

KING'S BENCH.

Macdonald, J.]

LARKIN v. POLSON.

[Nov. 19, 1909.]

Local option by-law—Petition of twenty-five per cent. of electors, sufficiency—Several petitions made into one by cutting off headings—Injunction against submission of by-law.

A number of separate petitions for the submission of a local option by-law under s. 62 of the Liquor License Act, R.S.M. 1902, c. 101, as re-enacted by 9 Edw. VII. c. 31, s. 2, containing signatures of more than the required number of the resident electors, were received by the clerk of the municipality, who handed them back to the person presenting them to carry out a suggestion as to how they should be put together. The latter then made the many petitions into one by cutting off the headings from all but one and putting all the signatures after the one heading left.

Held, distinguishing *Adams v. Woods*, 45 C.L.J., p. 722, that such subsequent mutilation of the original petitions would not of itself be sufficient to warrant an injunction against the submission of the by-law.

Two of the headings thus cut off, however, were altogether insufficient as petitions under the Act and, although the number of the signatures to these imperfect petitions could not, as a result of the mutilation, be definitely ascertained, it was believed by the judge that there was not the necessary percentage of the electors on the remaining petitions.

Held, that everything should be presumed in odium spoliatoris and the finding should be that there were not enough signatures to uphold the petition, and that an injunction should be issued to prevent the submission of the by-law.

Appeal to the Court of Appeal December 8, dismissed with costs.

Andrews, K.C., and *F. M. Burbidge*, for plaintiff. *Taylor*, K.C., for defendants.

Mathers, J.]

HOWARD v. LAWSON.

[Dec. 2, 1909.]

Practice—Substitutional service—Publication of notice of advertisement—Motion for final judgment—King's Bench Act, Rules 182, 183.

Motion for final judgment, after interlocutory judgment in default of defence, in an action for a declaration that certain