

Q. B. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

the Canada Temperance Act, he might not be said to have acted without jurisdiction.

Quere, whether sec. 111 takes away the *certiorari* in all cases, or only in cases coming under sec. 110.

Fenton, for the Crown.

Tizard, contra.

Divisional Court.]

[March 10.]

HATELY V. MERCHANTS DESPATCH CO.

Carrier—Damage to goods carried—Action by consignor—Nonsuit—New trial—Joinder of consignee as co-plaintiff—Constitutional question—Notice to Attorney-General.

The plaintiff consigned a quantity of butter to parties in England, and shipped it by the defendant, on bills of lading describing the goods as shipped by the plaintiff to be delivered to —, or order, or his assigns, he or they paying freight. The plaintiff endorsed the bills of lading. The consignees paid the drafts drawn upon them for the price, and the butter having been seriously damaged in transit, they made claim upon the plaintiff for the loss. The plaintiff sued the defendants for the damage, and was non-suited on the ground that he had not sufficient interest or was not the proper person to sue.

The Court, without holding that the plaintiff had no right of action, or deciding as to the effect of R. S. O. cap. 116, sec. 5, set aside the non-suit and directed a new trial, with leave to the plaintiff to add as co-plaintiff any or all of the consignees or endorsers of the bills of lading; the evidence already given to stand with any additions the parties might desire, reserving all costs.

The validity of R. S. O. cap. 116, sec. 5, was challenged on the ground that it was *ultra vires* as interfering with trade and commerce, but the Court refused to decide the point now, without notice to the Attorney-General and Minister of Justice, under 46 Vict. cap. 7, sec. 6 (O), which would involve great delay, the course adopted being the speediest and least expensive.

Moss, Q.C., and *Lees*, for plaintiff.

Oster, Q.C., *Kerr*, Q.C., *Cassels*, *Plumb*, and *Miller*, contra.

CHANCERY DIVISION.

Proudfoot, J.]

[April 4]

RE MCCAUGHEY V. WALSH.

Striking solicitor off the rolls—Misconduct of partner.

To justify an order to strike a solicitor off the rolls there must be personal misconduct; it is not enough to show that his partner has been guilty of fraudulent conduct, from which a constructive liability to pay money may perhaps arise. The Court is not in the habit of exercising even the lesser jurisdiction of ordering payment in a summary manner against a solicitor, to whom personally no blame is attributable, though he may be responsible for his partners' acts—much less will the Court exercise this penal power over a solicitor to whom no blame is ascribed. *St. Aubyn v. Smart*, L. R. 3 Ch. 646, distinguished.

J. H. Macdonald, for the motion.

Hoyles, contra.

Divisional Court.]

[April 5]

WITHROW V. MALCOLM.

Re-issue of patent—Patent Act of 1872.

As to the plaintiff's first patent,

Held, [reversing *FERGUSON*, J.], there had been no infringement as regards the first and third claims; as regards the second claim, the patent was bad for want of novelty.

As to the sixth claim of the re-issued patent, there appeared to be an infringement, if the re-issued patent was valid. The defendants objected that the re-issued patent contained combinations not in the surrendered patent or application therefor, and that it was therefor invalid. It appeared that the sixth combination of this re-issued patent was displayed in the drawings described in the application, but not separated from the other parts of the description, and made the subject of a distinct claim so as to be protected by the first patent.

Held, per *BOYD*, C., the re-issued patent was nevertheless valid: per *PROUDFOOT*, J., contra.

Per *BOYD*, C.—The commissioner had jurisdiction to grant the re-issue, for the commissioner has power to re-issue and include therein a claim, which was described in the original, but through inadvertence, accident or mistake, not