

could have been laid because the date at which the offence charged in the amendment was within the time limit as provided by the statute, then the amendment might have been made. But because the effect of the amendment was in substance a new information alleging a new offence, and because the time limit had expired in which an information for such new offence could have been laid, then the amendment was improperly made, and the conviction under such amendment must fail.

The Legislature provided a time limit within which all prosecutions such as this under the Liquor License Act had to be commenced by the laying of informations, and it never could have contemplated, in the section of the Act giving leave for amendment by charging the new offence, that such new offence should be charged in an amendment after the time had expired when the substantive information could have been laid, and by such amendment destroy the protection which was given to the defendant by the clause in the statute putting the time limit upon the initiation of the prosecution.

The result of giving force to the amendment made at the time when it was made, namely, after the time limit for laying the original information had expired would be absolutely to nullify the protecting clause of the Liquor License Act and to take away from the accused that protection which the statute had deliberately thrown about him.

For these reasons I think that both convictions must be set aside with costs, which I fix at \$10 in each case. In support of the view I have taken see *Rex v. Boomer*, 15 O.L.R. 321; *Rex v. Hawthorne*, 2 Can. Cr. Cas. 468.

Province of Manitoba.

COURT OF APPEAL.

Full Court.]

MCINTYRE v. GIBSON.

[May 6.

Garnishment—Garnishing order before judgment in action of tort.

The plaintiff's claim against the defendant was to recover damages suffered by reason of the defendants removing part of a fence enclosing the plaintiff's crops and thereby allowing cattle to enter and damage the crops. He claimed \$600 damages.