

Q. B. Div.]

NOTES OF CANADIAN CASES.

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were that many superannuated ministers residing on that circuit.

I think also that the first part of the section shows that the class of men entitled to this exemption are those only that are in the ordinary service of the church as ministers in charge of congregations. The words "stipend or salary" mean in their ordinary acceptation an annual payment as wages for services annually performed. Mr. Pearson is in receipt of no such stipend or salary.

I regret that in coming to this decision I have had to differ from the judgment given by his Honor Judge McDougall as reported in the *Law Journal* for 1886, page 158. But I agree with the judgment of McDonald, County Judge, as reported in same volume, page 341. I concur in the opinion expressed by Judge McDougall that the legislature should so amend this section as to make its proper construction free from doubt, and more especially so now, as there are conflicting decisions as to its proper interpretation.

I affirm the decision of the Court of Revision and dismiss the appeal.

NOTES OF CANADIAN CASES.

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QUEEN'S BENCH DIVISION.

QUEEN V. WALKER.

Canada Temperance Act, 1878, sections 108, 109, 111, 119—Search warrant, when proper to be issued—Certiorari, when taken away—Presumption that liquor kept for sale, when created by the finding of appliances for sale—Municipal by-law under the Act—Search warrant and conviction quashed with costs.

An information charging defendant with having sold intoxicating liquor was laid before two justices of the peace, and immediately afterwards a further information to obtain a search warrant was sworn by the same complainant before the same two justices. Thereupon, a warrant to search the premises of defendant was issued, under the hand and seal

of one only of the two justices: upon the search being made three bottles were found, each containing intoxicating liquor, and it was sworn that there were also found in defendant's house other bottles, some decanters and glasses, and a bar or counter.

On the day following the search, the complainant laid a new information before the same two justices of the peace, charging defendant with keeping intoxicating liquor for sale. Upon the hearing, the constables who executed the search warrant were the only witnesses examined, and on their evidence the defendant was convicted.

Upon motion to quash the search warrant and conviction,

Held, that sections 108 and 109 of the Act were intended to provide process *in rem* for the confiscation and destruction of liquor in respect of which a use prohibited by the Statute was being made, and not to provide a means of obtaining evidence on which to found a prosecution or support one already begun.

Held, also, that this warrant in this case was illegal because issued by one justice of the peace only.

Held, that the operation of section 111 of the Act in taking away the right to certiorari, is confined to the case of convictions made by the special officials named in the section.

Held, further, that the presumption of keeping liquor for sale created by section 119 of the Act, arises only where the appliances for sale of liquor mentioned in the section, together with the liquor, are found in Municipalities in which a prohibitory by-law passed under the provisions of the Canada Temperance Act is in force.

As it appeared that in this case the search warrant had been issued, and the defendant's premises searched, for the mere purpose of possibly securing evidence upon which to bring a prosecution, the justices of the peace and the informant were ordered to pay the defendant's costs.