appointed. The only officials recognized as Judges under the British North America Act are the Judges of the Superior, District and County Courts, including Judges of Probate and Admiralty—the word District having reference to judicial districts in the Province of Quebec. Under section 96 of that Act, the power of appointing all such judges is vested in the Governor General. The respective rights and powers of the General and Provincial Governments on this subject are fully set forth in a report of the Minister of Justice (Sir John Thompson) to the Privy Council in regard to the disallowance of the Act of Quebec relating to District Magistrates, passed in 1888. From this it would appear that the power of the Provincial Governments, if any, is limited to the appointment of magisterial officers with subordinate jurisdiction and to Judges of Probate in Nova Scotia and New Brunswick, which is expressly reserved to them under the British statute. I do not, however, deem it necessary to more than call attention to this point, as in my view the the local Government whether the right to appoint a Judge vests in them or not under the British North America Act, have not the power to appoint the Stipendiary Magistrate as Judge of the City Court in the face of the express enactment of their own legislature, disqualifying him from acting as such, to which I have already referred.

"This objection to the jurisdiction which is raised by Mr. McLeod's plea of justification, lies at the very base and root of the whole proceedings, and in my opinion renders them absolutely null and void and all the parties trespassers. The questions involved in the defence raised in this suit are of paramount importance, and it is manifestly in the public interest that they should be decided for the protection of innocent suitors who may not only lose their debts but be mulcted in heavy damages in seeking to recover them in a court without jurisdiction. I have therefore dealt to some extent with these questions in this judgment so that in case of an appeal they may be considered and determined by the Appellate Court.

"Judgment must be given for the plaintiff; and the only remaining question is the damages. With regard to the damages under the trover and trespass counts, I shall assess the value of the watch at $27, being the value placed upon it by Messrs. Taylor and Tanton, and the five cases of oyster clams at $5.50 per case, being the value stated by Messrs. Grant, Large and May. Under the count for false imprisonment there is no ground for awarding exemplary damages, and I shall allow the plaintiff $10, making in all $64 50, for which judgment will be entered.

Sudden Death.

Leaves have their time to fall,
And flowers to wither at the North wind's breath,
And stars to set; but all,
Thou has all seasons for thine own, O death!

Angus Campbell, eldest son of Donald Campbell, Greenvale, in company with a younger brother, left his home on Sunday afternoon to attend vespers in St. Mary's Church, Souris. Being on foot, they followed the back road through the woods and were hurrying on to reach their destination in time. When near O'Hanley's clearance the church bell began to ring and the two quickened their pace into a run. After proceeding thus for a short distance, Angus complained of feeling faint and fell on his knees. The brother went to his assistance and did what he could to relieve him, but in vain, as a few minutes after he breathed his last. Deceased was 22 years of age, and was an exemplary young man in every respect. Much sympathy is felt for his bereaved parents in their great affliction.

Personal.

The Master of the Rolls arrived home from Boston last evening.

The Rev. Allan McLean and wife, of Hampton, last week paid a visit to their friends at Bay Fortune and Dundas.

We are sorry to hear that John Nichols, Esq., of Annandale Mills, is laid aside with a severe attack of tonsilitis, but hope he will soon be on foot again.

At the earnest solicitation of his present parishioners, the Rev. J. G. Cameron, of Souris, has decided not to accept the call from the church at Acadia Mines, N. S.

Goldwin Smith has accepted the post of honorary president of the Continental Union Association of Toronto. In his letter of acceptance Smith says his love of the motherland impels him to accept the position.

THE TURF.—Kremlin made another attempt to regain the stallion record at Montgomery, Ala., on Thursday. He made a mile in 2 09. A bad break in the stretch ruined his chance. It is not likely that he will be started again this season.

Warm and comfortable room at the auction to-night. A few good clothes wringers without reserve.—E. H. Norton.

TELEGRAPHIC NEWS.

SPECIAL DESPATCHES TO THE EXAMINER.

The New Cabinet.

AMENDED LIST OF MEMBERS

Hon. J. F. Wood Is "In It."

OTTAWA, Dec. 6.

