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PROGRESS.

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St. Stephen's Streets and Public Places;
THE PICTURESQUE BORDER TOWN.
Her Leading Men and Business Houses
In the Grand 16 Page Number.

VOL. II., NO. 70.

ST. JOHN, N. B., SATURDAY, AUGUST 31, 1889.

PRICE THREE CENTS

JUDGE PALMER'S VIEW

OF THE PARKS VS. PARKS CASE IN THE EQUITY COURT.

He will Order Wm. Parks and Wm. J. Parks as Parties to the Suit, and Have Enquiries Made into the Affairs of the Estate—His Judgment Yesterday.

This is a suit to administer the estate of the late William Parks. It appears by the pleadings that the testator died seized of a considerable amount of real and personal estate, leaving a will by which he bequeathed to his wife and daughter all his household furniture and his dwelling house during their lives with remainder over. He also bequeathed to his wife an annuity of \$1200 a year during her life, and to his daughter, the plaintiff, \$2000 yearly during her life, and directed his executors and trustees to appropriate out of the funds of the estate sufficient stock funds or securities so that the income thereof would be sufficient for the payment of these annuities. These funds so appropriated for his wife's annuity he gave to such persons as she should by her will appoint, and the funds appropriated to pay the daughter's annuity at her death to such persons as she should by her will appoint, and it also directed that if the income from those funds should be insufficient to answer the annuities he authorized the trustees to apply a portion of the principal to such payment. Then follows a rather remarkable statement in the will in these words:

And that under no circumstances whatever shall there be any default or delay in paying the said respective annuities as aforesaid.

Then he gives in fee to the defendant John H. Parks the cotton factory, together with all the engines, machinery, tools and implements used and employed therein; then he devises to William H. Parks certain lands in Kent county. The testator then expresses his desire that a dwelling house—known as Clifton Terrace—should become vested in his son, John H. Parks, in fee simple, and after some clauses which are not important in this suit, the will proceeds:

And as to the rest and residue of my estate, real and personal, after the payment of my just debts, funeral and testamentary expenses, I give, devise and bequeath the same to my son John H. Parks, his heirs and assigns for ever.

He then appoints his wife executrix and trustee, and his son John Parks, his brother Thomas Parks, and his friends John Hegan and James Hegan, to be executors and trustees, and then there is a declaration that while any trust remains to be executed there should always be three trustees, and he declared that—

If my trustees, or either of them, or any of the persons appointed as such, shall die, or disclaim, or be unwilling to execute the trusts of my will, it shall be lawful for my wife and, after her death, for the trustees to substitute by writing, under his or their hand, any person or persons as such trustee.

This will was proved in the probate court of St. John on the 10th November, A. D. 1870, and probate granted to Ann Parks, John Parks, Thomas Parks, John Hegan and James Hegan, since which Ann Parks, Thomas Parks and James Hegan have died, and it appears, by the evidence, that by writing the surviving executors on the 28th July A. D. 1884 professed to appoint the plaintiff and William Parks trustees. The plaintiff declined and William Parks accepted. It appears that the trustees and executors entirely neglected the directions of the will as to appropriating the funds, the income from which was to pay the annuities, and by the answer the defendant, John H. Parks, sets up that the assets of the estate after the payment of debts and setting off the specific legacies, were entirely insufficient to enable them to do so, and that he has expended the whole of the corpus of the estate in paying the annuities, and has passed his account in the probate court. It appears that the executors filed their accounts in the probate court, including therein the amounts advanced to one of themselves, the widow, on her annuity, and also the plaintiff on her annuity, and also funds arising from the proceeds of some real estate not specifically devised, and that the learned judge made a decree thereon, upon the whole of these matters, finding a balance due John H. Parks of \$5020.

The first question is this: whether this matter is *res judicata* by that decree? The law on this subject is well stated by Shaw, C. C., in *Cowden vs. Perry*, II. Pickering, 503. He says:

Any decree directing an executor to pay or not to pay a legacy to any particular person, or at what time a legacy should be paid, whether made upon or without notice, would afford the executor no justification.

