

The application of the liquidators must therefore be refused.

The Bank Act (s. 29) provides that no assignment or transfer of shares "shall be valid unless it is made and registered and accepted in a book or books kept by the directors for that purpose." The non-observance of these conditions by the company left its name on an incomplete and unaccepted transfer of shares, and gave rise to this litigation, and the liquidators in executing their duties under the Winding-Up Act could not determine the mixed questions of law and fact themselves, and had no other course open to them but to bring the case before the court for its adjudication. There will therefore be no costs.

### SUPREME COURT OF BRITISH COLUMBIA.

WEILER v. RICHARDS.

#### *Provincial legislation—Ultra vires—Licenses.*

Where an Act of the Legislature of the Province of British Columbia empowered the municipalities within the Province to impose a license tax upon all persons carrying on business as wholesale or retail merchants:

*Held*, that the Act was *intra vires* of the Legislature of the Province.

This was an appeal against a conviction of the Stipendary Magistrate of Victoria, for that the Appellant carried on the business of a wholesale as well as retail merchant without having taken out a license as provided by the by-law under the Municipalities Act and Provincial Statutes.

BEGBIE, C.J.—The facts being all admitted the only question argued before me was as to the constitutionality of the tax, *i.e.*, of the Provincial Statute which authorised it to be imposed. It is admitted that if the Provincial Legislature has this authority under s. 92 of the B.N.A. Act the tax has been in other respects lawfully imposed on the appellant.

Several cases were cited on both sides, for and against the tax, but the appellant's counsel almost rested his claim upon *Severn's Case*, 2 S.C.R., 70. Of course both duty and inclination would impel me to follow a decision of the highest Court of Appeal in Canada if the circumstances of the taxes are identical or even analogous; it is my clear duty to follow such decisions, and it would render all debate unnecessary and relieve from all responsibility in dis-

cussing so delicate a question as to the constitutionality of an Act of the Legislature.

Unfortunately, however, the two cases at the very outside are separated by a very broad and clear distinction owing to the differences in the trades of the two parties. The present appellant is an upholsterer; Severn was a brewer in Ontario subject to the Dominion excise laws and armed with a Dominion permit. And this is relied upon by all the judges who decided that the additional license tax was beyond the power of the Provincial Legislature. All matters connected with the excise are admittedly under Dominion law. Severn had already been duly licensed to exercise his calling, as far as manufacturing beer was concerned; and it was argued almost irresistibly that this involved a license to sell his beer when manufactured. It was not to be presumed that the B.N.A. Act contemplated a double taxation; and besides taxation by the Province would necessarily diminish the capacity of the taxee to sustain the excise taxes, which the Dominion might find it necessary to impose. All the four judges who formed the majority on Severn's case rely strongly on this ground. They allege other grounds also, but they all agree in this and place it prominently forward, and it is not easy to see an answer to it. Another matter which is also prominently put forward is the argument of *ejusdem generis*. The two clauses in s. 91 and s. 92, which are alleged to be in conflict, and on which the appellants and the municipality respectively rely are in well known words. Sec. 91, s-s. 2, declares that the Dominion Parliament exclusively is authorized to make laws "for the regulation of trade and commerce." Sec. 92, s-s. 9, declares that the Provincial Legislature exclusively shall have authority to make laws "in relation to shop, saloon, tavern, auctioneer and other licenses for raising revenue for provincial, local, or municipal purposes." It was argued by the majority in Severn's case that the words "other licenses" must mean others *ejusdem generis*, and that "shop licenses" in Ontario (being the province in which the tax appealed against was imposed), did not mean licenses for shops in the wide, general sense, but only for liquor shops, and that other licenses must, therefore, also mean other liquor licenses, though the auctioneer's license was not so readily dealt with. But, whatever the effect of this last word "auction-