On May 12th, 1881, the Mayor of Sarnia convicted Alexander of unlawfully selling liquor contrary to the Act, and fined him $50 and costs.

Mr. James F. Lister, counsel for the defendant, raised the following objection, but was over-ruled by the Mayor :—

"I submit that you, as Mayor or otherwise, have no power or jurisdiction to entertain, try, or adjudicate upon the alleged offence upon which the defendant is charged because the Canada Temperance Act, 1878, under which the information herein is laid is not lawfully in force in the County of Lambton by reason of the polling of votes under the said Act having been taken in the county on the same day that an election of a member to serve in the Legislative Assembly for Ontario was opened and commenced by the nomination of candidates, and in support of my objection I beg to refer you to sec. 9, sub-sec. 2, which provides that no polling under the Act shall take place on the day on which any election may take place in any county for members to serve in the Parliament of Canada, or in any of the Local Legislatures of the Dominion. I submit that the 29th day of May, 1879, was the election day for the West Riding of Lambton within the meaning of the Ontario Elections' Act, R. S. O. c. 10, sec. 26 and following sections. That it was a day on which an election might have been held, and at all events it was the opening and commencement of an election. For these reasons this prosecution should be dismissed."

The matter coming up on *certiorari* before ARMOUR, J., on May 25th, 1881, he granted a rule *nisi* calling on the informant and Mayor to show cause why the conviction should not be quashed "on the ground that the Mayor had no jurisdiction to hear or determine the said charge, the Canada Temperance Act, 1878, not being legally in force in the said County of Lambton by reason of the polling of votes under the said Act having been held in the said county on the same day that an election of a member to serve in the Legislative Assembly of the Province of Ontario took place."

On June 1, 1881, *C. Robinson*, Q.C., moved the rule absolute.

J. Bethune, Q.C., contra.

ARMOUR, J., made the rule absolute to quash the conviction.

His Lordship delivered an oral judgment. The following is a report of his remarks taken from the *Globe* newspaper of June 3rd, 1881 :—

His Lordship, then, in delivering judgment, said : "That it seemed to him quite clear that the proceedings in connection with the polling were irregular, and he might as well dispose of the matter at once, so that if either party desired they could take it at once before the full court, which would still be sitting for several days. For myself I have no doubt that the conviction should be quashed. I think the nomination day is the day upon which an election might take place, and that being so, the polling on that day, under the Temperance Act is prohibited, and it is just as if no such polling had taken place at all. As to the next objection raised in opposing this motion, that the Governor-in-Council had issued a proclamation which is final, I do not think he has any authority to move or dispense with preliminaries required by the Act. Dealing with a case of this kind I cannot say that anything the Governor-General might have done could vary the provision of this Act. He has to act as authorized by the Legislature, and there is nothing in the statutes giving him power to waive the provisions. The rule will, therefore, be absolute to quash the conviction."

Mr. Bethune requested that the rule which would issue should set out the grounds upon which the conviction was quashed as the matter would again be submitted to the Lambton people.

His Lordship said that certainly the rule might issue in that form. He thought it was a rather unfortunate circumstance that a matter like this should be disallowed on such technical grounds.

MASTER'S OFFICE.

(Reported for the CANADA LAW JOURNAL.)

MERCHANTS' BANK v. MONTEITH.

Imp. Act 38, *Geo.* 3, *c.* 87—*R. S. O. c.* 40, *ss.* 34 *and* 35, *c.* 46, *s.* 32—*Infant administrator—Nullity—Suits by an infant—Liability for costs.*

The 6th sec. of 38 Geo. 3, c. 87 (Imp.), prohibiting the grant of probate to infants under the age of twenty-one, is in force in Ontario, either as a rule of decision in matters relating to executors and administrators (R.S.O. c. 40, ss. 34, 35), or as a rule of practice in the Probate Court in England (R.S.O. c. 46, s. 32.)

An infant cannot lawfully be appointed administrator of an estate, and therefore a grant of probate or of letters of administration to an infant is void, and confers no office, and vests no estate in such infant.

An infant had been appointed administrator of an estate, and various suits had been brought in his name on behalf of such estate.

Held, that being an infant he was incapable of bringing suits in his own name, or of making himself, or the estate he assumed to represent, liable for the costs of such suits.

Sections 57 and 58 of the Surrogate Act (R.S.O. c. 46) protect parties *bona fide*, making payments to an executor or administrator, notwithstanding any invalidity in the probate or letters of administration; but they do not protect payments made to third parties by an infant assuming to act as administrator of the estate.

[Mr. Hodgins, Q.C. Sept. 29.