

culty in defining who is a broker and who is a commission merchant. We have express law on the subject. Art. 1735 says "a broker is one who exercises the trade and calling of negotiating between parties the business of buying and selling or any other lawful transactions. He may be the mandatary of both parties, and bind both by his acts." Art. 1736 :—"A factor or commission merchant is an agent who is employed to buy or sell goods for another, either in his own name or in the name of his principal, for which he receives a compensation commonly called a commission." It is obvious that the business of these parties is not described in either of the articles of the Code, and I do not think I should make the case any clearer by discussing principles or analogies which the express terms of the law render unnecessary.

I am of opinion, therefore, that the plaintiffs in all these cases are ship agents, and nothing more, for their being owners or not has nothing to do with the question whether they are brokers or commission merchants. The tax is not put on mere agents such as these, but on brokers, a perfectly distinct calling, intermediaries and agents of both parties to a bargain, and upon commission merchants, who by law are those who buy and sell for others; and it cannot be extended beyond those terms to include mere ship agents. Therefore I decline to go beyond the express law; and I neither refer to the case cited from 4 Bingham, nor to the fact which was mentioned, and indeed proved in these cases, that the tax in question has not been levied from agents of the same class in another ward of the city. There is therefore judgment for plaintiffs in the three cases, with costs.

Dunlop & Lyman for plaintiffs.

RECENT DECISIONS AT QUEBEC.

Nuisance—Indictment—B. N. A. Act.—The defendant, agent of the Bell Telephone Co. of Canada, was indicted for illegally erecting three telegraph poles, in Buade street, a leading thoroughfare in the city of Quebec, thereby obstructing the Queen's highway, to the common nuisance of the public.

The Company is incorporated by Act of the Parliament of Canada, 43 Vict. ch. 67, with power to establish telephone lines in the several provinces of the Dominion, and to construct, erect and maintain lines along any public highway,

street, bridge, water-course or other such place, or across or under any navigable waters, either wholly in Canada, or dividing Canada from any other country, "provided that in cities, towns and incorporated villages, the opening up of the street for the erection of poles or for carrying the wires underground, shall be done under the direction and supervision of the engineer or such other officer as the Council may appoint, and in such manner as the Council may direct, and that the surface of the street shall, in all cases, be restored to its former condition by and at the expense of the Company." This charter, and the consent of the city Council, duly obtained, were relied on by the defendant as a plea to the indictment; in the absence of these conditions the poles in question would undoubtedly constitute an obstruction and a nuisance.

It appeared that the business of the Company, in connection with the objectionable poles, was of a purely local character, and confined to the district of Quebec, and it was not declared by the charter to be an undertaking incorporated for the general advantage of Canada.

The jury, under direction of the Court, found a verdict of *guilty*, subject to the question reserved for the determination of the Court *in banco*, whether the said Company had authority under their statute, or were otherwise authorized by law, to place the poles in the said street; and if so, whether the Dominion Legislature had a legal right to grant such authority.

Held, sustaining the verdict, that the establishment of the Company in Quebec, was one purely of a local character and intended to serve local purposes, having no pretension to connect provinces, or even to cross navigable rivers, and of such a nature as to be *ultra vires* of the Dominion Parliament, and falling exclusively within the jurisdiction of the local legislature.

To give the Dominion Parliament the power to authorize the Bell Telephone Company to impede circulation and traffic in the streets of Quebec, one of two conditions would have been required; either the Company should have been incorporated for the purpose of connecting by telephone lines this province with any other or others of the provinces of the Dominion, or of extending its lines beyond the limits of this province; or it should have been declared by parliament to be for the general advantage of Canada or of two or more of the provinces.—*Regina v. Mohr*, Reserved Case, decided by Court of Queen's Bench, 8th June, 1881. 7 Q.L.R. 183;