

In other words, secs. 41 and 46 were not intended to afford a basis for interfering with the export of intoxicating liquors from Ontario—if they did, they would be ultra vires. See the cases cited above and *Gold Seal Limited v. Dominion Express Co.*, [1917] 3 W.W.R. 649.

Summary of conclusions:—

- (1) The defendants are common carriers.
- (2) Carrying liquor is part of their professed business.
- (3) They cannot, at their own option, refuse to carry for a particular class, though that class is designated by the License Board.
- (4) The Ontario Temperance Act does not give power to the License Board to interfere, in the manner here attempted, with the export of liquor from Ontario.
- (5) If it did, the Act would be ultra vires.

KELLY, J.

JUNE 25TH, 1920.

*G. TAMBLYN LIMITED v. AUSTIN.

Landlord and Tenant—Lease of Part of Building for Purposes of Store—Erection by Landlord of Stairway on Outer Wall of Store—Interference with Access of Light—Derogation from Lessee's Rights—Unauthorised Use of Wall—Demise Including both Sides of Wall—Absence of Reservation in Lease—Exclusive Use of Cellar by Lessee, though not Included in Description of Part Leased—Interpretation of Lease by Conduct of Parties—Description Explained by Possession—Use of Vacant Land Adjoining Store—Lease not under Seal—Pleading—Delay in Taking Proceedings to Stop Erection of Stairway—Injunction—Declaration—Costs.

Action to restrain the defendant, the plaintiff company's landlord, from proceeding with the erection of a stairway upon the store-premises demised to the plaintiff company, and from in any way interfering with the user by the plaintiff company of the premises, and for an order directing the removal of the stairway built by the defendant.

The defendant counterclaimed a declaration that the plaintiff company was not entitled to the use of the basement under the store, nor to the use or occupation of the lands lying immediately to the north of the store, and an injunction restraining the plaintiff from using the basement or cellar and the adjacent land.