has not the effect of making that the law which the legislature had erroneously assumed it to be: *North-West Electric Co.* v. *Walsh*, 29 S.C.R. 33.

Crawford, Q.C., for society. *Wilson*, for District Registrar.

Province of British Columbia.

SUPREME COURT.

Walkem, J.] WILSON *v.* DONALD. [July 31.

Practice—Writ of summons—Service out of jurisdiction—Shares in ship—Receiver—Order XI.

Motion to set aside the service of a writ of summons out of the jurisdiction and to discharge the order allowing the service. The plaintiffs sue on behalf of themselves and all the other execution creditors of one James Morton, and on behalf of the sheriff of Victoria. Morton being the owner of the steamship "Horsa" (registered at Victoria) mortgaged her on the 27th of August, 1898, to the defendant John A. Donald, to secure payment to him of $15,000.00. After the mortgage was executed, and before it became due, the plaintiffs severally recovered judgments at Victoria against Morton for various sums due to them, principally for supplies to the ship, and placed writs of fieri facias in the sheriff's hands with instructions to seize Morton's equity of redemption in the shares of the ship. Morton having failed to pay off the mortgage, Donald under a power of sale in it, sold the ship on the 31st of December, 1898, to H. P. Saunders of New York, for $20,000.00, that is to say for about $5,000.00 over what was due to him. The bill of sale to Saunders was registered at the Custom House, Victoria, on the 16th of January last and the ship left that port,

Notwithstanding the sale to Saunders, it was contended on behalf of the plaintiffs that the equity of redemption in the shares had been seized, and is now held by the sheriff, and that the shares are thus, in effect, now within the jurisdiction of this Court.

Held, (1) That the creditors not having got a receiver appointed of the shares they had passed to the purchaser; (2) that an order for service out of the jurisdiction on the mortgage, could not be made.

Langley for the motion. *G. A. S. Potts* contra.

Full Court.] [Nov. 28, 1899.

SHORT *v.* FEDERATION BRAND SALMON CANNING CO.

Practice—Time for appealing—Supreme Court Act, s. 76, and amendment of 1899—Meaning of "refusal of a motion or application."

Appeal to the Full Court from the judgment of DRAKE, J., dismissing the action. The judgment was pronounced on the 26th of April, 1899, and