

diligence, that the fish was the property of plaintiff. It appearing that nothing had occurred to induce B. to change his position in any way to his prejudice, and that he sought to retain the money and apply it in satisfaction of the debt due by J., without having received any authority therefor from anyone,

*Held*, that the judge of the County Court was right in finding in plaintiff's favor, and that defendant's appeal should be dismissed with costs.

*Held*, further, that defendant's application for leave to adduce further evidence must be refused with costs, the rule which permits that to be done upon appeal being limited to cases originating in the Supreme Court.

*W. B. A. Ritchie, Q.C.*, for appellant. *Rowlings*, for respondent.

Full Court.]

ATTORNEY-GENERAL *v.* PARKER.

May 23.

*Succession Duty Act—Acts of 1895, c. 8, s. 5 and 7—Does not apply to funa transferred by power of appointment exercised after passage of Act where testator died previously.*

By the Succession Duty Act, Acts of 1895, c. 8, s. 5, all property passing either by will or intestacy, etc., shall be subject to a succession duty, etc., and by s. 7 the duties imposed, unless otherwise provided, shall be due and payable at the death of the deceased, or within ten months thereafter, etc.

M.P.B., by his last will, directed his trustees to invest a portion of his estate and pay the income arising therefrom to his brother C., and at their discretion to pay C. a portion of the principal, and, after the death of C., to pay the principal remaining to such uses and purposes as C. should by deed or will appoint. M.P.B. died on the 19th April, 1891, some four years before the passage of the Succession Duty Act. C. died on the 30th December, 1897, having exercised his power of appointment by will made the 3rd June, 1897.

*Held*, that the fund in question did not pass within the meaning of the Act, s. 5, by the exercise of the power of appointment by C., the appointees taking under the instrument creating the power, and not by virtue of the power itself.

*Held* also, that the Act, s. 7, must be construed as applying only to deaths occurring after the passing of the Act.

*A. McKay*, for plaintiff. *W. B. A. Ritchie, Q.C.*, and *J. A. Chisholm*, for defendants.

Meagher, J.]

JORDAN *v.* MACDONALD.

[July 12.

*Costs—Event—Where first verdict for plaintiff and second for defendant.*

This was an action against a constable for damages for false imprisonment. The plaintiff was arrested by the defendant under a warrant issued against the plaintiff for assault upon another constable acting in the discharge of his duty. The arrest was made by the defendant in another county before endorsement of the warrant, and the plaintiff claimed that the arrest was therefore illegal. On the first trial, a verdict was found in favour of plaintiff, but the trial judge deprived the plaintiff of costs on the ground of misconduct, and gave no costs to defendant. The plaintiff appealed from this judgment, and the defendant applied for a new trial, which was granted, the plaintiff's appeal as to costs not having been considered. On the second trial a verdict