

will not act fairly and distribute the property. The undertaking of the executor should be varied so as to be effective. Appeal dismissed with costs, but order varied so as to add to the undertaking the requirement that he shall collect with due diligence.

MAY 12TH, 1902.

DIVISIONAL COURT.

GRAHAM v. BOURQUE.

*Contract—Breach—Absolute Refusal to Perform.*

Appeal by plaintiff from judgment of LOUNT, J., ante p. 138.

The same counsel appeared.

THE COURT (BOYD, C., MEREDITH, C.J.,) varied the judgment below by reducing the defendants' recovery on their counterclaim to \$75. Judgment for plaintiff with costs for \$958.05 (less amount paid into Court), and for payment out to plaintiff of amount paid into Court, and for defendants for \$75 with costs. Judgments to be set off pro tanto. No costs of appeal to the Court below or to this Court.

MAY 13TH, 1902.

DIVISIONAL COURT.

REX v. MCGREGOR.

*Municipal Corporation—By-Law for Prevention of Fires—Ejusdem Generis Rule—Storing Combustible or Dangerous Material—Oils—Petroleum Inspection Act, 62 & 63 Vict. ch. 27, does not Supersede Provincial Legislation on Same Subject—The Latter Confers Power to Make Police or Municipal Regulations of Local Character for Prevention, etc., of Fires.*

Hodge v. The Queen, 9 App. Cas. at p. 131, followed.

Motion by defendant to make absolute a rule nisi to quash conviction of defendant by the police magistrate for the city of Windsor, for that defendant, "agent of the Queen City Oil Company, did keep at one time in a house or shop within the city limits a larger quantity than three barrels of coal oil, rock oil, water oil, or other similar oils, and a larger quantity than one barrel of crude oil, burning fluid, naphtha, benzole, benzine, or other combustible or dangerous material, contrary to the city by-law for prevention of fires and other purposes therein mentioned."

G. F. Shepley, K.C., for defendant. The by-law is *ultra vires*, not being within any of the powers conferred by sec. 542 of the Municipal Act; and sub-sec. 17 of sec. 542 is *ultra vires*. The *ejusdem generis* rule should be applied to