

The third division is thus explained. Quasi contestata as when \* \* \* it is not *lawful* to contest suit *expressly*, the suit is in a manner contested by the mere interrogation and answer between the parties. So likewise when the contestation of suit is not *necessary* the suit is said to be in a manner contested by the next contradictory act which concerns the merits of the cause.

Thus we find the *contestatio litis* may be *tacit* as well as *express*, and again *quasi contestata* without any formal contest by either the oral interrogation between the parties before the Judge, or, without such interrogation, by the next contradictory act.

Now it is to be remarked that the formal *contestatio litis* is only requisite in Plenary cases. Brown distinctly states in Summary causes no express contestation is necessary. (1 Bro. 492.)

The course seems to be, that after the return of the Decree citing the parties interested to appear, the Proctors having exhibited their proxies, the Proctor of the Executor calls on the Proctor of the next of kin to declare whether he will oppose the Will, and on his declaring that he does oppose it, the other then declares that he propounds it. This, Burn says, in a note to the passage "amounts to contestation of suit in the Prerogative Court." And then, and not till then, the Executor asserts an allegation, which is frequently, as here, the common conditit. Here then it is evident the *quasi-contestatio litis* which is the only contest that takes place in Summary causes, *precedes* any allegation on either side, and thus answers to the description before given of this proceeding as the foundation of the suit.

If, in the case now before the Court, no proceeding in the precise form here given took place before the Surrogate, yet after the citation returned an allegation having been asserted, I consider that act presupposes a *quasi contestatio litis*, or at all events when this was followed up by the Appellant bringing in an allegation on her part, this was clearly a contradictory act, "concerning the merits of the cause," (in the words of the authority before cited) which amounts to a *contestatio litis*.

If this were not so, and the *contestatio litis* did not take place, as has been contended, till the bringing in of the responsive allegation on the part of the Respondents, it would follow, that notwithstanding all the proceedings in the Court below, and their removal into this Court, her Suit had not actually commenced till some time after the removal took place.

There is little analogy in these Suits to the proceedings at Common Law. There the parties are called on and compelled to plead under the prescribed penalties which the rules of practice impose, until the cause is distinctly at issue. In this Court, however, though each party may assert one or more allegations, it is entirely optional to do so, and the only issue, properly so called, is that which has preceded any allegation on either side.

3d. It only then remains to consider the third point, whether it is open for the Appellant at the present time to require the personal answers of the Respondents to the allegation admitted in December 1846. The passage in Brown, which has been referred to, would at first seem to warrant such a conclusion, but on consideration, I am of opinion that his language can only be true in a restricted sense, in which it was perhaps intended that it should be understood. The object of the personal answers is to confine the proof by witnesses within a narrower compass. When answers therefore are required, the practice seems to be that they are called for as soon as possible after the allegation filed, when it is ascertained how much can be extracted from the adversary's admissions, then comes the examination of witnesses, and after the same process has been gone through on all the allegations asserted on both sides, then publication passes, and the cause is ready to be heard. If, as it is contended, however, the personal answers, instead of being demanded when the allegation is admitted, may be called for at any time quite down to the hearing—then it must follow that the proceedings, when ripe for argument, may be postponed from time to time—first, until one side, and then until the other, if he think fit, shall have procured the personal answer of his adversary to the several allegations given in. No case has been adduced on the argument which gives any countenance to such a practice, which it appears to me would be productive of great delay and confusion, nor have I been able to discover any. It is probable therefore that Brown only means, that throughout the course of the cause, so long as allegations are delivered in, to each of those allegations the personal answer may be required, and this is in conformity with all the other authorities,—which give no sanction to the more general proposition. For these reasons, looking to the time at which the allegation was admitted, and to what has taken place subsequently in the cause, I am of opinion, that the application is too late.

