

of the whole in the proportions which they have severally contributed to it.

*Held*, also, following *Harris v. Harris*, 29 Beav. 110, that a cestui que trust whose property is wrongly converted by the trustee can recover by suit the proceeds of such property from another cestui que trust to whom such proceeds have been improperly, though mistakenly, paid by the trustee; that an equitable claim like the plaintiff's in this action can now be entertained by a County Court; that no demand and refusal was necessary before action; and that the plaintiff was entitled to hold his verdict. Appeal dismissed with costs.

*Aikins*, K.C., for plaintiff. *Howell*, K.C., for defendant.

Full Court.]

IN RE "THE LIQUOR ACT."

[Feb. 23.

*Prohibitory liquor legislation—B. N. A. Act, ss. 91 and 92—Powers of Provincial Legislatures—Ultra vires.*

This was a reference to the Full Court of King's Bench for their opinion on the constitutionality of "The Liquor Act," chapter 22 of the Statutes of Manitoba passed in 1900. The reference was made under R. S. Man. c. 28, by order of the Lieutenant Governor in Council, and counsel were heard both in support of the validity of the Act and against it. The judgment of the Court was unanimous in holding that the Act as a whole was beyond the power of a Provincial Legislature as set forth in B. N. A. Act, s. 92, for the following reasons:

1. Legislation having for its object the prohibition of the liquor traffic with a view to diminish the evils of intemperance does not come within the class "Property and Civil Rights" assigned to the Provincial Legislatures by section 92 of the British North America Act.

2. Such legislation by a Provincial Legislature if permissible at all must come under the class "Matters of a merely local or private nature within the Province," referred to in said section.

3. The Liquor Act consists chiefly of provisions for licensing druggists, wholesale and retail, to sell liquor for medicinal, sacramental, mechanical and scientific purposes only, or to those who are to use it for those purposes, and for prohibiting all sales by others in the Province than such licensees for consumption therein, except by manufacturers and wholesale dealers to such licensees. It therefore prohibits manufacturers from selling to the dealers who have warehouses in the Province for export trade, and such dealers cannot sell to parties in the Province for export or who are licensed by the Dominion Government to carry on the business of compounders here. It may be questionable whether the Act forbids a person resident out of the Province to sell through an agent in the Province and deliver here, but it certainly seems to forbid a non-resident himself, while temporarily in the Province, from selling, importing and delivering here even to the manufacturer, the compounder, the wholesale dealer, the exporter or