

Sup. Ct.]

NOTES OF CANADIAN CASES.

[Sup. Ct.]

New Brunswick.]

TAYLOR V. MORAN.

Marine insurance—Voyage policy—Sailing directions—Time of entering Gulf of St. Lawrence—Attempt to enter—Amendment of pleadings.

In an action on a voyage policy containing this clause, "warranted not to enter, or attempt to enter, or to use the Gulf of St. Lawrence, prior to the tenth day of May, nor after the thirteenth day of October (a line drawn from Cape North to Cape Ray, and across the Strait of Canso, to the northern entrance thereof, shall be considered the bounds of the Gulf of St. Lawrence seaward)," the evidence was as follows: The Captain says: "The voyage was from Liverpool to Quebec, and ship sailed on April 2nd. Nothing happened until we met with ice to the southward of Newfoundland, shortened sail and dodged about for a few days trying to work our way around it. One night ship was hove-to under lower main-top-sail, and about midnight she drifted into a large field of ice. There was a heavy sea on at the time, and the ship sustained damage. We were in this ice three or four hours—laid-to all the next day—could not get any further along on account of the ice. In about twenty-four hours we started to work up towards Quebec." The log-book showed that the ship got into this ice on the 7th May, and an expert, examined at the trial, swore that from the entries in the log-book of the 6th, 7th, 8th and 9th of May, the captain was attempting to enter the Gulf of St. Lawrence. A verdict was taken for the plaintiff by consent, with leave for the defendants to move to enter a nonsuit or for a new trial, the Court below to have the power to mould the verdict, and also to draw inferences of fact the same as a jury.

Held (reversing the judgment of Supreme Court of New Brunswick, HENRY, J., dissenting), that the above clause was applicable to a voyage policy, and that there was evidence to go to the jury that the captain was attempting to enter the Gulf contrary to such clause.

Appeal allowed with costs.

Weldon, Q.C., for appellant.

Stockton, for respondent.

Quebec.]

THE QUEEN V. DUNN.

Petition of right—Provincial debt, Liability of Dominion for—Order in Council—Account stated—Consideration—Right to petition.

Prior to Confederation, one T. was cutting timber under license from the old Province of Canada, on territory in dispute between that Province and the Province of New Brunswick. In order to utilize the timber so cut he had to send it down the St. John River, and it was seized by the authorities of New Brunswick and only released upon payment of fines. This continued for two or three years until T. was obliged to abandon the business.

As a result of negotiations between the two Provinces, the boundary line was finally fixed, and a commission was appointed to determine the state of accounts between them in respect to the disputed territory. One member of the commission only reported New Brunswick to be indebted to Canada in the sum of \$20,000 and upwards, and in 1871 these figures were verified by the Dominion auditor.

Both before and after Confederation T. frequently urged the Government of Canada to collect this amount, and indemnify the licensees who had suffered owing to the said dispute; and finally, by an order in council of the Dominion Government (to whom it was claimed the debt was transferred by the B. N. A. Act) it was declared that a certain amount was due to T., which would be paid on his obtaining the consent of the Governments of Ontario and Quebec. Such consent was obtained, and payments were made by the Dominion Government to T., and to the suppliant to whom the claim was assigned, and the suppliant proceeded by petition of right to recover the balance; the Government demurred on the ground that the claim was not founded upon a contract and the petition would not lie.

Judge FOURNIER, in the Exchequer Court, overruled the demurrer, and on appeal to the Supreme Court of Canada,

Held (reversing the judgment of FOURNIER, J., FOURNIER and HENRY, JJ., dissenting), that there being no previous indebtedness from New Brunswick, Canada or the Dominion to T. shown, the order-in-council did not create a debt, and petition would not lie.