It is difficult to conceive how a subsequent ratification or allowance of a payment already made can be of any greater force or effect. The object of such an accounting by the executors before the judge is to show that he has paid according to his charges; and upon producing proof of the fact of payment such charge is allowed. But whether such payment is rightful is a question for which the executor himself stands responsible. To hold that an allowance of a payment in account under such circumstances would bar a legacy whose

legatee is not yet payable would be pressing the doctrine of *res judicata* beyond all reasonable limits. I think the decree of a judge of a court of probate is final unless vacated by an appeal, but as to matters without his jurisdiction, it is null and void. It is no part of his duty to settle the legal construction of a will, to determine in the case of different claims to whom payment should be made, or when the amount is contested what the sum shall be. All these questions belong exclusively to this court. The executor may, if he choose, procure the decision of any controverted right before acting or he may act on his own responsibility and decide for himself. The relative rights of legatees, and other questions affecting the distribution of an estate, cannot properly be heard upon the settlement of the executors' account. For the same reason, the executors cannot be allowed for payments in his account the effect of which would prejudice the rights of those who claimed a larger share than had been paid them.

As I think this is the law, it shows conclusively that the proceedings in the probate court is no answer to this suit.

The next question in the case is: What is the true construction of the will? If there is enough of real and personal estate not specifically devised to have enough set apart so that its income would pay the annuities and there remained enough to pay the debts, there is little trouble in construing it. The rule laid down by the House of Lords, in *Greville vs. Brown*, 7 H. L. 696, would make it clear that those annuities and the debts are charged on all such, by virtue of the devise thereof, to John Parks; but if there is not, then most important and difficult questions of construction will arise upon the terms of this will which I do not now intend to decide. Before doing so I would require them to be more elaborately argued before me than has been done.

The first is, whether taking the whole will together, it was not intended that these annuities should be paid in priority to every other devise in the will, and if so they would be a charge on every part of the estate.

Whether this is so must depend upon what is decided to have been the intention of the testator as expressed by every clause in the will. A more mature consideration of this question has made me more doubtful on the point than I was when I delivered my former judgment in this case. If this is not so, the next question is, Whether the personal property of the deceased specifically devised should not have been used for payment of the debts if it required all the rest of the personal estate to be set apart to make a fund sufficient to pay the annuities. I do not propose to decide these questions until it is ascertained what were the amounts of those several funds and also the amount of the liabilities of the estate, and before proceeding I will direct inquiries as to all these matters. In the meantime, as it now appears that William Parks is a trustee, he must be made a party and as this change has to be made I will also direct that William H. Parks, the devisee of the Kent county lands, be also made a party, also any parties who have become interested in the specific devise to John H. Parks since the death of the testator. There will be an order to that effect.

The enquiries will be:

1. What was the amount of the personal estate that came into the hands of the executors?
2. What was the value of the real estate of the testator not specifically devised?
3. What was the value of the different portions of the real estate specifically devised?
4. What was the amount of the debts of the testator paid by the executors?
5. What was the value of the personal estate specifically devised to the testator's widow and daughter and received by them?
6. What was the value of the personal estate specifically devised to John H. Parks and received by him?
7. What is unpaid of the said annuities?

I reserve all other questions on further directions.

Please Mam, Have You Any Cake?
"Please mam, what place is this?"
"This is the Sailor's Rest, my boys," said the kindly lady who had answered their timid knock and now looked inquiringly at the three bright-eyed urchins in the entrance.
"Please mam, we're sailors."
"Not deep water sailors, I'm afraid," answered the lady, glancing at their mud-bespattered shoes.
"Please mam, we're fish."
"Where, at the end of the wharf?"
"Please mam, have you got any cake?"
"No, we have no cake," and bang went the door.

Umbrellas Repaired. Duval, 243 Union street.

Removed to Better Quarters.
Mr. A. D. W. Knapp (Butterick pattern agent) has moved to 95 King street, next door Messrs. Hunter, Hamilton & McKay. He has a new stock and is ready for business.

The "National" Dining rooms are the best in town. Dinners from 12 to 2. Choice lunches at all hours.

