

[S. C.]

NOTES OF CASES.

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PUBLISHED IN ADVANCE BY ORDER OF THE LAW  
SOCIETY.

## SUPREME COURT.

February 1881.

THE QUEEN, *Appellant*, v. BELLEAU, ET AL.,  
*Respondents*.*North Shore Quebec Turnpike Bonds issued  
under authority of 16 Vict. c. 235—Liability  
of Canada for the debts of the late Province  
of Canada.*

The Respondents by Petition of Right before the Exchequer Court set forth in substance: That the Province of Canada had raised, by way of loan, a sum of £30,000 for the improvement of Provincial highways situate on the North Shore of the River St. Lawrence, in the neighbourhood of the City of Quebec—and a further sum of £40,000 for the improvement of like highways on the South Shore of the River St. Lawrence—that there were issued debentures for both of the said loans, signed by the Quebec Turnpike Road Trustees, under the authority of an Act of Parliament of the Province of Canada, passed in the sixteenth year of Her Majesty's reign, intituled: "An Act to authorise the Trustees of the Quebec Turnpike Roads to issue debentures to a certain amount and to place certain roads under their control"—that the moneys so borrowed came into the hands of Her Majesty, and were expended in the improvement of the highways in the said Act mentioned—that no tolls or rates were ever imposed or levied on the persons passing over the roads improved by means of the said loan of £30,000—that the tolls imposed and collected on the highways improved by means of the said loan of £40,000 were never applied to the payment of the debentures issued for the said last mentioned loan in interest or principal—that the Trustees accounted to Her Majesty, as well for the said loans as for the tolls collected by them—that at no time had there been a fund in the hands of the said Trustees adequate to the payment, in interest and principal, of the debentures issued for said loans—that the Respondents are holders of debentures for both of the said loans to an amount

of \$70,072, upon which interest is due from the 1st day of July, 1872—that the debentures so held by them fell due after the Union, and that Her Majesty is liable for the same under sec. 111 of British North America Act, 1867, as debts of the late Province of Canada existing at the Union.

In his defence to this Petition, Her Majesty's Attorney-General did not deny the liability of Her Majesty for the debts of the late Province of Canada, but he denied that the debentures in question were debentures of the Province of Canada—that the moneys for which they were issued were borrowed and received by Her Majesty—that there was any undertaking or obligation on the Province of Canada to pay the whole or any part of the said debentures.

*Held*, affirming the judgment of Exchequer Court, that the debentures in question were debentures of the late Province of Canada—therefore under the provisions of the British North America Act, the Dominion of Canada was liable, but for the capital only of the said debentures, it being provided by c. 235, sec. 7, that no money should be advanced out of the Provincial funds for the payment of the interest.

RITCHIE, C. J., and GWYNNE, J., dissented. *Lash*, Q. C., and *Church*, Q. C., for appellants.

*McCarthy*, Q. C., and *Irvine*, Q. C., for respondents.

JONAS, *Appellant*, v. GILBERT, *Respondent*.

*By-law—Power to impose license tax—Discrimination between residents and non-residents—Ultra vires of 33 Vict., c. 4, N. B.*

This was an action against the Police Magistrate of the city of St. John, for wrongfully causing the plaintiff (Jonas), a commercial traveller, to be arrested and imprisoned on a warrant issued on a conviction by the Police Magistrate for violation of a by-law made by the Common Council of the city of St. John, under an alleged authority conferred on that body by 33 Vict., c. 4, passed by the Legislature of New Brunswick. The by-law in question authorized "the Mayor or his Deputy, as aforesaid, to demand and receive from any and every such person to whom license shall be granted, as aforesaid, for the use of the Mayor, Aldermen and Commonalty of the said City, the sum of money hereinafter men-