

REVIEWS.

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CASES DETERMINED BY THE SUPREME COURT OF NEW BRUNSWICK. Vol. II. Reported by William Pugsley, Jr., A.B. Saint John, N. B., 1874.

We are in receipt of the first and second number of this volume of reports. Mr. Pugsley explains in a short preface that the publication of the reports of the Supreme Court of the Province being in arrear, it has been arranged that he should publish the cases from Hilary Term, 1872, inclusive, and that the former reporter, Mr. Hannay, shall complete his second volume with the cases of Michaelmas Term, 1871. In order, however, that the current decisions may not be delayed, Mr. Pugsley commences his second volume with these contemporaneous cases, and will hereafter publish his first volume. This, therefore, is a very suitable time for our readers to subscribe for these reports, and there are very substantial reasons why their circulation should not be limited to the professional circles of New Brunswick. The common law of England obtains there, as here; their local statutes, arising from similar circumstances, are many of them similar in character to ours; while the statutes of the Dominion apply alike in both provinces. Decisions upon these subjects in the New Brunswick Court must of necessity be interesting and instructive to the bar of Ontario. The handsome appearance and varied character of the contents of the number before us, commend them to the patronage of the profession. The cases as reported bear very satisfactory testimony to the care and ability with which Mr. Pugsley attends to his duties: the observations and questions of the judges during the argument are pointedly given, and the citations are verified with great accuracy. The reporter evidently discharges his work as a labor of love, and in no grudging or perfunctory style.

Among the cases reported we may mention *In re Harrison*, p. 11, wherein is an interesting discussion as to the effect of the local Homestead Exemption Act, in which the owner thereof becomes insolvent. The Court seem disposed to hold that the Act, giving as it does exemption from seizure under execution to real estate, is in conflict with the Dominion Act relating to insolvency, and

therefore *ultra vires* in so far as it affects traders, while perfectly valid as to non-traders. *Wiggins v. Teovil*, p. 31, is a decision in equity where a very well-considered and elaborate judgment is given by Allen, J., upon the question as to whether, when the directors of a bank have determined to increase the capital stock of the bank, and with that purpose shares were allotted from the accumulated profits, such shares were to be treated as a part of the "dividends, interest, and annual produce" of certain shares of the capital stock of the bank bequeathed to a testator. Unfortunately, in the number of the reports we have, there is a hiatus from p. 40 to p. 57, so that we had to stop short in the perusal of this interesting judgment. We find also a case relating to municipal aid to railways, *Ex parte the N. B. R. Co.*, p. 78, in which it is held that a municipality authorized to take stock in a company incorporated for the construction of a line of railway particularly defined by the Act, is not bound to issue debentures to a company not incorporated to construct that specific line, a subscription to their stock-list by the warden being a nullity. In *McGowan v. Betts*, p. 90, it was decided that the notice of action required by the Fisheries Act, 31 Vict. c. 61, sec. 13, does not apply to an action of replevin. In *Reg. v. McMillan*, p. 110, the interminable liquor question came up, and the Court held that the local Act imposing fines and penalties for selling liquor without licence is not *ultra vires* since Confederation; and though there may be thereunder a question as to the power of the local legislature to direct the manner in which the fines shall be recovered, the excess only, that is the mode of recovery, would be void.

It seems that questions arising upon assessments may be brought before the Supreme Court for decision. There should be such a provision here. Among such cases is *Ex p. Smith*, p. 147, where it was ruled that a clerk in the Provincial Secretary's office in Fredericton, who resides outside of the city, is not a "person carrying on business," within the meaning of the local Assessment Act, so as to make him an inhabitant of the city for the purposes of taxation.

In *Reynolds v. Vaughan*, p. 159, it was held that the payee of a note is not a "subsequent party," and cannot render it