

been dealt with in *Bank of Toronto v. Lambe*, 12 App. Cas. 576; and also in two cases in Nova Scotia, viz., *City of Halifax v. Western Assurance Company*, 18 N.S.R. 387, and *City of Halifax v. Jones*, 28 N. S. R. 452. It is to be observed, in connection with this branch of the case, that not only is a fee for licenses exacted, but it is required that there shall be paid to the Provincial Secretary, for the public use of Ontario, a yearly fee upon the transmission to him of the annual statement required by the Act. No question whatever arises under clause 25 of sec. 91 of the *British North America Act*. There is no distinction made in the Act between alien corporations and those of the mother country or of other portions of the Empire. I may say that I should hesitate, notwithstanding some dicta cited in Mr. Harrington's very able brief, to class the purposes and operations of the plaintiffs as "commerce." The selling or lending of books and other material to students is only ancillary to the principal purpose of the company, which is to give instruction by correspondence through the mail.

The answer, therefore, to the first question will be, yes.

2. The second question is whether plaintiffs are carrying on business in Ontario so as to bring them within the provisions of the Act. This point is covered by the judgment of the King's Bench Division in *Bessemer Gas Engine Co. v. Mills*, 8 O. L. R. 647, 4 O. W. R. 325. The application of the English income tax cases, such as *Granger v. Gough*, [1896] A. C. 325, is taken away by sec. 14 of 63 Vict. ch. 24, which, so to speak, interprets itself by declaring that a penalty shall be incurred if an unlicensed corporation shall carry on in Ontario any part of their business; and that the company shall not be capable of undertaking an action in respect of any contract made in whole or part in Ontario.

The answer to the second question also will be in the affirmative.

The judgment, therefore, will be for the defendant. There is nothing said in the case about costs, and I suppose the parties have their own arrangement. If I have any power of disposition over costs, I direct them to be paid by plaintiffs to defendant; and also to the Attorney-General, if the Crown condescend to accept costs.