

person interested, complaining that any company operating any public utility, or having the control thereof, or charged with the performance of any duty or the exercise of any power in relation thereto, (b) has done or is doing any act contrary to or in contravention of any agreement entered into between the company and the corporation.

By sec. 22, this jurisdiction, where conferred, is exclusive.

The defendants were a company operating or having control of a public utility.

Nothing in the judgment of the Judicial Committee in Toronto R. W. Co. v. City of Toronto, [1920] A.C. 455, 17 O.W.N. 501, caused the learned Judge to doubt the correctness of the judgment in Town of Waterloo v. City of Berlin (1913), 28 O.L.R. 206, which entirely covers the point raised.

The jurisdiction of this Court had, therefore, by appropriate legislation, been ousted.

The question whether the parties had by agreement excluded the jurisdiction of this Court in relation to the matter in question was not argued, and the learned Judge did not pass upon it.

*Motion dismissed with costs.*

FERGUSON, J.A., IN CHAMBERS.

NOVEMBER 12TH, 1920.

REX v. NEILSON.

*Ontario Temperance Act—Magistrate's Conviction for Offence against sec. 40—Alleged Sale of Intoxicating Liquor by Officer of the Law—Absence of Evidence to Sustain Finding of Magistrate—Quashing Conviction.*

Motion for an order quashing the conviction of the defendant, by a magistrate, for an offence against the Ontario Temperance Act.

J. W. Curry, K.C., for the defendant.

F. P. Brennan, for the magistrate.

FERGUSON, J.A., in a written judgment, said that it was contended: (1) that the evidence in the case did not disclose a sale; and (2) that the defendant was entitled to the protection afforded by the provisions of sub-sec. 3 of sec. 50 of the Act, 6 Geo. V. ch. 50.