

Sup. Ct.]

NOTES OF CANADIAN CASES.

[Sup. Ct.]

right in proceedings in insolvency under 47 Vict. ch. 23.

That the Crown by its acceptance of two dividends had not waived its right to be preferred to other simple contract creditors.

Appeal allowed with costs.

Burbidge, Q.C., for appellant.

Hodgson, Q.C., and Fitzgerald, Q.C., for respondents.

*Not followed
Regina v.
Blanchet
10 Dist.
148.*

Prince Edward Island.]

FITZGERALD V. MCKINLAY.

Canada Temperance Act 1878—Sec. 107—Appropriation of fines—31 Vict. ch. 1.—Applicable to Province of Prince Edward Island—Sec. 7. sub-sec. 22.—Construction of.

McK (the respondent) prosecuted one B. before F. (the appellant) as stipendiary magistrate for a breach of the 100th section of the Canada Temperance Act 1878. B. was convicted and fined \$100 and the fine was paid F. as stipendiary magistrate. McK thereupon applied to the Supreme Court of Prince Edward Island and obtained a rule *nisi* for a mandamus to compel F. to pay over to him one half of the said sum of \$100, and after argument the rule was made absolute. On appeal to the Supreme Court of Canada.

Held (reversing the judgment of the Court below), that whereas a mode of recovering penalties imposed by the Canada Temperance Act is given by section 107, viz.: under the Summary Convictions Act, 32-33 Vict. ch. 31, and said Act makes no appropriation of the said penalties, the same belong to the Crown.

That the Interpretation Act, 31 Vict. ch. 1 (D), is in force in Prince Edward Island, but that sub-sec. 22 of sec. 7 only applies to fines imposed for the infraction of an act which in itself appoints no specific mode for their recovery.

Appeal allowed with costs.

Davies, Q.C., for appellant.

Peters, for respondent.

Prince Edward Island.]

INGS V. BANK OF PRINCE EDWARD ISLAND.

Set-off by contributory in an action on a promissory note by liquidators of a bank—45 Vict. ch. 23. sec. 76—Construction of.

In May, 1883, the Bank of Prince Edward Island discounted the appellant's note for \$6,000, and on the fifth of May, 1882, appellant purchased in good faith and for value a draft of the Prince Edward Island bank for \$5,685.11. The Canada Winding-up Act was passed on the 17th May, 1882, and on the 19th June, 1882, a winding-up order was made on the Prince Edward Island Bank. The appellant was a shareholder and was settled on the contributory list. Appellant's note fell due on the 3rd June, 1882, and he set up the above draft of \$5,685.11 of which he was then the holder and endorsee, as a set-off, and paid the difference in cash.

The bank refused to allow this set-off, and subsequently brought suit in the Supreme Court of Prince Edward Island on the note, to which the appellant pleaded the cash payment and the above draft as set off. A verdict was found for the respondents. The learned judge having charged the jury that sec. 76 of 45 Vict. ch. 23 was retrospective.

On a motion for a rule *nisi* for a new trial the rule was discharged by the Supreme Court of Prince Edward Island. On appeal to the Supreme Court of Canada.

Held (reversing the judgment of the Court below), that section 76 of 45 Vict. ch. 23 did not apply because the draft was bought before the Act was passed and because by its terms it is confined to cases of set-off by contributories against claims for contribution, and that appellant having purchased *bona fide* and for value the draft in question he was entitled to set it off against the note sued on.

Appeal allowed with costs,

Davies, Q.C., for appellant.

Fitzgerald, Q.C., and Peters, for respondents.