

those who are unaccustomed to its use, and these also must be protected. No one can be allowed to offer for sale without a license, under the guise of a temperance beverage, a liquor which is capable, if freely drunk, of producing even the incipient stages of intoxication. I think Blue Ribbon beer will do this if used freely by the class of persons last mentioned, though doubtless its effects upon more seasoned drinkers may be questionable. Upon the whole case and from the whole evidence I must decide that this beer is an intoxicating liquor, and that the appellant has been properly convicted.

McDougall, Co.J.]

VERNEY v. GUTHRIE.

[Nov. 10.

Easement—Non-reservation—Derogation from grant—Drainage.

Plaintiff and defendant owned adjoining houses, which originally belonged to one owner. The defendants' house was drained by a branch drain which went under the plaintiff's house and connected with the plaintiff's drain, which drain, so used for both premises, but on plaintiff's land, emptied into the street sewer. There was no mention of the drain in any of the conveyances, and neither party knew of the position of the drains until shortly before the action was commenced.

Held, that the privilege to drain defendant's house through plaintiff's premises not being an easement of necessity, and there being no reservation of any such right, the defendant had no right to use the drain on the plaintiff's premises, and he was liable for damages resulting to plaintiff by such user. *Wheeldon v. Burrows*, L.R. 12 Ch.D. 49, followed.

D. T. Symons, for plaintiff. *Smoke*, for defendant.

Province of New Brunswick.

SUPREME COURT.

McLeod, J.]

MELLIN v. MUNICIPALITY OF KINGS.

[Oct. 29.

Practice—Striking out name of defendant—Action in tort—Power to plaintiff to enter nolle prosequi—60 Vict. c. 24, s. 145.

The Court or a judge has no power to strike out the name of a defendant in an action ex delicto, s. 145 of 60 Vict. c. 24, being limited to an action on contract. But the plaintiff may get rid of it in the action by entering a nolle prosequi, and this may be done at any time, even after verdict.

A. A. Stockton, Q.C., and *J. P. Byrne*, for plaintiff. *A. S. White*, Solicitor-General, for defendants.

Full Bench.

FIDELE v. LEGERE.

[Nov. 1.

Costs of County Court appeal—Next friend—Attachment.

Court refused an attachment against the next friend of the respondent for non-payment of appellant's costs on a County Court appeal, holding that they should be added to the appellant's costs in the Court below, and recovered by attachment out of the County Court.

J. D. Phinney, Q.C., in support of the motion.