#### NOTICE.

ALL Persons having any demands against the Estate of CHARLES J. PETERS, late of Fredericton, in the County of York, Esquire, deceased, are requested to hand in the same, duly attested, within three calendar months from this date; and all persons indebted to the said Estate are requested to make immediate payment to Edward B. Peters, Barrister at Law, at his Office in the City of Saint John.—Dated at Fredericton the tenth day of February, 1848.

GEORGE P. PETERS, M. D.  
EDWARD B. PETERS,  
MARTIN H. PETERS, M. D.

#### POST OFFICE, FREDERICTON.

List of Letters remaining in Office 15th February, 1848.

A	
Annett, Robert	
B	
Barker, Thomas	Bradley, John D.
C	
Carman, Miss Elizabeth	Corum, Jacob
Cessford, Margaret	Crawley, Margaret
Clark, John,	Crock, Anthony
Corbett, John	
D	
Dwyre, Thomas	Duress, John
Dinny, Richard	
E	
Elles, William	
G	
Gallagher, Margaret	Gillespy, Mary
Gallaugher, Michael	Gilman, George
Gallagher, Pat	Gilman, Nehemiah
Gillespy, Catherine	Goodine, Thomas
H	
Hagerman, Elizabeth	Henderson, Robert
Harper, Henry	Heughan, John
Harris, Calven	Hunkin, William
Hartt, Aaron	Hurren, Mrs. R.
K	
Keeper of W. A., Nashwaak,	Kerr, Francis
L	
Lyttleton, James	
M	
Martin, James, (2)	M'Elroy, Terrience
Minnitte, R. C.	M'Gonigal, Neal
Milligan, Phil.	M'Kay, John
Murphy, Mary	M'Knight, Wm.
M'Cay, Rose	M'Loon, Edward
M'Crearty, John	
N	
Nichols, H. B.	
O	
O'Brien, Miss M. A.	O'Mar, John
Ogden, Mrs. Mary Ann	
P	
Parlee, Solomon	Pratt, John H.
Payne, Michael	Price, Catherine
Pickard, Thomas and Co., (2)	
R	
Robson, Alexander	Rurden, Catrine
S	
Shaw, John	Smith, Wm.
Smith, David	Speakman, F. D.
Smith, John	Sterling, George H.
T	
Torrance, Thomas	
V	
Veaghan, Bridget	
W	
Weary, Joseph	Williams, James
Welsh, Donald	Wright, Geo.

Persons calling for any of the above Letters, will please remark that they are Advertised. A. S. PHAIR, P. M.

#### LADIES' BENEVOLENT SOCIETY.

THE Committee of the Ladies' Benevolent Society beg to intimate to the friends of the Society and the Public, that the calls upon the Society this Season have been very urgent and unusually numerous, and to all appearance are likely to continue so; and they earnestly solicit the aid of all who have the means, to enable them to continue the relief which is so much needed, and which the Committee can confidently state is given in a form the most beneficial to the interests of the Community generally, and the least liable to abuse.

Contributions of Clothing, Potatoes, Meal, &c., received at the Infant School; and of Money, by the Secretary Mrs. Kerr, the Rev. Mr. Ketchum, Mr. Wolhaupter, Mr. Simpson, Mr. Reade, and Miss Fayerweather, and at Beek's Book Store, where Tickets may be procured.

Fredericton, 21st January, 1848.—(H. Quar. and Rep.)

#### NOTICE.

THE friends and supporters of the Ladies' Benevolent Society are informed that an Examination of the Infant School will take place on Saturday next, the 26th instant, at 1 o'clock, p. m., when their attendance is particularly requested.

February 23, 1848.

#### DIOCESAN CHURCH SOCIETY.

A MEETING of the Executive Committee of the Diocesan Church Society will be held at Saint John in the Episcopal Sunday School Room, on Wednesday the first day of March next, at twelve o'clock, noon.

W. Q. KETCHUM, Sec. of the Ex. Com.  
Fredericton, 14th Feb. 1848.