HE IS A RINGER, SURE.

PROOF THAT "STANLEY" IS THE HORSE "EARLE" 2.30 1-2.

Something For Mr. John McCoy to Think About—"Stanley" Out to Grass—He Won't Enter the Circuit Races This Year—A Wise Decision.

A number of insinuations have been made in the papers about the trotter Earle being in the provinces, but all seemed tinged with doubt. Earle was a Grand Circuit performer in 1884. He was sired by Young Revenue, dam by Napoleon. He was entered by W. T. Esterbrook, of Great Bend, Pa. At Buffalo, N. Y., he attracted attention when he won the first heat of the 2.25 class in 2.23, Bessie M. winning the race in 2.21½, 2.22, 2.22½. Eva, Onward, Alonard, Nellie L., Paul Hawke were the other starters. Earle was driven by Miller. Mr. Estabrooke in giving his history, said he purchased Earle in 1880, having been brought from Knox county, Miss., when he was coming four. He did not buy him for a trotter and knew nothing about his breeding, but after he developed speed ascertained that he was sired by Young Revenue, son of imported Revenue by imported Trustee. Earle was then a stoutly-built, nice topped horse, about 16 hands high, with strong hips and a good deal of style and quality, a chestnut with blaze face, goes with a stiff hock, but plenty of knee action, and almost too good a breaker. A side check and open bridle were used but no toe weights. Such was Earle in Aug., 1884, and on the 13th of that month he made his record at Rochester, N. Y., winning the first heat. He was given no rest afterwards or he might have done better. Belle F. also won a heat and Onward captured the race. Earle afterwards trotted that season at Utica, Hartford and Springfield, but did not win a heat. He has since trotted in a number of races in the states, and his last race there was at Woonsocket, R. I., Sept. 14, 1888, in the free-for-all, when he was fourth in the first heat and distanced in the second. Rex won the race in 2.27, 2.30, 2.28, with Joe Howe, the Nova Scotia pacer, second, and Sam F. third. He was entered in this race by John Price, of Providence, R. I., who on the 12th of May, 1889, sold him to John McCoy, of New Brunswick.

SIXTEEN PAGES NEXT WEEK!

"Progress" Will Double Its Size, but the Price Will Be the Same as Usual.

The St. Stephen illustrated edition of PROGRESS will be issued next week. The engravings are better than any that have ever appeared in this paper, which is saying a good deal, and the press work so well up to the standard that the paper will stand any criticism. The first side of the issue has been printed. St. Stephen looks well on paper. "Dry Goods Row" will compare with the street of any city of the same size. The factories of the St. Croix soap company and GANONG Bros. are as natural as possible, and represent the best work of good engravers. The new school building is one of the creditable structures in the town, and the post office engraving has some outside work that enhances its appearance. The view of the St. Croix farm is second to no piece of work ever done for PROGRESS, while the engravings of Lumps, Edgardo, Elation, and Adele Gould, made from drawings by a special artist brought there by Mr. Todd last spring are of a high order. There are five portraits of prominent gentlemen of St. Stephen, and other illustrations and matter that will be worth buying the paper for. The paper will be 16 pages but the price will be the same—three cents.

THE PRICE OF TEA THERE.

How the Proprietor of the Point du Chene House Treated a St. John Party.

There is a curiosity in the Point du Chene house which everybody who has ever gone to P. E. Island has pleasant or unpleasant recollections of. A St. John party that has recently returned from the island does not bring the best report from the hostelry by the Strait. They had luncheon with them, but some of the ladies wishing a cup of tea, the proprietor of the Point du Chene house was approached and asked to supply them. They went into the dining room, drank their tea, and one of the party, a gentleman asked what the bill was.

"Three dollars," was the reply.

"Haven't you made a mistake? Remember we had only six cups of tea—what we asked you for before we entered the dining-room."

"That is no matter, no person goes into that dining room without paying 50 cents to get out."