The following is the *personel* of the new Cabinet, as finally amended:

Sir John Thompson, Premier and Minister of Justice.
Hon. Geo. E. Foster, Minister of Finance.
Hon. MacKenzie Bowell, Minister of Trade and Commerce.
Hon. Sir A. P. Caron, Postmaster General.
Hon. John Costigan, Secretary of State.
Hon. Chas. H. Tupper, Minister Marine and Fisheries.
Hon. John Haggart, Minister of Railways and Canals.
Hon. J. A. Ouimet, Minister of Public Works.
Hon. J. C. Patterson, Minister of Militia & Defence.
Hon. Thos. M. Daley, Minister of the Interior.
Hon. A. R. Angers, Minister of Agriculture.
Hon. W. B. Ives, President of the Council.
Sir John Abbott, Hon. Frank Smith and Hon. Mr. Carling, Ministers without Portfolio.
Hon. Clark Wallace, Comptroller of Customs.
Hon. J. F. Wood, Comptroller of Inland Revenue.
Hon. J. J. Curran, Solicitor General.
Mr. Schrieber has assumed control as Deputy Minister of Railways and Canals and Chief Engineer of Railways and Canals, and simultaneously. Mr. Pottinger commences his duties as General Manager of the Intercolonial Railway.

Lieut.-Governor Chapleau.

MONTREAL, Dec. 6.

Hon. Mr. Chapleau left for Ottawa yesterday and will return to-morrow evening, when he will proceed to Quebec to be sworn in as Governor of the Province. It is not yet decided who will contest the ex-minister's seat, Terrebonne, although Senator Tasse is mentioned.

Schooner Lost.

NEW YORK, Dec. 26.

The schooner Ethel, Emmerson, hence for Sackville, N. B, with a load of sand, struck the wreck of the yacht Alva off Pollock Rip on Dec. 2d, and sprang a leak and filled. She was owned by William Hickman.

General Telegraphic News.

CALCUTTA, Dec. 4.—Shere Afzul Khan, the usurping ruler of Chitral, has recognized the Ameer of Afghanistan as Suzerain of Chitral. Goods in transit from India through Chitral will henceforth pay duty to the ameer. The Indian government will not admit the suizerainty of the ameer.

LONDON, Dec. 4.—The Standard's Berlin correspondent says that in a draft of the conservative platform the first paragraph reads: "We combat Jewish influence in our national life, upon which it acts with a disintegrating effect. We demand Christian government for Christian people and Christian teachers for Christian pupils. We condemn the excesses of anti-Semetism.

MONTREAL, Dec. 4.—Hon. Mr. DeBoucherville has as good as resigned the premiership of the province and has recommended that Hon. L. O. Taillon be called in his stead. Although the member for Chambly, at first declined the high honor his friends and both the English and French members are unanimous in their support of the man who was defeated on the Riel cry six years ago. The club Cartier called an emergency meeting here yesterday and unanimously endorsed Hon. Mr. Taillon as the future leader of the conservative party in this province.

NEW YORK, Dec. 4.—Samuel R Moore, who, it is said, has an interest in a large clothing establishment here, was arrested yesterday in suit brought by Albertina L Belle, to recover $20,000 damages for breach of promise of marriage. The order of arrest was issued upon an affidavit of Erastus Wiman, that Moore was about to leave the state. Mr. Wiman says he had known the plaintiff and her family, having been introduced to them by the most respectable and influential people in the city of Montreal, where they are well known, enjoying the respect and esteem of good people. He has every reason to believe that the statements of the plaintiff are truthful. Miss La Belle says she is 21 years of age. One of her sisters is Lady Welina La Belle Roberti.

VANCOUVER, Dec. 4.—Two tribes of Indians in the western portion of Vancouver Island are engaged in warfare, as a result of a supply of whisky of which they have in some way become possessed. The lighthouse keeper at that point is shut up with his daughter in the lighthouse in a state of siege. They have telegraphed for a man-of-war to be sent to quell the fighting, and the revenue cutter Quadra, with fifty policemen, have been despatched to the scene of the trouble.

J D McLeod & Co call attention in another column to their stock of winter apples. Call and see them if you want a good barrel cheap.

BIRTH.

On the 4th inst., the wife of George Coles, North Milton, of a son.

Annual Meeting.

THE Annual Meeting of the Young Men's Christian Association will be held in the Association Lecture Room on the evening of MONDAY, December 12th, 1892, at 8 o'clock, for the election of officers for the ensuing year and for general business. A full attendance of members is requested.

