

THE DAILY EXAMINER. JANUARY 31, 1884.

The Recent Scott Act Judgment.

[CONTINUED]

This distinction is clearly shown in the recent Dominion Liquor License Act of 1883, where the sections of the Act regulating the examination of witnesses, being together, make the intent of the Legislature very apparent, and show the fallacy of the reasoning we referred to. Sections 139 and 140 of that Act read as follows:—

139. Every person other than the defendant, summoned or examined as a witness in any prosecution brought under this Act, is bound to answer all questions put to him, and which are pertinent to the issue, notwithstanding that his answers may disclose facts tending to subject him to any penalty imposed by this Act; but such evidence shall not be used against him in any prosecution.

140. On the trial of any information or complaint under the provisions of this Act, the person charged, or husband of such person, shall be competent and compellable to give evidence as a witness in the said matter.

These sections surely cannot be interpreted to mean other than that the witness is protected, and that the person charged (or the defendant) is not. We should rather enjoy the solemn judgment of a Court which, under these sections, held that the defendant was examinable as a witness; but as his privilege is not expressly taken away, the evidence given by him could not be used against him in the prosecution then pending. The usefulness of examining him would, under such a judgment, be very apparent, and the wisdom of the Legislature in passing such an enactment still more so. Yet why should the fact of two similar sections in the Scott Act, being some few inches further apart, make the one judgment more sensible than the other? Is not the amusing spectacle of the Legislature, in the one case, compelling the defendant to give evidence, and then indemnifying him from any unfortunate results the moment it falls from his lips, a fit stereoscopic counterpart to the other, wherein this same august body is presented, ordering a similar delinquent to give evidence, but simultaneously closing his mouth with the legal gag, "Nemo tenetur seipsum accusare." We wish to preserve no copyright in our suggested picture. We rather suggest it as a frontispiece for the Judges edition of the Liquor License Act of 1883.

Now to the second point. We say that the object of the Act is plain—if the words can be considered doubtful—it is to examine the defendant; and by the true rule of legal construction that meaning which best suits the scope and object of the Statute and promotes its real intention, must be given. It is not the duty of the court to find reasons for not interpreting an enactment, as including all its logical consequences strictly, though may be only implicitly resulting therefrom. It is just the reverse, it is to give effect to every word and implication in a statute, no matter what the consequences may be. Shall we make ourselves plain by a quotation made in point from Maxwell on Statute Law, (of the highest legal authority):—"The Bankrupt Acts in requiring a bankrupt to answer self-criminating questions relative to his trade and affairs, made his answers subject to the general rules of the law of evidence, and consequently admissible in evidence against him even in criminal proceedings. To hold otherwise would have been in effect to suppose that the Legislature in expressly changing the law which had hitherto protected him from answering, intended also to make the further change by mere implication, and suspending pro tanto the ordinary rule as regards the admissibility of self-prejudicing statements."

What does this mean? simply that the law said to every bankrupt you must in your bankruptcy proceedings answer any question, whether criminating or otherwise, nothing more. Yet because this enactment expressly changed the law which had hitherto protected him from answering, his answers are here held admissible in evidence against him in a criminal prosecution. They are not made expressly so, anymore than the words in the 123rd section do not expressly say he must criminate himself.

We wonder in the mind of that writer what arguments would have been assigned to the arguments against such an interpretation of the Bankrupt Act (supported by judicial decisions not to be conveniently quoted here) suggested in the judgment under review as "founded on the known infirmities of human nature too weak to be restrained by the religious and moral obligations of an oath when tempted and solicited in a contrary direction by temporal interest, or the desire to escape present punishment, etc." The deputation, however, consisting of James E. Robertson, M. D., C. E. Fraser, J. M. Aitken, W. C. White, E. T. Wickwire, R. W. Sprague, H. Nelson, John McLean, Duncan McDonald, Angus McPhail, D. Martin, John A. McDonald, C. D. Poole, Joseph Warren, and John F. Robertson, waited upon him at his residence, where the address was presented by Dr. Robertson. Speeches were made by many of the deputation, all of whom expressed their extreme regret at his departure.

It must be very gratifying to Mr. Fitzgerald to receive such an address, signed as it is, by all classes in the community. As he says in his reply, it is the best evidence that his work has been appreciated, and that the institution over which he has presided, has been of material benefit to them. The success of the bank at Montague must be largely due to his

ventures to deprecate the use of such an argument, in the face of all modern legislation, which alike makes the criminal, in certain cases, answer an oath as well as the civil plaintiff and defendant, the latter of whom have generally vandy more at stake than \$50 or \$100, and consequently, a much greater incentive to perjury.

This article is longer than we intended. We close it expressing the hope that this decision will be appealed from and that in the Appeal Court other counsels will prevail. Not that it is necessary to bring this particular judgment up for review because it appears to us that a similar question must ere long be raised under the section quoted in the License Law of 1883, when it will be the interest of all parties to have the highest judicial opinion obtainable.