Remonstrance was useless, and as the grasping proprietor began to bluster about what kind of a house he kept and what kind he didn't keep, the bill was paid, but it may interest him to know that, upon their return, the party, and a lot of other people who had heard the story, passed the Point du Chene house for a rival hostelry—the Weldon house. They are not apt to forget the price of tea on the Straits and the hotel man who was so ready to take advantage of them.

MR. WILLIAMS OF THE I. C. R.

"Geoffrey Cuthbert Strange" Concludes With His Pen Portrait.

MONCTON AUG. 27.—Mr. Thomas Williams, the treasurer of the I. C. R., forms the subject of the last of these pen portraits of the railway magnates. Let me say that it is with feelings of the deepest regret that I bid farewell to these close companions of the past seven or eight weeks, and that nothing but the lack of further material could induce me to wipe the "gall" off my pen and couch my lance in rest till some other subject of absorbing interest once more wakes it into activity. It has been such a pleasure to the modest newspaper man to mingle on terms of equality with the great ones of the—railway—to chum with them, if one may venture to use so familiar a term, even for this short space of time; and in the narrow precincts of his own sanctum, that he is reluctant to say "the solemn words good bye." I trust that the railway officials will feel the same reluctance to say good bye to me.

Mr. Williams is by birth, and also I believe, by education, an Englishman, and, like most of his countrymen, a man of strong will and determination. Indeed, the position he occupies is in itself a sufficient guarantee of both those qualities, for Canadians are not, as a rule, anxious to see Englishmen placed in positions which there are more than enough of their own countrymen to fill, therefore, a foreigner, even if he be from the mother country, must surmount some difficulties if he aspires to a first place in Canada. But Mr. Williams got there all the same, and having done so, he evidently intends to stay; for he has built a handsome house on Highfield street, is identified prominently with the Reformed Episcopal church, and has given other evidences of good citizenship.

In his official capacity, Mr. Williams is looked upon as a very decided martinet, and if he errs at all in the management of his staff it is certainly not in the direction of over-indulgence; consequently, I do not suppose he has inspired a spirit of passionate adoration in their breasts; but they respect him as a man who does not exact much more from others than he is willing to do himself. He is not only a man of cultivated mind and extensive reading, but a *littérateur* of no mean excellence. His literary productions so far have taken the form of short, but incisive, articles on the living questions of the day. His literary style is terse, forcible or eminently to the point. He does not hesitate to call a spade a spade. I do not think he has as yet given any of his work to the world under his full name, but in time he may wear his laurels openly, and let his friends be as proud of him as he deserves. In person, Mr. Williams is slightly above the middle height, with very dark hair and beard, broad forehead and dark, intelligent eyes, set far apart and marked by spectacles; a clear, pale complexion, and a slight stoop in walking.

GOEYFRY CUTHBERT STRANGE.

Cool and refreshing drinks at the "National," 22 Charlotte street.

YOUNG, BUT WHAT A CAREER!

A Country Athlete, a Fakir, a Barber and an Attempted Suicide.

James Britney, the young fellow who shot himself, Thursday night, in Mrs. Howard's place, has had a remarkable career for a young fellow. He was one of the wild reckless lads of Kingston, King's County, for nearly a score of years before he came to St. John. He went then by the nickname of "Nim," and was known to all the country side as a fleet long-distance skater and a runner.

For years, in St. John, he earned a precarious living by his wits. He could be frequently seen talking some countryman into buying a watch or some other article of jewelry. Bright-eyed, sharp and shrewd, quick at retort, and a good knowledge of human nature, Britney's talents should have been put to better use; but it seemed that he was the happiest when in the hardest luck.

Finally he turned to barbering, and with his quickness soon became an expert. Still he always loved the faking business, and one day he eluded the officers and went to Fredericton, where he has been well known for years as one of the best barbers in the capital.

His great enemy was whiskey. He kept sober for a time and married. His position was a good one, having all the trade of the Queen, and plenty of outside custom. But prosperity was too much for "Nim." He would get drunk again and again, lose his place and be called back again. Subject upon recovery to despondency, it was in one of these that he sent a bullet within half an inch of his heart, and as a result is fighting death in the hospital. With all his faults, Britney was generous and warm-hearted, more ready to do a good than a bad turn.

