

C. L. Cham.]

DAIN V. GOSSAGE.

[C. L. Cham.]

clause 64, it follows that it must necessarily be inconsistent with the other clauses, or it would not have been inserted at all. Further the expression in clause 59 "*including the present year*" (which applies only to the May Courts) is nothing more than the law would imply if those words were not there.

I think the residue of clause 59 cannot be excluded from the words "the other Sections" in clause 64, from the following considerations:—

Clause 64 seems to be intended to declare the times for the Act coming into force, and it does declare them as to every part of the Act—unless it be those portions of clause 59, and it seems not likely that it could have been the intention to omit so small a part, where all the rest is declared. In saying this I do not lose sight of the words "*including the present year*" in the 59th clause. And if any one shall attribute force to these words, an answer is, that they are not applied at all to the enactment of sec. 59, as to the September General Sessions. This fact must be borne in mind in all that I have further to say.

Then, as to the expressed intention, what could be the purpose of inserting in clause 64, an express provision as to "*so much of the 59th sec. as relates to the Sittings of the County Court in September?*" If it were intended that the whole clause should come into operation forthwith, why was not clause 59 inserted in sec. 64 after clause 58, without any special mention of the September County Court? That would have been the natural way of expressing such a purpose. To my apprehension those words are meant to contradistinguish the enactment as to the September County Court, from the rest of clause 59. And if so, at *what time* is the rest of clause 59 to come into operation?

Again can this half section, with propriety, be held to be included in the words "the other sections" in clause 64? First observe that it says "*the other sections.*" The word section has no technical meaning, nor indeed any very exactly defined meaning. No doubt it is usually applied to the numbered paragraphs of an Act, and in this very clause 64 it is used in that sense, but it does not necessarily mean that. It means a part divided or cut off, and it seems to me that after excepting a portion of clause 59, and then referring to "*the other sections*" of the act in a clause like 64 which seems to be purposed to declare the time of the Act taking effect, it may without any straining of language be held to apply to the residue of clause 59—if the apparent dominant intention of the Legislature require it. If a piece of chalk were

broken in two each half would be a piece of chalk, and so if the section of an Act consisting of distinct parts, be divided, I do not see why each part should not, in one sense, be called a section, because each is really a distinct enactment, although each would not be a numbered paragraph. In our Real Property Act the same word "Rent," occurring repeatedly throughout the Act, is construed in three different senses, because the general intention required it. (See Leith's Blackstone pp. 206, 208). I put great stress here upon the expression, "*the other sections,*" as though it were intended to include all the rest of the Act.

Then, as to the necessity of construing the Act, as in the last paragraph suggested. If the enactment in clause 59, as to the September General Sessions, is not within the words "the other sections," in clause 64, it seems to me it must come into force at the passing of the Act, or never come into force at all. Should any one think this proposition untrue, I would ask him to consider *at what time*, in such case, it comes into force, if not at the passing of the Act, and why. I think the proposition is true, but the supposition that the enactment is intended never to come into force is absurd—therefore it must come into force at the passing of the Act. Remembering then that it is the *expressed intention* that we are looking for, and that clause 64 enacts that "*so much*" of 59 as relates to the County Court in September, shall come into immediate operation, and that it is silent as to the General Sessions for that term, and as to all the rest of clause 59, the spirit of the maxim, "*Expressio unius est exclusio alterius,*" applies, and to ordinary apprehension, what is said and what is omitted, together distinctly convey the intention of the Legislature that the residue of clause 59 shall *not* come into immediate operation. It is indeed a very strong expression, by exclusion, of that intention. The above maxim of construction has been lauded as one naturally arising—being a principle of logic and common sense, and never more applicable than when used in the interpretation of a Statute: Broom's Legal Maxims, 5th Ed., 664, 667. But, I take it, it affords from necessity just as strong an indication of another intention, which is, that the words "the other sections" shall include the residue of clause 59, because, if not, the enactment as to the September General Sessions must either come into force at the passing of the Act, which I think is proved to be against the intention, or never at all. The words in section 59, which apply to the holding of the May Courts,—"*including the present year,*"—can