Belfast to the Front with the Grits in the Rear.

THE Patriot has an article headed "Belfast to the Front," which is a good illustration of whistling to keep up ones courage. With much reluctance and hesitation the Grit party have settled down on Mr. Duncan McMillan. Over two weeks ago, Messrs. John F. Robertson and Roderick Munn made a pilgrimage to Belfast, and selected Mr. McMillan; and that gentleman was understood by the public to be in the field. THE EXAMINER, in fulfilment of its duty to the public as a newspaper, announced Mr. McMillan's candidature; but the Patriot said "never a word." The cooler heads among the Grit managers knew that Mr. McMillan could not carry the District, and they waited in the hope that a split might occur in the Conservative ranks, or that a sectional feeling might be invoked in favor of the Grit cause, and Mr. McMillan was permitted to wait for nearly ten days without seeing his name mentioned in the Patriot. The agony is now over. Nothing better could be done for the party than to adopt Mr. Duncan McMillan as the Grit candidate; and the organ dubs him "a good and true man, a Liberal who will not flinch at his post."

When our contemporary says that Mr. Duncan McMillan is a Liberal, it means that he is a Grit. Now we would like to inquire when, and under what circumstances, Mr. McMillan became a Grit? The truth is the Grit party have, in the nomination of Mr. McMillan, who, until quite recently, has been a pronounced Conservative, admitted that, in the regular ranks of their own party there is not, from Alexandria to Little Sands, a man qualified to become the representative of the District. Mr. Duncan McMillan is, we believe, in private life, a very amiable man; but his Conservative friends, who knew him best, and who are still his best friends, never for a moment thought of bringing him out as a candidate for Legislative honors. In the Grit party the standard is lower, which is amply proved by the fact that nearly all the representative Grits in the Province are deserters from the Conservative camp, but whose desertion the latter party have never felt as a serious loss.

It might be expected that even the faithful Grits of Belfast would resent the insult which has been so often repeated, of calling on them to vote for renegade Conservatives, and we hear of some faint murmurings. These will not, however, amount to much. John F. Robertson and Roderick Munn have made the choice, and the faithful have nothing to do but to ratify it.

THE Patriot is very anxious to know if the Government policy is to abolish the Prince of Wales College, and thinks the electors of Belfast should be advised on this point before the election. It would be well also to know what the policy of the Opposition is with regard to the College. For some years that institution and its professors have been attacked in the coarsest manner possible by members of the Opposition in the House of Assembly. The defence of the College devolved on the Hon. Mr. Ferguson, and other members of the Government. We hope the Government will be able to make the College still more useful in the future than it has been in the past. Our correspondents appear to have helped the College materially. A few strictures on College matters by correspondents of THE EXAMINER is sufficient to convert the Grits from being coarse assailants into warm admirers and defenders of the College and its professors.

We publish to-day the address presented to M. J. Fitzgerald, Esq., the deservedly popular Manager of the Branch of the Bank of Nova Scotia at Montague. It was intended to be presented to him in the Hall which he so materially assisted in erecting, but his illness prevented this. The deputation, however, consisting of James E. Robertson, M. D., C. E. Fraser, J. M. Aitken, W. C. White, E. T. Wickwire, R. W. Sprague, H. Nelson, John McLean, Duncan McDonald, Angus McPhail, D. Martin, John A. McDonald, C. D. Poole, Joseph Warren, and John F. Robertson, waited upon him at his residence, where the address was presented by Dr. Robertson. Speeches were made by many of the deputation, all of whom expressed their extreme regret at his departure.

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exertions, for he was placed in charge of the branch when it first opened, and has continued so until the other day. We join with his numerous friends in wishing him every success in his new sphere of action—while we too regret his possible removal from this Province, knowing of his active support in every work having for its object the material improvement of the community wherein he resided.

John N. McLeod, Malcolm McPhee, Sr.; Norman McPhee, Martin Martin, Laughlin McPhee, Michael McDonald, William Munroe, Walter Kearney, Charles McKinnon, Angus McPhee, Thomas Beas, George Beas, John McPherson, Duncan Gillis, Donald Beaton, Daniel Beaton, M. M. Stewart, Hugh McDonald, Benj. Nicholson, Joseph Martin, John McPhee, Malcolm McPhee, jr.; Peter Gormley, John McCarthy, Wm. McCarthy, James Compton; Norman McPherson, John McPherson, Philip Beas, Donald Hume, William McPhee, D. A. McPherson, Alex. McPhee, George Bethune, Peter Stewart.

