

The principal ground argued by Mr. Mackenzie was that the Dominion Statute, R.S.C. ch. 92, was *ultra vires*, that the commission under which the defendant assumed to act was void, as were all proceedings taken and done in pursuance thereof.

It has long been settled law that an Act such as the one in question is within the competency of the Dominion Parliament: *Valin v. Langlois*, 3 S.C.R. 1, and 5 App. Cas. 115; *Attorney-General v. Flint*, 16 S.C.R. 707; *In re Henry Vancini*, 34 S.C.R. 621. This being so, the defendant was entitled to notice of action, and no notice was given. There can be no dispute, upon the evidence, that the defendant was acting, and properly acting, under his commission, and all that he did was under and by virtue of that authority. This, in my opinion, affords a complete answer to the plaintiff's action.

It was urged by Mr. Mackenzie that no notice of action was required in respect of the fine of \$100 imposed on the plaintiff, and of the costs, and that he was entitled to recover the same as money had and received for the plaintiff's use. I do not think so. It was money paid over by virtue of the imposition of an act of the defendant while in the discharge of his office.

With reference to the destruction of the liquor, I do not think the plaintiff has shewn any damage. Under sec. 614 of the Code, it was the duty of the officer seizing the liquor to bring the same before the Commissioner, and if it appeared to the satisfaction of the Commissioner that a violation of the Act had been committed or was intended to be committed, with respect to said liquor, it shall be declared forfeited and shall be destroyed.

In the present case the forfeiture and destruction of the liquor were also acts strictly within the jurisdiction of the defendant as commissioner, in respect of which he was entitled to notice of action. 6-7 Edw. VII. ch. 9, sec. 6(D.), expressly provides that every constable appointed under any law of Canada may seize upon view anywhere within the limits specified in any proclamation under Part 3 of the Act any intoxicating liquor in respect of which he has reason to believe that a violation of the provisions of the said part is intended, and he shall forthwith convey any liquor so seized, together with the owner or person in possession thereof, before a commissioner or justice, who shall thereupon proceed as provided in sec. 614. That was what was done in this case. The constable seized the liquor on view and brought the same and the plaintiff before the magistrate. There is no dispute as to the owner; that was admitted. It was suggested, however, that the two cases of whiskey and three cases of gin were intended for the marriage celebration.