

Before the receipt of this notification defendant had sent to plaintiffs certain orders for goods which plaintiffs failed to fill and they sought to avail themselves of a clause in the contract in which it was provided, "If from any cause the company fails to furnish the agent with these goods it shall not be liable to him for damages in consequence."

Held, that this clause was void as repugnant to the obligation and that defendant was entitled to damages for loss of profits on the transactions.

Christie, K.C., for plaintiffs. *Roberts*, for defendant.

Graham, E.J.]

THE KING v. CLARK.

[Nov. 2.

Canada Temperance Act—Excessive penalty—Conviction set aside.

The Canada Temperance Act, 1904, c. 41, provides that a defendant on conviction shall be liable to a penalty for the first offence of not less than \$50 or imprisonment not exceeding one month with or without hard labour. Defendant was detained in jail under a commitment which provided for imprisonment with hard labour in default of payment of the penalty.

Held, that he was entitled to his discharge, but a condition was attached that no action should be brought.

Section 872 of the Code as amended by the Act of 1900 is applicable to statutes which impose both imprisonment with hard labour and a penalty with imprisonment in default of payment or distress. In such a case it would be anomalous for a prisoner serving for the whole penalty to be imprisoned part of the time with hard labour and part of the time without. This view gives an office to the words "as part of the punishment" in the amending Act.

Power, for the applicant. *Ralston*, contra.

Graham, E.J.]

RE EFFIE MAUD YOUNG.

[Nov. 2.

Criminal law—Inmate of disorderly house—Imprisonment for "term of three months."

E. M. Y. was convicted by a stipendiary magistrate for that