

popularly called the Scott Act, is in force in that county, and the defence set up is that the defendant intended to re-sell the liquor in that county, which was known to the plaintiffs, and that consequently the price cannot be recovered. The plaintiffs object to the defendants setting up this defence under the statute, as he has not given notice of his intention to do so. The question, therefore, which I have to consider is, whether this notice is requisite.

By section 92 of the Division Courts Act it is enacted as follows: "In case the defendant desires to avail himself of the law of set-off, or of the Statute of Limitations, or of any other statute having force of law in Ontario, he shall, at least six days before the trial or hearing, give notice thereof in writing to the plaintiff, or leave the same for him at his usual place of abode, if within the division, or if living without the division, he shall deliver the same to the Clerk of the Division Court."

For the defendant it is argued that no notice is necessary, because this Temperance Act inflicts penalties for the infraction of its provisions, saying nothing about rendering the contract of sale invalid, that being a consequence superadded by the common law.

According to this argument this clause of the Division Courts Act only applies to the Statute of Limitations, the Statute of Frauds, or any other statute which bars the remedy, unless writing or some other preliminary proceeding is requisite, bearing directly upon the contract. This appears to me to be a narrow and restricted view of the words "or of any defence under any other statute having force of law in Ontario," and I am not able to bring myself to the conclusion that this contention is correct. It is said, suppose A sells goods to B, which A has received knowing them to have been stolen, must A in seeking to invalidate the sale give notice of the statute attaching criminal consequences to the knowing receiver of stolen goods? I answer, not necessarily. Because, independently of that statute, the sale is rendered invalid by the common law, because the transaction is against the public welfare.

Again, it is said, when the consideration of the contract is bribery at an election, or of goods procured by a smuggling transaction in fraud of the revenue, is a defendant obliged to give notice of the statute relating to bribery or of that inflicting penalties for smuggling in

order to set up a defence in the Division Court? I answer in the negative. Because outside the statutes, in either case, a contract under such circumstances is vitiated by the Common Law as being against the public welfare. In all these, and similar instances, it is not necessary that in the Division Court notice of any statute should be given, because if no statute was in existence, such transactions would be invalid. But it is different with respect to the Canada Temperance Act. The sale of this liquor would be perfectly valid if it were not for that Act. Take it away, and nothing is left for the defendant on which to rest his defence.

The Division Courts Act allows defences of fraud, and various other defences to be set up without notice; and in this respect often puts the plaintiff to a disadvantage. Where there is a requirement of notice I think we ought not to lean to the restrictive side, if the cause of action is good and maintainable, but for a particular statute, I think notice of that statute should be given for the defence.

The operation of the Temperance Act is not universal in Ontario. It is confined to particular municipalities, and thus the question of locality is involved, and this circumstance adds to the desirability that the intention to set it up should be made known to the plaintiff.

The conclusion I arrive at is, that in the absence of notice, this defence is not admissible, and the judgment will be for the plaintiffs.

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

CAUCHON v. LANGELIER.

Controverted Elections Act, c. 9, s. 50, R. S. C.
—Judgment dismissing petition for want of prosecution non-appealable—Judgment refusing to set aside petition for want of prosecution non-appealable.

On the 23rd of April, 1887, an election petition was duly presented to set aside the election of the respondent as a member of the House of Commons for the Electoral District of Montmorency. The trial of the petition was fixed by order of a judge for the 22nd of