The Legal News.

VOL. XIII. APRIL 26, 1890. No. 17

A question of considerable importance is discussed in *Allen & Hanson*, reported in the present issue. It is the first case, since the 47 Vict. (D.) ch. 39, amending the 45 Vict. (D.) ch. 23, in which the right to appoint a liquidator in Canada to a company incorporated in Great Britain, has been impugned, and it raises directly the question whether the Parliament of Canada exceeded its powers in passing the amending Act. The case of the *Briton Medical* Company may be mentioned as one in which a liquidator was appointed in Canada to an English company, but in that instance no objection was taken. *Merchants' Bank of Halifax* v. *Gillespie* (10 Can. S. C. R. 312) was a case before the 47 Vict. ch. 39, was passed, and the only question that had to be decided there was whether the 45 Vict., ch. 23, applied to a company incorporated in England. The Supreme Court held that the Act did not apply to such company, but two of the judges—Justices Strong and Henry—expressed the opinion, which in that case was *obiter dictum*, that the Dominion Parliament had no power to pass a law affecting the rights of shareholders incorporated under an Imperial Statute. Mr. Justice Cross in the present case of *Allen & Hanson*, takes the same ground, but the majority of the Court hold that a liquidator may lawfully be appointed under the Canadian Statute, which in this respect was not *ultra vires*. In view of the conflict of opinion the case naturally proceeds to the Supreme Court, where it will probably be argued in May.

Proudfoot v. *Newton*, (59 Law J. Rep. Q. B. 129), says the *London Law Journal*, will long be resorted to as an authority for the meaning of 'good tenantable repair' in contracts of tenancy. It was there held that an outgoing tenant under a contract to leave a house at the end of a three years' tenancy is liable both for commissive and permissive waste, but need not repair anything worn out by age, so that he need not put up new wall papers where the old ones have worn out, nor repaint inside woodwork where painting is decorative only, and also that he need not clean or scour wall paper or whitewash ceilings. The Court has, in fact, drawn a sharp distinction between 'tenantable' and 'decorative' repair, and held that the latter kind of repair cannot be thrown upon a tenant unless it be expressly stipulated for, as it very frequently is, by an express undertaking to paint and paper every seventh year, or in the last year of the term. The official referees generally, it was stated in the argument, had not drawn this distinction, taking perhaps the very tenable view that by 'tenantable repair' is meant such a state of repair as would enable a landlord to relet a house at the same rent without being previously obliged to re-paper and repaint. But this view must now conclusively be taken to be a wrong one.

COURT OF QUEEN'S BENCH.

QUEBEC, February 7, 1890.

Coram DORION, Ch. J., TESSIER, CROSS, BABY, BOSSÉ, JJ.

HARRY ALLEN (*petitioner in Court below*), Appellant; and CHARLES A. HANSON et al. (*liquidators*), respondents; and THE SCOTTISH CANADIAN ASBESTOS Co. (Limited), Insolvent.

Constitutional Law—Winding-up Act, 45 *Vict.* (*D.*), *ch.* 23—47 *Vict.* (*D.*), *ch.* 39; *R.S. ch.* 129, *s.* 3—*Liquidation.*

HELD:—(CROSS, J., *diss.*) 1. *That a company incorporated under an Imperial Act, but doing business in Canada, can be wound up under the Canadian Winding-up Act as regards its assets in Canada, and that the* 47 *Vict.* (*D.*) *ch.* 39 (*R.S. ch.* 129, *s.* 3), *which provides that the Winding-up Act applies to incorporated trading companies "doing business in Canada, wheresoever incorporated," is not* ultra vires *of the Dominion Parliament.*

2. *Where a liquidator to the company was appointed in Scotland, and subsequently another liquidator was appointed in Canada under the Dominion Winding-up Act, that objection to the Canadian appointment*