James McDonald, Bernard McEgan, Elisha Weatherby, John Nicholson, James Mahar, Robert Beas, James McLaughlin, Philip Curran, Patrick Campbell, An. M. McDonald, Alex. Martin, John McDonald, Peter Cleary, Donald A. Gillis, Donald Stewart, James Stewart, Angus Martin, er, Alex. Ross, Donald McDonald, Alex. Ryland, Daniel Nicholson, Wm. Matheson, James Gorman, Angus McSwain, Hugh McLean, Wm. Gormley, John D. Martin, John D. McPherson, A. F. Bruce, Hugh P. McQuaid, John D. Ross, Allan McDonald, William Martin, Angus Martin, Alex. Gillis, Alex. W. Martin, Martin Martin, Alex. Martin, Malcolm Gillis, James McLean, John McDonald, W. W. Walker, James Walker, Donald Martin, Alex. Nicholson, John McPherson, Duncan Finlayson, John Gillis, Peter McPhee, Arch McDonald.

As a Bank Manager we are happy to testify to your ability, and integrity; and believe that you are well qualified to fill a like position with credit to yourself and success to the Corporation employing you.

In our intercourse with you, either as Bank Manager or friend, we have always found you courteous, straightforward, and true, and can safely say that your departure will cause a blank in this community very hard indeed to fill.

Had your departure been more generally known, we feel assured that hundreds of our prominent inhabitants (who are now denied the opportunity) would have cheerfully joined with us in signing and presenting this address.

In parting with you, and while we linger on the words, good-bye, we pray, that your future course through life may be marked by health, happiness and prosperity.

We are, dear Sir, Yours sincerely,

MONTAGUE.—Rev. Wm. Phelan, James E. Robertson, M. D., E. J. Wickwire, James M. Aitken, John A. McDonald, Wm. McLeod, John T. Robinson, Robert Cameron, J. P. Donald McKay, John T. Dewar, Martin Lambert, James Dolaney, Charles B. Fraser, Wm. White, Charles D. Poole, John McLean, Jas. Campbell, John Vickerson, Albert J. White, James Gillis, Edward Parkman, W. C. White, Geo. Wightman, J. P. Duncan McDonald, R. W. Sprague, J. P. Angus McPhail, John D. Bell, Patrick Kelly, P. G. Fraser, Donald Forbes, Alex. Lemon, Rev. Wm. W. Macdonald, Malcolm Lamont, Wm. T. Vandierstine, Arch McLaren, Norman McLeod, Daniel A. Martin, Horatio Nelson, John S. Nelson, James McCarron, James N. Rourke, Joseph Kennedy, Emanuel Griffin, John J. Hines, Peter Keley, William Keith, Stewart Keith, Peter E. Campbell, Wm. D. Shaw, Richard Lemon, Matthew Brehaut, Daniel McDonald, John M. Gillis, Daniel J. Stewart, Alex. McVane, Moses Bourke, Andrew McAuley, J. H. McLean, John Burns, Joseph Campbell, Thomas Collins, Lawrence Kennedy, Norman J. McDonald, William Kennedy, William Conaghan, John Annear, Joseph Warren, Laughlin McLean, Daniel Riely, Angus Beaton, George Weatherly, John Lemon, Malcolm Gillis, John Murphy, Michael Power, James Compton, Donald McLeod.

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BEFORE STOCK-TAKING,

— AT THE —

LONDON HOUSE.

WE SHALL CLEAR OUT

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Every Department,

AT GREATLY REDUCED PRICES.

GEO. DAVIES & CO.

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Our Store Closes Every Evening at Six o'clock (Saturday Excepted).

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W. & A. BROWN & CO. are selling the following lines of Dry Goods, at very low prices, to clear before stock-taking 1st April:

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Also a special line of Dress Goods, of excellent value, and suitable for the season, reduced to twenty-two cents.

A large stock of Carpets, Oilcloths, Hearth Rugs, Mats, White and Grey Cottons, Sheetings, Pillow Cottons and Linens, Fancy Shirtings, etc., bought very low, and now opened, ready for the early Spring Trade.

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FLOUR, FEED AND PROVISION,

STORE,

South Side Queen Square, near Queen Street,

HAVE to announce that they have on hand the following goods, which they are prepared to sell at reasonable prices and in quantities to suit purchasers.

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OATMEAL, CORNMEAL, BRAN, SHORTS, OATS,

CRUSHED FEED, either Oats and Barley or Oats, Barley and Corn. APPLES, which will be sold by the barrel or by the pound, at rates very little over barrel prices.

Ch'town, Dec. 18, 1883.

D. A. BRUCE,

MERCHANT TAILOR, SOUTH SIDE QUEEN SQUARE, CHARLOTTETOWN. IS OVER-STOCKED with the following GOODS, and offers them at a REDUCTION OF TWENTY PER CENT. Gents' Woollen Underwear, Flannel Shirts, Fur Caps, Kid Mitts, Sleigh Robes. OVERCOATINGS, WHICH YOU CAN HAVE MADE TO YOUR MEASURE Cheaper Than Imported Ready Made. Dec. 20, 1883.—eod wklly D. A. BRUCE, 72 Queen Street, Charlottetown