

home with him, and deliver the envelopes to the persons to whom they were addressed after his death.

*Held*, per WEATHERBE and TOWNSHEND, JJ., GRAHAM, E.J. and HENRY, J. dissenting, that there was a delivery sufficient to constitute a good and effectual donatio mortis causa.

*W. E. Roscoe*, Q.C., for appellant. *J. J. Ritchie*, Q.C., for respondent.

Full Court.]

MILLER v. GREEN.

[March 14.

*Libel—Publication—Evidence of motive tendered and refused—New trial ordered.*

In an action brought against defendant, one of the general agents of the Confederation Life Association for publishing certain alleged libellous matter of and concerning plaintiff, formerly local agent for the company at B., and who had been removed from his position by defendant, to a policy holder in the company. Counsel for defendant tendered evidence at the trial to show the motive of defendant in writing the letter complained of. The trial judge having refused to receive the evidence.

*Held*, that he was wrong in doing so, and that there must be a new trial.

*Borden*, Q.C., and *J. J. Ritchie*, Q.C., for appellant. *Roscoe*, Q.C., for respondent.

Full Court.]

THE QUEEN v. ETTINGER.

[March 14.

*Canada Temperance Act s. 105—Information held bad not having been laid before two justices—Fact to be shown on face—Summons to follow information—Judicial Act—Words "if such prosecution is brought"—Estoppel.*

On the 14th October, 1898, defendant was convicted before two justices of the peace for the County of H. of an offence against the provisions of the Canada Temperance Act. On the 15th of November of the same year an order was granted for a writ of certiorari to remove into this court the conviction and all things touching the same, on the ground that the information was bad on its face, not having been laid before two justices, but before one only, in the absence of the other justice named in the summons, who was one of those that made the conviction.

*Held*—1. Dismissing the appeal taken by the inspector, following *The Queen v. Brown*, 23 N.S.R. 21, that the two justices must be present when the information is laid, and must concur in directing the issue of the summons, that being a judicial act; also that the information should show on its face that it was laid before the two justices, and that their names should appear therein, and the summons should follow the information.

2. The words "if such prosecution is brought" in s. 105 of the act as amended by Dom. Acts of 1888, can apply only to the laying of the information or the issuing of the summons.