

he is able to pay the sum asked for, and that the case is a proper one for an allowance for costs. The motion is therefore granted.

J. A. St. Julien, attorney for plaintiff.

McGibbon, Major & Claxton, attorneys for defendant.

(A. B. M.)

**PROHIBITION—LICENSED BREWERS
—QUEBEC LICENSE ACT, 41 VIC. CH. 3
—CONSTITUTIONALITY OF.**

MOLSON et al. & LAMBE es qual.

[Concluded from p. 304.]

GWYNNE, J. (*Continued*):—

The learned Judge presiding in the Superior Court, referred these questions to the Police Magistrate, thereby submitting in effect to the Court of inferior jurisdiction the determination of the issues joined in a proceeding duly instituted in the Superior Court, intimating as a reason for so doing, that the petitioner Ryan, if condemned in the inferior Court, might then apply to the Superior Court, by writ of *certiorari*. But the writ of *certiorari* is a mode merely of informing the Court of the particulars of the question brought up by that writ for its decision, and it only issues after judgment, while, as we have already seen, it is the inalienable right of the superior courts of common law to entertain and decide all questions affecting the jurisdiction of the Courts of common law of inferior, and indeed of all Courts of special limited jurisdiction by proceedings in prohibition, at whatever stage the proceedings in the inferior Court may be, and when issue is joined in proceedings in prohibition, duly instituted as they have been here, the Court in which they have been so instituted becomes so seized of the issues, that it is the inalienable right of the litigants to have judgment upon those issues rendered by the Court, and in the proceeding in which the issues are joined. That the Superior Court, therefore, has erred in the judgment rendered by it, whatever may be the proper judgment to be rendered upon the questions raised, cannot, I think, admit of a doubt. Upon appeal to the Court of Queen's Bench at Montreal that Court dismissed the appeal, a majority of the learned Judges of that Court against two dis-

sentients, holding that although the proceedings in prohibition were duly instituted, the judgment of the Superior Court which declined adjudicating upon the issues joined therein, is free from error. In support of this judgment, the case of *The Charkieh*, decided in the Court of Queen's Bench in England, L. Rep., 8 Q. B., 197, is relied upon, but a reference to that case will show that it is not at all analogous to the present case.

That was not a case presenting to the Court for its decision, certain issues joined in proceedings in prohibition duly instituted. It was not a case raising a question as to the proper construction of a Statute upon which depended the jurisdiction, if any, which an inferior Court had under the circumstances of the particular case, all the material facts of which appeared upon the record in the Superior Court, and upon admission of the parties. If, upon an application for a prohibition in England in a similar case to the present one, the applicant had been directed to declare in prohibition, and if he had done so, and if by the pleadings to that declaration, issues had been joined raising questions similar to those raised in the present case, such a case would have been analogous to the present; but in such case, there can be no doubt that the Court of Queen's Bench would have decided and finally determined all the issues, to raise which the applicant for the writ of prohibition had been directed to declare in prohibition. But the question was not at all as to the jurisdiction of a court of common law of inferior jurisdiction, which are questions peculiarly within the cognizance of a Superior Court of common law to decide, and the question which was raised, was disposed of on the rule *nisi* for a writ of prohibition as we have seen to be the practice in England, when the Court entertains no doubt as to the point raised, and for that reason does not require the party to declare in prohibition. The rule was to shew cause why a writ of prohibition should not issue to prohibit the High Court of Admiralty, itself a High Court of Record having jurisdiction in all matters relating to international and maritime law, and expressly by 24th & 25th Vict. ch. 10, "over any claim for damages done by any ship", from