

appeal is pending, yet the pendency of an appeal may be ground for the equitable interference of the court : *Huntington v. Atrill*, 12 P.R. 36.

(3) The steps taken by the defendant company in Ontario in the pending action being *bona fide* and not for delay, and it appearing that if the suits here and in Ontario were both proceeded with the "expense would be simply enormous," including costs of commissions to England and possibly France, the court should under the circumstances in the interest of justice exercise its discretion and interfere, as not to do so and allow a useless heaping up of costs and disbursements would be a perversion of justice ; by imposing terms the interference could be accomplished without prejudice to the plaintiff and the others interested in the proceeds of the Ontario judgment.

BAIN J.]

[June 1.

BENARD D. MCKAY.

Pleading - Demurrer - Promissory note - Liquor License Act - Illegal to sue on note given for liquor or as pledge for liquor supplied.

Demurrer. Plaintiff, a licensed hotel-keeper, sued defendant on two promissory notes made by him in his favour. The defendant pleaded that part of the consideration for which the notes were given was for and on account of liquor supplied by plaintiff to defendant in his hotel, and that the notes were received by the plaintiff in payment for the liquor so supplied to the defendant, and also that the notes were received by the plaintiff as a pledge for the liquor supplied as aforesaid.

Haney, for plaintiffs, demurred on the ground that the pleas confessed but did not avoid the plaintiff's claim.

Elliott for defendant.

Section 134 of the Liquor License Act provides :

"If any hotel-keeper receive in payment or in pledge for any liquor supplied in or from his licensed premises anything except current money or the debtor's own cheque on a bank or banks he shall for such offence be liable to a penalty of \$20, and in default of payment to one month's imprisonment."

Held, (1) that provision was *intra vires* of the provincial legislature : *Hodges v. Reginan*, 9 App. Cas. 117 ; *Citizens Ins. Co. v. Parsons*, 7 App. Cas. 96.

(2) By the imposition of a penalty for taking anything but money in payment or as a pledge for the price of liquors supplied on licensed premises, the legislature intended to make it unlawful and illegal to take anything but money : it was therefore illegal for the plaintiff to take from the defendant the notes sued on, and if it were illegal for him to take them he certainly cannot bring an action on them : *Re Cork, etc.*, L.R. 4 Chy. App. 748 ; *Man. Elec. & Gas Co. v. Gerrie*, 4 Man. R. 210.

Demurrer overruled.