

Quebec Rep.]

ANGERS V. QUEEN INSURANCE CO—NOTES OF CASES.

[C. of A.

half of the Crown, charging the respondents with infraction of the Statute.

The respondents pleaded the unconstitutionality of the Statute, inasmuch as it levied an indirect tax upon insurance business, and thereby encroached upon the exclusive jurisdiction of the Parliament of Canada.

The Court below (Torrance, J.) maintained the plea, and the action was dismissed.

Carter, Q. C., and Lacoste, Q. C., for appellant.

Abbott, Q. C., Kerr, Q. C., and Doutre, Q. C., for respondents.

RAMSAY, J., differing from the majority, would be for reversing the judgment appealed from. The tax levied by requiring stamps to be placed on insurance policies, though not direct taxation within the meaning of section 92 of the B. N. A. Act, par. 2, yet fell within par. 9 of the same section, permitting Local Legislatures to issue licenses for the raising of revenue for Provincial purposes. The payment of the license fee by stamps was simply a mode of collection, and was the most equitable mode that could be adopted.

DORION, C. J., held that the charge imposed on licenses by the Statute was clearly an indirect tax, and the attempt to put it in the form of a license was an evasion of the B. N. A. Act, from which the Local Legislature derives its powers. His Honor abstained from expressing any opinion upon the question, not raised here, whether the Local Legislature has not power to force insurance companies to take a license at a fixed sum.

Judgment confirmed.

—*Legal News.*

NOTES OF CASES.

IN THE ONTARIO COURTS, PUBLISHED
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COURT OF APPEAL.

From C. C. Ontario.]

[January 9.

THOMAS V. AMERICAN EXPRESS COMPANY.

Carriers—Contract to carry there and back—One rate.

The plaintiff, who was a poultry fancier, being desirous of sending some fowls and

pigeons to the Hamilton Exhibition, made inquiries of the agent of the Canadian Express Company, at Whitby, as to the cost of their carriage to Hamilton and back. The Canadian Express Company's line did not run further in that direction than Toronto, from which point to Hamilton goods were carried by the defendant's Company. Both Companies were carrying goods to the Exhibition at special rates, and the plaintiff asked the agent to ascertain the defendant's rates. The agent communicated with the defendant's agent, who was also the agent of the Canadian Express Company, at Toronto, but the correspondence was not produced. Subsequently the plaintiff delivered the birds to the agent of the Canadian Express Company, at Whitby, to whom he paid the freight for their carriage to Hamilton and back. The birds, on arrival at Hamilton, were received by the plaintiff. After the Exhibition was over the plaintiff requested the defendant's agent at Hamilton to send them back by a certain train, which he agreed to do, and gave him labels to address and attach to the crates, promising to send some one to receive them. The plaintiff afterwards pointed out his birds to a man sent by the Company, who promised to take charge of them, but allowed a number of the pigeons to fly away. This action was brought to recover their value.

Held, reversing the judgment of the County Court, that the evidence showed that the contract was with the Canadian Express Company to carry to Hamilton and back for one rate, and that the defendants, therefore, were not liable.

Monkman for the appellant.

McMichael, Q. C., for the respondent.

Appeal allowed.

From Q. B.]

[January 15.

ALLEN V. McTAVISH.

Statute of limitations—Covenant—Mortgage.

The declaration charged that the defendant, by deed dated 24th November, 1856, covenanted to pay one J. H., or his assigns, a certain sum of money, with interest, in four equal annual instalments, the first of which became due on the 24th November, 1856, and that the said J. H. assigned the said mortgage to the plaintiff, yet the defendant did not pay the principal moneys or interest, or any part thereof.

The defendant pleaded that the plaintiff's