

Procedure—Service of action in the province of Ontario—Law applicable—Proof of law.

Held, Where service is authorized to be made in Ontario, a personal service, in accordance with the law of that province as proved in the cause, is valid.—*Pinsonault v. Connée et al.*, Loranger, J., Dec. 29, 1888.

EXCHEQUER COURT OF CANADA.

OTTAWA, Dec. 13, 1888.

Before BURBIDGE, J.

REGINA V. POULIOT et al.

Information—Statutory Defence—Demurrer—Illegality of Contract—Dominion Elections Act, 1874—Crown Rights—Interpretation of Statutes.

This was an action at the suit of the Crown to recover \$352.20 from the defendants, due upon a contract for the carriage of passengers between certain stations on the Intercolonial Railway, which is owned and operated by the Government of Canada. The defendants by their pleas admitted the contract, and its performance by the Crown, but sought to avoid their liability by alleging, (1) That the passengers were carried on *bons*, and that the action should have been brought upon such *bons*, and not upon the agreement set out in the information; (2) That the contract was for the carriage of voters to attend the nomination proceedings at an election then pending, with intent to corruptly influence such voters at such election, and was illegal and void under the provisions of secs. 100 and 122 of the Dominion Elections Act, 1874. A demurrer to these pleas was filed on behalf of the Crown.

Held :—(1). That the defendants having admitted the breach of contract, their liability was not in any way affected by the fact that the passengers were carried on *bons* signed by one, and not by all of the defendants; and that the cause of action was properly averred in the information.

(2). That the Crown is not bound by section 100 of the Dominion Elections Act, 1874 (37 Vict., C. 9), which avoids every executory contract, promise, or undertaking in any way referring to, arising out of, or depending upon any election under the Act, even for the payment of lawful expenses, or the doing of some lawful act; or by section

122 thereof which enacts that *all persons* who have any bills, charges, or claims upon any candidate for or in respect of any election, shall send in such bills, charges, or claims within one month after the day of the declaration of the election to the agent of the candidate, otherwise such persons shall be barred of their right to recover such claims.

(3). That the language of the 46th clause of the 7th section of the Interpretation Act (Rev. Stats. Can. Ch. 1) which enacts: "that no provision or enactment in any Act shall affect in any manner or way whatsoever, the rights of Her Majesty, Her heirs or successors, unless it is expressly stated therein that Her Majesty shall be bound thereby;" is not to be construed by reading into the Act the exception to the common law rule, that the Crown is not bound by a Statute, unless expressly mentioned, which exception is laid down by Lord Coke in the *Magdalen College case* (11 Rep. 74-b), viz: "that the King is impliedly bound by Statutes passed for the general good; the relief of the poor; the general advancement of learning, religion and justice; or to prevent fraud, injury or wrong."

Quere : Does the clause in the Interpretation Act (Rev. Stats. Can. Ch. 1, clause 46, S. 7) preclude the Crown from being bound by a Statute in which it is included by necessary implication only?

Demurrer allowed.

O'Connor & Hogg for Crown.

Gormully & Sinclair for Defendants.

EXCHEQUER COURT OF CANADA.

OTTAWA, June 30, 1888.

Before BURBIDGE, J.

BOURGET V. THE QUEEN.

Compensation and damages—Dedication of Highway—Similarity of the law of England and of the Province of Quebec respecting the doctrine of Dedication or Destination.

This was a claim for \$681 for 2,724 square feet of land in the village of Lauzon, County of Levis, P.Q., expropriated by the Crown for the purposes of the St. Charles Branch of the Intercolonial Railway, and for \$1,350 for damages to other lands of the claimant caused by the construction thereof.