HENRY, J.:—

This is an action brought by the Respondent Lambe as Inspector of Licenses for the revenue district of Montreal, against Andrew Ryan for an alleged breach of the License Law of the Province of Quebec in having sold spirituous liquors without license and contrary to law.

In addition to the general plea of non-guilty, Ryan pleaded a justification as the servant and employee of the firm of J. H. R. Molson and Brothers, doing business as brewers under a license as such brewers from the Dominion Government, to sell the liquors brewed and manufactured by them at Montreal. The questions to be decided in the action were arranged to be submitted for the decision of the justice who issued the writ, and were substantially embodied in admissions signed by the counsel of both parties, and are in substance the points raised by the pleas in this action.

The case was submitted for the consideration of the justice, but before any decision by him, a writ of prohibition was issued by the Superior Court; and, after argument before that Court, the learned Judges in their judgment decided substantially that the Local License Act of 1878 did not supersede the Act of the Dominion as to Brewer's Licenses, and that Ryan was justified in selling beer as he did, but inasmuch as the justice had jurisdiction to decide the matters of fact and law, and that as the decision of the justice could be revised by a higher court by means of a writ of certiorari, the Court quashed the writ of prohibition. That judgment was affirmed, but apparently for other reasons, by the Court of Appeal at Montreal, and from the latter judgment an appeal was taken to this Court.

The question then is as to the applicability of the writ of prohibition to the circumstances of this case.

The writ of prohibition is an extraordinary judicial writ issuing out of a Court of a superior jurisdiction, and directed to an inferior Court for the purpose of preventing the inferior tribunal from usurping a jurisdiction with which it is not legally vested.

It is an original remedial writ and is the remedy afforded by the common law against the incroachments of jurisdiction by inferior Courts; and is used to keep such Courts within the limits and bounds prescribed for them by law. Such being the object, and I may say the only one, it should be upheld where it can be legitimately employed.

In vol. 3, Comm. Blackstone says: "A "prohibition is a writ issuing properly out "of the Court of King's Bench, being the "King's prerogative writ, but for the further"rance of justice it may now also be had "in some cases out of the Court of Chancery, "Common pleas or Exchequer directed to "the Judge and parties of a suit in any in"ferior Court, commanding them to cease "from the prosecution thereof, upon suggest"ion that either the cause originally or some "collateral matter arising therein does not "belong to that jurisdiction, but to the "cognizance of some other Court."

The writ "does not lie for grievance which "may be redressed in the ordinary course "of judicial proceedings." Nor is "it a writ "of right granted *ex debito justicia* but rather "one of sound judicial discretion, to be "granted or withheld according to the cir"cumstances of each particular case. Nor "should it be granted, except in a clear case "of want of jurisdiction in the Court whose "action it is sought to prohibit." High on extraordinary remedies 606.

On an application for the writ, the want of jurisdiction about to be exercised should be clearly shown, and regardless of the law and facts to be considered by the Court sought to be prohibited, the sole question is as to its jurisdiction to deal with them. If that is not clearly shown, the issue of the writ would be unjustifiable.

I have carefully considered the petition for the writ of prohibition in this case and the admissions of the counsel; but neither contains any allegation of the want of jurisdiction of the justice who issued the writ between the original parties, and therefore it must be presumed that such jurisdiction existed. See Shortt on Prohibition 446 and case there cited, Yates v. Palmer, 6 D. & L. 288. If so, there is no jurisdiction shown for the issue of the writ of prohibition. Besides, I hold that, under the law, the Justice before whom the case was originally brought had ample jurisdiction to try all the issues raised before him.

The Justice therefore must be held to have had jurisdiction to dispose of the case submitted to him, and no Court by prohibition could prevent him from the performance of the duty imposed upon him by law by a decision on the matters of fact and law involved.

After his decision, a review of it may be had by a Superior Court as pointed out in the judgment of the Superior Court: but under the law as to the writ of prohibition that writ could not be interposed even if his judgment would be unappealable or could not in any way be reviewed by a higher Court. I will not discuss the merits of the case as between the original parties, as they should in the first place be disposed of by the Justice, the only tribunal in my opinion at present having power to deal with them in the first place. I think therefore the appeal in this case should be dismissed and the judgments of the two Courts below affirmed with costs.

(Opinion of Gwynne, J., in next issue.)