F. S. MOORE,
President Y. M. C. A.

Charlottetown, Dec. 3, 1892—eod tl dte

THE McKAY WOOLEN MILLS,

MANUFACTURERS

TWEEDS. For genuine All-Wool, every day wearing TWEEDS, we have the best value on the Island.

BLANKETS. Our make of BLANKETINGS, in White and Colored, are cheaper and will give the best satisfaction of any you can buy.

FLANNELS. In WHITE and COLORED, Heavy, Strong and Warm. Just the article for Winter use. OUR OWN MAKE.

READY-MADE CLOTHING, From Our Own Tweeds. For All-Wool Heavy Winter Suits of Clothing, those made from our own Tweeds will give A 1 value for your money. An immense stock of all kinds always on hand to select from.

READY-MADE CLOTHING, IMPORTED. We have every style, every kind and all prices that is wanted—carefully selected, bought for cash, all new and clean. No Clothing House can show you a better or cheaper line of goods.

Come to the Store where you can get the Largest Assortment to select from. Remember, our prices are low. You will save money by buying from us.

McKAY WOOLEN COMPANY.

Charlottetown, November 12, 1892—dy eod & wy

SURPRISE!

That is the only word that expresses our customers' feelings when they see the goods we put up in our $10 OVERCOATS and $2.50 PANTS. We sell every time. The biggest sale of Overcoats for November we ever had.

JOHN McLEOD & CO

Charlottetown, December 6, 1892—eod & wky

BOOMING TRADE!

WE are bound to sell $500 more this month than the corresponding month last year, and in order to do so, have

ORDERED OUR CHRISTMAS STOCK EARLY,

and we will sell, during November, both our old and new stock at a BIG DISCOUNT.

Our winter stock of BOOKS is now in, and we are sure we can suit you to anything in the line. GIFT and TOY BOOKS—see them. Boys' and Girls' Own Annuals, Leisure Hours, Chatterbox, Sunday Home, etc., etc.

Writing Desks, beautifully inlaid; cheap. New stock of SHELL GOODS, at prices that will surprise you. PHOTOGRAPH ALBUMS, Leather or Plush, at your own prices. FANCY PLUSH STATIONERY BOXES, just the thing for Xmas Presents. Our stock of CHINA is something immense; everything beautiful and useful. Handsome CARVING SETS, from $5 to $15; good. PICTURE EASELS, HAND AND MANTEL MIRRORS, largest assortment and lowest price in the city. PICTURES, framed or otherwise; gems.

We are glad to show you our goods whether you intend buying now or not. Call and see the

BAZAAR STORE. Queen Street.

Charlottetown, Nov. 14, 1892—eod & wy

CHOICE

Winter Apples!

Spys, Baldwins, G. Russets, Greenings, Kings, &c.

CALL AND SEE THEM. FOR SALE CHEAP.

J. D. McLEOD & CO

Ch'town, Dec. 6, 1892—3i eod

LECTURE!

—ON—

Thursday Evening, 8th inst.,

—IN—

ZION CHURCH LECTURE ROOM.

THE REV. ANDREW ROBERTSON, of New Glasgow, N. S., will deliver his Lecture on

"A Night in Thrums, or Studies in Scottish Life and Character,"

illustrated with Readings from the works of J. M. Barrie, the famous Scottish author. Admission, 10 cents.

Doors open at 7.30. Lecture to commence at 8 o'clock. 3i—dec6

CHARLOTTETOWN DRIVING PARK

—AND—

Provincial Exhibition Association.

THE ANNUAL GENERAL MEETING of the Shareholders of this Association will be held in McLeod's Hall, Queen Street, Charlottetown, on TUESDAY EVENING, the 27th of December, instant, at 8 o'clock, for the transaction of general business

A full attendance is requested.

The Transfer Books of the Association will be closed from this date until the day after the General Meeting.

By order of the Directors.