Smokers will not fail to try the "National" Havana Cigars, and Virginia Tobaccos. The best in town.

A NOBLE AND GOOD MAN.

REV. CANON MEDLEY, M. A., RECTOR OF SUSSEX.

And Son of the Metropolitan of Canada—His Death in Sussex After a Lingered Illness—A Portrait of Him and Sketch of His Life.

"If you would see his monument look about you." The church in Canada now mourns the loss of one of her best-beloved clergy. In the diocese of Fredericton the gap will take a long time to fill, for it is nearly 30 years since the Rev. Chas. Steinkopf Medley began his parochial work in New Brunswick, and throughout those years he has endeared himself to all who knew him.

He was born in Truro, Cornwall, England, on the 16th of September, 1835, and received his early education in classics and mathematics at Marlborough college, Wiltshire, a preparatory school for boys. In 1855 he followed his father, who had been consecrated bishop, and had gone to take charge of the See of Fredericton. He took the arts course at King's college, Fredericton, studied theology with his father, and was ordained deacon in 1859. In 1860 he was admitted to the priesthood.



THE LATE CANON MEDLEY.

His first parish was Douglas, York county, N. B., where, although he only remained there fifteen months, he made hosts of warm friends, who still remember his genial manner, his frank manliness and his kind acts, and have still a love for his memory that makes his death a great blow to them. While he was at Douglas he served as a school trustee, and did good literary work, apart from all the excellent labor he expended as a clergyman for the good of the parish and the parishioners.

From Douglas he went to Fredericton to assist his father at the cathedral for a time, and thence to Newfoundland, where he was rector of St. Mary's for three years. Gladly would the people of St. John's have kept him with them, for there too and along the coast he won all hearts. Many a little village of fisher-folk looks back on the days when he used to stroll into its cottages for a friendly chat, and counts them among its happiest recollections. In 1867 he bade them farewell and returned to New Brunswick to resume the rectorship of Sussex.

At Sussex he labored ever since, and at Sussex he died, after a lingering illness, on the evening of Sunday, Aug. 25, 1889.

Whenever there was a choral service in the cathedral at Fredericton, Canon Medley—he was made a canon in 1868—intended the service, and it was he who was always the bishop's chaplain. As rural dean of Kingston deanery, the largest in the diocese, he has always shown his wisdom and his manliness, and has maintained a true brotherly feeling among the clergy. His sympathetic nature enabled him to feel the troubles of others as his own. The young clergy looked to him for advice and found it, and with it a friend whom they could trust and a man whom they could respect. He was one of those large-hearted, unselfish men who seem to be becoming fewer and fewer, one of those with minds large enough for thoughts of other matters than their own personal interests. He was a polished writer, a fine scholar, and a sound theologian; besides, an enthusiastic cricketer and lover of outdoor sport generally. Years ago he was struck on the nose with a cricket ball and the wound developed into the cancer for which he was treated some years ago and from which he died. He will long be remembered by many of those who have camped with the militia at Sussex. It is not so very long ago that, when a cricket match was played there between some of the battalions, Canon Medley and his wife prepared a lunch for the teams at two or three hours' notice. By such acts of consideration and kindness will he long be remembered among the tents of the New Brunswick militia.

When he went to Sussex there was an old church standing: one of the first churches built in New Brunswick and very old, for Sussex was settled by U. E. Loyalists, but a new church has taken its place and it, too, is remarkable as being one of the first built with no plaster showing in its interior.

Canon Medley was married, April 21st 1864, to Charlotte, daughter of Mr. Robert Bird, of Birdtown, York Co. They had no children. His two brothers, John and Edward, are clergymen in England.

HOW TO BUY GROCERIES.

Mrs. Cleveland Fooled the Grocers, and Started Business Herself.

