NOTES OF CANADIAN CASES.

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QUEEN'S BENCH DIVISION.

THE QUEEN v. LYNCH.

Conviction.—Retrospective operation of 49 Vict. cap. 49., Can.—Excess of jurisdiction.

That, notwithstanding it is not so expressly enacted, 49 Vic. cap. 49, Dom., has a retrospective operation upon cases decided prior to the passing of the Act.

That under sec. 7 of that Act the right to *certiorari* is taken away upon service of notice of appeal to the sessions, that being the first proceeding on an appeal from the conviction.

Conviction *held* bad, following *The Queen* v. *Brady*, that where imprisonment is directed for non-payment of a penalty, the adjudging of a distress of the goods to levy it and then imprisonment, in case the distress proves insufficient, is invalid in law and an excess of jurisdiction.

T. W. Howard, for application.

Clement, contra.

REGINA v. HODGINS.

Canada Temperance Act, 1878.—Disqualification of convicting magistrate.—R. S. O. ch. 71, s 7—Variance between information and conviction.—Amendment.

The court refused to quash a conviction under Canada Temperance Act, 1878, on the ground that one of the convicting justices had not the necessary property qualification, the defendant not having negatived the justice's being a person within the terms of the exception or proviso of sec. 7 of ch. 71, R. S. O.

Held, also, that it was no variance between the information and the conviction that the former used the expression "disposal," and the latter "sale"; and that, if there had been, an amendment would have been made under secs. 116, 117, 118 of the first-mentioned Act.

Clement, for motion.

McLaren, contra.

REGINA v. MCDONALD.

Trespass—Obstruction—Right of way.

S. owned lot 38 in 8th con. of N., containing 200 acres. In 1866 he sold the west half of the lot to complainant, reserving a strip of thirty feet along the north line thereof, as a road for himself and successors in title, to and from the highway at the west of lot 38 to and from the east half of the lot. S. put up a gate at the west limit of the lane, where it meets the highway, which gate had been there from 1866 until removed by the defendants. The defendants were successors in title to S., and removed the gate in question as an obstruction, and were convicted for unlawfully and maliciously breaking and destroying the gate erected at the west end of said road as the property of the complainant.

Held, that the defendants were acting in good faith in claiming the right to remove the gate, and under a fair and reasonable supposition of right to do so, and therefore the convictions were quashed.

Held, also, following *Regina* v. *Malcolm*, 2 O. R. 511, that the question of a fair and reasonable supposition of right to do the act complained of was a fact to be determined by the justice, and his decision upon a matter of fact would not be reviewed; but that this rule did not apply where all the facts showed that the matter or charge itself was one in which such reasonable supposition existed; that is, where the case and the evidence were all one way.

Quære, whether a gate across a right of way was an obstruction in law.

Held, also, that the proviso in sec. 60 of 32 and 33 Vict., c. 22, is to be read as applicable to sec. 29 and to the whole Act.

Kappele, for motion.

Aylesworth, contra.