

Sup. Ct.]

NOTES OF CANADIAN CASES.

[Q.B. Div.]

New Brunswick.]

VENNING, *appellant*, v. STEADMAN,VENNING, *appellant*, v. HARRISON,VENNING, *appellant*, v. SPURR, *respondents*.

Trespass—31 *Vict. ch. 60, secs. 2, 19*—*Order in Council, 11 June, 1879*—*Construction of—Fishery officer—Action against—Notice—Damages.*

Appeal from the Supreme Court of New Brunswick.

Three several actions for trespass and assault were brought by A., B. and C., respectively, riparian proprietors of land fronting on rivers above the ebb and flow of the tide, for forcibly seizing and taking away their fishing rods and lines, while they were engaged in fly fishing for salmon in front of their respective lots. The defendant was a fishery officer, appointed under the Fisheries Act (31 *Vict. ch. 60*), and justified the seizure on the ground that the plaintiffs were fishing without licenses in violation of an Order in Council of June 11th, 1879, passed in virtue of sec. 19, ch. 60, 31 *Vict.*, and which order was in these words:—"Fishing for salmon in the Dominion of Canada, except under the authority of leases or licenses from the Department of Marine and Fisheries, is hereby prohibited." The defendant was armed, and was in company with several others—a sufficient number to enforce the seizure if resistance was made—and there was no actual injury. A. (who was a County Court Judge) recovered \$3,000, afterwards reduced to \$1,500, damages; B. \$1,200, and C. \$1,000.

Held, 1. That secs. 2 and 19 of the Fisheries Act, and the Order in Council of the 11th June, 1879, did not authorize V., in his capacity of Inspector of Fisheries to interfere with A., B. and C.'s exclusive right as riparian proprietors of fishing at the *locus in quo*.

2. (Gwynne, J., dissenting.) That when V. committed the trespasses complained of he was acting as a Dominion officer under the instructions of the Department of Marine and Fisheries and not as a Justice of the Peace, and was not entitled to notice under Cons. Stat. N.B. ch. 89, sec. 1, or ch. 90, sec. 8.

3. That the damages were excessive, and on that ground a new trial should be granted.

Appeal from a judgment of the Supreme Court of New Brunswick on a motion for a non-suit or new trial.

The facts and pleadings are stated in the report of these cases in 22 N. B. Rep. p. 639 (1) (see also *Phair v. Venning*, 22 N. B. Rep. 362).

Harrison and Burbridge, for appellant.
Wetmore, Q.C., for respondent.

QUEEN'S BENCH DIVISION.

IN BANCO.

MUREAU v. BOLTON.

Grant to life tenant—Remainder-man in fee—Partition and sale of life estate—Prohibition.

The interest of a tenant for life is not within the Partition Act, and a prohibition on his application was granted to prevent sale.

ARMOUR, J., dissenting.

McMichael, Q.C., for plaintiffs.

Clement, contra.

LOCKIE v. TENNANT.

Third party.

A third party can only be joined before trial, and an original defendant, if he desires to secure indemnity against a third party, must sue independently.

Osler, Q.C., for plaintiff.

T. G. Blackstock, for third party.

Robinson, Q.C., and J. H. Macdonald, for defendants.

WALTON v. APJOHN.

Ontario Election Act—Algoma election—Refusal of votes.

The duties of a deputy returning officer are not judicial, but ministerial only, unless personification, etc., is attempted, and if he refuses the votes of any entitled to vote he is amenable to consequences under the Election Act. In this case the vote of a party was refused because he could not specify his land with precision, though he alleged it to be in one of several localities mentioned by him: the deputy returning officer was held liable. HAGARTY, C.J., *dubitante*.

No notice of action necessary in such a case.