The grocers of St. John have, much to their sorrow, made an undesirable acquaintance during the past year, in the person of a woman, who has bought much goods, but failed to pay for any. To some she was known as Mrs. Campbell, to others as Mrs. Thompson, but her true name is Mrs. Cleveland, and her husband is working with a down town concern. The method of victimizing people was very simple. She would go to a store, represent herself as just having moved in the neighborhood, and would like to open an account and settle weekly, to which the grocer gladly consented. She never troubled the grocer to deliver her goods, as "her little girl could carry them just as well as not." When pay day came around she generally had rheumatism or some other illness that prevented her from seeing the grocer, and the little girl was sent with a note to get an extension of time, also more goods.

The grocer would finally get tired and call to see whether she was still in the land of the living, but the bird had flown, and, in fact, never had been there, as far as he could learn.

She has "taken in" a great many people in this way, and has lately started a grocery, on her own account, on Waterloo street. The person who takes her "into camp" will have to get up very early.

The husband, when asked to settle her bills, says he is not responsible for her debts, as he advertised her some time ago. Nevertheless, he never fails (with his children) to help eat what his wife has swindled people out of.

FOOLED AT HIS OWN GAME.

Two Against One in the McCormick-Ross-Dalton Race.

One of the features of the sports at the Kingsville picnic, held on Tuesday at "Watters' Landing," was a boat race in which Hugh J. McCormick, Edward Ross and Geo. Dalton were the contestants, for a prize of \$25—distance 2½ miles with turn. McCormick drew the shore side, with Dalton next and Ross outside. They got off to a good start, with Dalton in the lead, which he tried to keep and at the same time crowd McCormick on a ledge of rocks which ran out from the shore, but he got fooled at his own game, for a boat that rowed at the end of the ledge warned McCormick in time, and he having about a length lead pulled out across Dalton's bow and saved himself. Not so with Dalton; for he went on to the rocks intended for McCormick and ended his chances for the race. Meanwhile Ross was steering a beautiful course for the stake boat, and McCormick, being away out of his course, "set sail" for him, reached the stake boat at the same time, and then had to stop to save his boat, as Ross was on the inside. After rounding for home, Ross had about two lengths lead, which McCormick soon gained and won the race with great ease by a length and a half.

It is very evident that McCormick is in better form now than he was, and that Ross has no business with him. As for Dalton, it is hard to tell what he might do if properly boated and used better judgment.

Flynn on a Bang.

"What is the matter with Flynn?" Haligonians asked that question frequently Thursday. They did not ask the right men. No doubt if they had approached the gentlemen who had him in charge the night before and showed him the sights, they would tell them Mr. Flynn was on a bit of a bang.

The Opera House Contract.

A meeting of the Dockrill opera house directors is called to ratify the contract for building the structure on Union street. The directors say it is their intention to rush the work forward and have the building ready as soon as possible.

FROM THE GRAND STAND.

Shamrocks, 19; Socials, 21!!!
St. Johns, 10; Presumpscots, 5!!!
St. Johns, 14; Presumpscots, 4!!!
Anything worth the above?
Parsons tried hard to hit the cow.
Parsons and Cunningham played with the Shamrock.
The Socials would like to play St. John at Bangor; but what about that \$100.
Pickering's name is heard quite often these days. Sullivan is a dandy; so is Donivan.
Flynn can't come within reaching distance of Small for fine work.
Webb went to Fredericton sick at heart. What about Small's glass arm, Mr. Webb?
The St. Johns play in Fredericton and Bangor next week.

The famous Amburs, of New York, reach here about the middle of the month.
The Thistles and Franklins are tied.
John McCoy says he wants to see PROGRESS. The office hours of the sporting editor are from 6 a. m. to 11.30 p. m. Call any time, but read the proof that "Stanley" is a "ringer" first.
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Why couldn't Flynn pitch Thursday? He was "out the road" Wednesday evening.
The Halifax races didn't fill and Power explains elsewhere.

Schoolmarm is trotting fast—so is Speculation.
What about the St. John-Shamrock games. Arrange for a series, gentlemen.
Too bad, that Mr. Coy stole that 2.40 race here. Look out for him again.

Ladies, and Children's Dresses, Satens, Nuns veiling or Cotton cleaned at Ungar's Steam Laundry.