A. B. WARBURTON,
Secretary.

Charlottetown, Dec. 3, 1892—pat guar d&w

TO LET—The Dwelling House on Hillsborough Street, adjoining the residence of Mr. Lemuel Poole, and containing seven rooms, newly papered and finished throughout. Immediate possession.—GEORGE ALLEY. dec5

WANTED—A girl for general housework. Apply at this office. 3i pd—dec6

WANTED IMMEDIATELY—A housemaid Good wages; no washing. Apply to MRS. STRICKLAND, Fitzroy Street. tf—dec6

WANTED—A servant girl to do general housework. Apply to MRS. JAS. MORGAN Lower Great George Street, nearly opposite Bishop's Palace. 2i pd—dec6

TO LET—Half of a double house in the Common of Charlottetown, near the grounds of the Woolen Mills. Apply to JOHN INGS. dec6—3i pd

LOST—In this city, on Tuesday last, a wallet containing money The finder will be rewarded on leaving it at THE EXAMINER office. dec6

LOST—Between Kent Street and the end of the Malpeque Road, a large door key. The finder, by leaving it at this office, will be paid for his trouble. 1i dec6

LOST—A Gentleman's Cashmere Waterproof Coat, between Charlottetown and Ten Mile House, Georgetown Road. Finder will be rewarded by leaving the same at James Paton & Co's, Scotch Clothing House. dec5

A COLD WAVE COMING!

—(x)—

OVERCOATS & WARM SUITS

Are now the Order of the Day.

—(x)—

COME AT ONCE TO OUR STORE and pick from fashions the choicest buds of your fancy at prices that no house in town can match. We are offering immense Bargains during December. Crowds have already taken advantage of this great offer. **Overcoats made to order for $10.**

D. A. BRUCE,

Ch'town, Dec. 6, 1892—eod REGULATOR OF LOW PRICES.

The Diamond Bookstore and Bazaar

UNDER ONE ROOF.

—(x)—

TWO STORES IN ONE.

—(x)—

FOR THE HOLIDAY SEASON the original and long established BAZAAR over the DIAMOND BOOKSTORE will open on MONDAY NEXT, December 5th. The both Departments will show the

Grandest Display Ever Seen on P. E. Island.

These Premises, the most commodious in the city, gives the purchaser a special advantage in selecting Gifts.

OUR 50 CENT TABLE

will be a GREAT ATTRACTION, and contain goods in value as high as $2 50 Be sure to see it. You will be both astonished and delighted.

THOUSANDS OF TOYS, HEAPS OF FANCY GOODS of Newest Designs and Best Value.

The Display of CHRISTMAS CARDS is new and unique. Very cheap.

Do not forget to view the rare exhibition of JAPANESE WARE—the finest ever shown here. The assortment is quite new and rare.

All the BOUND ANNUALS, such as Boys' Own Paper, Girls' Own Paper, Leisure Hour, Sunday at Home, Young England, etc., for $1 90 each.

BOOKS in endless variety, embracing the Poets, from 15 cents upwards.

GIFT BOOKS from 2 cents upwards, in every kind of binding.

CHRISTMAS NUMBERS of Dominion Illustrated, Illustrated London News, Graphic, Father Christmas, Black and White, Gentlewoman, Holly Leaves, Chatterbox, Toronto Saturday Night, etc.,—cheapest in the city.

IN A WORD, you can get at the DIAMOND BOOKSTORE AND BAZAAR (the only two Stores in one in this city) the BEST HOLIDAY GOODS AT THE LOWEST PRICES. Big discounts to wholesale buyers.

FORGET IT NOT—Get one of our Illustrated Papers, "THE POINTING HAND," *free* and you will find out that "the half has not been told."

SCHOOL BOOKS and SUPPLIES, Wholesale and Retail, less than elsewhere

THEO L. CHAPPELLE,

DIAMOND BOOKSTORE AND BAZAAR, CHEAPSIDE.

n, December 1, 1892—3i eod

Fall and Winter.

—(x)—

Axes (Broads and Fowler's). Axe Handles, Sleigh Shoe and Caulk Steel Bar and Sheet Iron, Horse Shoes, Cut, Clinch and Horse Nails. Zinc, Shovels, Forks, Glass, Paints, Oils, Powder, Shot,

Also, a full line of the celebrated Disston Crosscut and Hand Saws, Files, etc., at lowest prices, wholesale and retail.

FENNELL & CHANDLER,

Charlottetown, Nov. 18, 1892—tu sat & wy VICTORIA ROW.

Reefers, cheap; Reefers, cheap; Reefers, cheap; Reefers, cheap. All sizes kept in stock at the SCOTCH CLOTHING HOUSE.

CAPE ULSTERS, CAPE OVERCOATS, FUR-LINED ULSTERS, REEFERS AND OVERCOATS,