

appears to have been often followed. Thus the Dominion Legislature regulated, and not taxed, banks and insurance companies, and their right to do so has been established in Lambe's case and Parson's case before the Privy Council. The Imperial Parliament in many cases, e.g., shipping, factories, etc., regulates without taxing, and in many other cases taxes certain transactions without regulating how or where, or by whom or with what ceremonies those transactions are to be performed, or any regulations except those connected with the actual perception of the tax. I have already alluded to the *ejusdem generis* argument. The question almost immediately arises, "*ejusdem generis*?" These other licenses are to be of the same genus as that indicated by the previous particular words. Well, what is that genus? and here really the particular words cover every kind of trade. I prefer Justice Strong's meaning of the word shop—the general popular sense—as the proper sense in an Act of Parliament, and that is the sense which it has always borne here.

I could not listen to the suggestion that because "shop license" in Ontario was commonly applied to a license to a grocer to sell fermented liquors, therefore, it must necessarily, or ought reasonably, to bear that sole meaning here, where it never has been so confined.

It would be difficult to argue that in British Columbia the term "other license" would not cover an upholstery, and the argument of Mr. Justice Strong at p. 107 seems quite unanswerable. But for the purpose of this appeal it becomes quite immaterial to consider what is or what is not the "other license" phrase. It is not any "other" or undesignated license that is here taxed, but one of the licenses expressly designated in s-s. 9, viz., a "shop" license. It is admitted that the appellant keeps a shop, a place where he makes his living by buying and selling. Severn did not keep a shop in the ordinary sense of the word. He manufactured and sold beer. The only words under which he could be taxed, therefore, were "other licenses."

For these reasons I think that the tax is quite constitutional, and that the appeal should be dismissed, and with costs. I think that any other conclusion would be quite inconsistent with the judgments in Parson's case, and Lambe's case, and with the principles, though

not with the decision, enunciated by all the judges in Severn's case.

S. Perry Mills for appellant.

W. J. Taylor for the respondents.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

COURT OF APPEAL.

From MACMAHON, J.]

[May 13]

SHAIRP v. LAKEFIELD LUMBER CO.

*Free grants—Crown timber—Timber license—
Trespass—Patent—Reservation—R.S.O.
(1887), c. 25, ss. 4, 10—R.S.O. (1887), c. 28.*

The plaintiff was in March, 1884, located as the purchaser of a lot in the township of Burleigh, and obtained a patent therefor in November, 1888, the patent being in the usual form of a patent in fee to a purchaser, without any reservation of timber or any reference to the Free Grants and Homesteads Act. The defendants assuming to act under a timber license issued in May, 1888, covering this and other lots, entered upon the lot after the issue of the patent and took timber therefrom. In the license the lot was referred to as "located and sold." The Township of Burleigh was within the geographical limits described in sec. 4 of the Free Grants and Homesteads Act, R.S.O. (1887), c. 25, but had never been appropriated or set apart as free grant lands under the provisions of that Act.

Held, that the lot was not "land located or sold" within the limits of the Free Grant Territory, within the meaning of that Act, and that the patent was not subject to the reservations as to timber in that Act contained.

The expression "Free Grant Territory" in sec. 10 does not refer to the whole territory or tract defined in sec. 4, but only to that portion of that territory or tract which may be actually set apart and appropriated by the Lieutenant-Governor-in-Council under the Act.

Held, further, that there being no actual reservation in the patent, the defendants had no