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DECISIONS IN COMMERCIAL LAW.

CHARLTON V. "COLORADO" AND "BYRON TERICE."—This was an action to recover damages incurred by reason of a collision on the early morning of August 12th, 1891, between the plaintiff's vessel, "The Starling," while moored to the dock at Windsor, Ont., and the defendant's barge, "Colorado," in tow of the tug "Byron Terice." The defendants in their pleadings admitted the collision, but claimed that the plaintiff's vessel was in fault, since there was no light on board and no stern line out, in consequence of which latter neglect "The Starling's" stern swung out into the stream as the tug and its tow were passing at a reasonable distance away from her, and that the collision was occasioned thereby. A survey of the damage done was made at the plaintiff's instance. Notice of intention to have a survey made was only given to the defendant by mailing a letter to his address on the day before the survey was made. Notice of the result was given to the defendant. There was also claimed demurrage, cost of survey, and towage to shipyard for repairs. McDougall, Judge of the Toronto Admiralty district, held that negligence must be such as to contribute to the accident, if the plaintiffs are to be debarred on that ground; and that as it was daylight at the time and the plaintiffs' vessel was admittedly seen by the tug when more than one hundred feet away, and the tow was three hundred feet behind the tug; and further, since the evidence showed "The Starling" was properly and securely moored to the dock, the absence of a light did not constitute such negligence on the part of the plaintiff as contributed to the accident, and that therefore they were entitled to recover for the damages arising from the negligent navigation of the tug and her tow to the amount of the actual cost of the repairs and also a sum fixed for towage to the shipyard. Held also, that the cost of survey was not chargeable to the defendants, because reasonable notice was not given to enable them to be present or to be represented thereat. And also, that demurrage should not be allowed, it being shown that "The Starling" was lying at the wharf

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awaiting commission (she being used as a lighter), and that as soon as a commission was secured the vessel went to work, although repairs were not then completed, and that no actual loss of earnings occurred by reason of the accident.

MAINVILLE V. POITRAS.—PIGEON V. MAINVILLE.

—An important judgment which involved a question of the rights of the Federal and Provincial Governments as regards permission to run lotteries was given recently by Judge Desnoyers in the Montreal Police Court. There were two cases decided, those of Edgar Mainville against Xavier Poitras for selling tickets of the People's Lottery, and A. P. Pigeon against Edgar Mainville for selling tickets of the Mount Royal Lottery, which was formerly known as the Province of Quebec Lottery. The defence set up in each case was that they had been authorised to sell tickets by the Province of Quebec Legislature. The defendant Mainville also alleged that he merely acted as an employee of Mr. Brault, who had obtained a contract from the Provincial Legislature to hold a lottery for the St. Jean Baptiste Society. Poitras too alleged that he was only an employee. He worked for Messrs. Tourville and Leduc, who had also obtained a contract from the Provincial Government. Mainville had also pleaded, it appears, against Poitras contesting the provincial authorization he said he had received, and based his complaint on the law of the Federal Government on the subject. Before deciding who had the contract from the Provincial Government it was necessary to determine whether it is the Provincial Legislature or the Federal Parliament which has the right to legislate on this matter. "I am of the opinion," said Judge Desnoyers, "that these Provincial laws would have no effect with respect to the Dominion laws absolutely prohibiting lotteries. The Dominion Parliament having prohibited lotteries, I do not see how the Legislature could make exceptions. In case of a conflict between the two Parliaments, when the Dominion Parliament has jurisdiction, the Dominion law must prevail, and has so been decided in a number of cases. Section 91 of the B. N. A. Act gives

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the Dominion Parliament exclusive power with reference to criminal matters. Lotteries fall within the category of criminal law. 10th and 11th William III., chap. 17, passed in 1700, declared lotteries in England to be public nuisances, and since then they have been treated as such. Imperial statute 12, George II., chap. 28 (1739), an Act for the suppression of games of hazard, imposed a penalty of £200 for advertising lotteries or games of chance. Violations of 10th and 11th William III., chap. 17, have always been considered punishable as indictable offences. By Imperial Act, 14 George III., chap. 83, sec. 11 (Quebec Act 1774), introduced into this country the entire criminal law of England. Our Courts at different times have held that 10th and 11th William III. and George II. were binding in this country as appertaining to criminal law, as such having been introduced by the Quebec Act of 1774. Thus, before the passing of the statute in 1856, the lotteries in this Province were, according to the laws, public nuisances, and advertisements, etc., thereof were treated as infractions of the criminal laws. The Act of 1856 could not change the nature of these offences; for these reasons I am of the opinion that the Dominion Parliament alone has power to legislate in regard to lotteries. It is not necessary for me to say which lottery is legal."

ANSWERS TO ENQUIRERS.

J. H. B., Kingston.—The description of fish-curing is on page 1086 of last issue, next the back cover.

A. E., Waterloo.—The association you ask about, the Dominion Provident Benevolent, is registered with the Ontario Government to insure against sickness and death, and to secure life time benefits. It was incorporated in July, 1889, under the Benevolent Societies Act, Ontario. It had in June last year, 446 members, and professed to have \$2,276 on hand as a reserve, and a sum of \$17,402 to meet maturing coupons and funeral benefits. Changes have been made (in 1892 or 1893) in its constitution and rules by direction of the Ontario Registrar.