

Prac.]

NOTES OF CANADIAN CASES—CORRESPONDENCE.

Osler, J.A.]

[November 10.]

**BANK OF MONTREAL V. HARVEY.***Signing judgment—Interest—Duty of clerk.*

In an action on a promissory note the plaintiffs, in their statement of claim, claimed interest at the rate of seven per cent. without showing any legal right to charge more than six per cent. The statement of defence having been held bad on demurrer, and leave to amend not having been asked or granted the plaintiffs entered judgment for default of defence for the full amount of the principal and interest claimed.

*Held*, that it was the duty of the Deputy Clerk at the office where judgment was signed not to permit judgment to be signed for what the plaintiffs were not entitled to, and that there was no objection to the plaintiffs limiting their claim to six per cent. when they came to sign judgment.

*Holman*, for the plaintiffs.

*Aylesworth*, for the defendants.

**CORRESPONDENCE.****ULTRA VIRES.**

To the Editor of the LAW JOURNAL:

DEAR SIR,—I continue the discussion of this subject, commenced in the issue of your journal of the 1st October.

II. The appointment of judges.—Sec. 96 of the B. N. A. Act provides that "the Governor-General shall appoint the judges of the Superior, District and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick."

Sec. 99 provides that "the judges of the Superior Courts shall hold office during good behaviour, but shall be removable by the Governor-General on address of the Senate and House of Commons."

Sec. 100 provides that "the salaries, allowances, and pensions of the judges of the Superior, District and County Courts shall be fixed and provided by the Parliament of Canada."

And by section 92 the Provincial Legislatures may *exclusively* make laws in relation to the ad-

ministration of justice in the Province, including the constitution, maintenance and organization of Provincial Courts, both of civil and of criminal jurisdiction, but not including criminal procedure.

The first question I wish to put as arising out of these provisions is: Can any person exercise jurisdiction or authority as a judge in any of the Courts mentioned who has not received the Governor-General's commission as such? The answer to this question must, of course, be in the negative.

The next question is: What is a judge within the meaning of these provisions? There being in the Act no interpretation of the meaning of the word, does it not mean any person exercising any judicial functions in any of the Courts in the Province having either civil or criminal jurisdiction. With this qualification, however, that where, as in Ontario, there were at the time of Confederation certain officers of those Courts not styled judges, who then exercised certain limited *quasi*-judicial powers (see Ont. Judicature Act, 1881, s. 62), it would be presumed that it was not intended to interfere with the appointment of these officers by the local authority as theretofore.

In Manitoba, on the contrary, the Courts at present existing were not constituted or organized till after 1870, and it seems impossible to hold that the word judge in section 96 does not, in Manitoba, include every person exercising any undoubtedly judicial powers in the Courts of that Province. If this be so, the question arises: Was it competent for the Manitoba Legislature in constituting and organizing a Superior Court for the Province to distribute, or empower the Court to distribute, the judicial powers amongst several persons, and to style some judges and others master and referee, and to provide that the latter should be appointed by the Lieutenant-Governor in Council during pleasure?

Section 3 of chapter 16 of the statutes of 1881 provides: "The Court of Queen's Bench may make and publish general orders for empowering the referee in chambers to do any such thing, or to transact any such business, and to exercise any such authority and jurisdiction in respect of the same as by virtue of any statute or custom, or by the practice of the said Court, is now or may hereafter be done, transacted or exercised by a *judge* of the said Court sitting in chambers, and as may be specified in any such order," except in the four matters there set out; and section 4 of the same Act provides that "every order or decision made or given under this Act by the referee in chambers shall be as valid and binding on all the parties concerned as if the same had been made or given by a *judge* sitting in chambers," with a right of appeal.