

Held, that in such an action as this the venue need not be laid where the offence is committed.

Legacy v. Pitcher, 10 O. R. 620, followed.

Per ROSE, J.—The point was not taken in the motion paper, and this was not a case in which to review *Legacy v. Pitcher*, even if opened for review by *Ascott v. Lilley*, 14 A. R. 283.

From the village of M., where the arrest and conviction took place, and the liquors were destroyed, to the Canadian Pacific Railway, then in course of construction, and over fifty miles distant, the railway company had constructed a colonization supply road for the conveyance of supplies for the railway. No proclamation was issued under R. S. O. (1877) c. 32, proclaiming this a public road; but, subsequently, the Dominion Government, by proclamation issued under R. S. C. c. 151, proclaimed the ten miles on either side of the supply road to be in the vicinity of the public work.

Held, by ARMOUR, J., and affirmed by the Divisional Court, MACMAHON, J., doubting, that the village of M. was not within three miles of a public work under R. S. O. (1877) c. 32.

Per GALT, C.J.—The place did not come within either Act, no proclamation having been issued at the time.

It was urged in the Divisional Court that the order for the destruction of the liquors, with a certificate indorsed, stating that the liquors were destroyed thereunder, though not produced at the trial, should now be received, and was a bar to the plaintiff's claim in respect of the destruction of liquors.

Per GALT, C.J.—There was no power to make the order, the authority to do so being based on R. S. O. (1877) c. 32, which was not made applicable; and, therefore, the order should not be received in evidence.

Per ROSE and MACMAHON, JJ.—The order was not dependent on the conviction of the plaintiff, and came within R. S. O. (1877), c. 73. The destruction was an act under an order, and the order must be quashed to avoid the protection afforded by s. 4; but

Per ROSE, J.—The order should not now be received; in any event there must be a new trial; but this would be of doubtful value, as it would only be on payment of costs of the trial and the motion.

Per MACMAHON, J.—The order should be received, but a new trial should be granted on this part of the case.

G. T. Blackstock, for the plaintiff.

McCarthy, Q.C., for the defendants.

Street, J.]

(May 23.)

MCARTHUR v. NORTHERN AND PACIFIC
JUNCTION R. W. CO.

*Railway—Company incorporated by Dominion
Parliament—Line built through lands under
timber license—Timber cut within and out-
side six-rod belt—Damage by reason of rail-
way—Limitation of action.*

The defendants, a railway company incorporated under an Act of the Parliament of Canada, built the railway through lands in this Province, the fee of which was in the Crown, but was under a timber license issued by the Ontario Government to the plaintiffs, and cut down and removed the timber both within and outside of the six-rod limit mentioned in R. S. C. c. 109, s. 6, ss. 12. The timber was all cut more than six months before action brought.

Held, that as to the timber cut within the six-rod limit, this was damage or injury sustained "by reason of the railway" under R. S. C. c. 109, s. 272, and the action was, therefore, barred by reason of its not having been brought within the six months; but that as to the timber cut outside the six-rod belt, the plaintiffs were entitled to damages.

A. R. Creelman, for the plaintiffs.

E. Martin, Q.C., and *W. Cassels*, Q.C., for the defendants.

Chancery Division.

Robertson, J.]

[May 22.]

BALDWIN v. KINGSTONE *et al.*

*Will—Devise—Heir at law—14 & 15 Vict. c.
6 (C. S. U. C. c. 82)—Moneys paid over six
years—Moneys paid within six years under
common mistake of law—Recovery of moneys
which were the proceeds of lands vested by
acts of the parties.*

A. W. B., by his will, dated August 14, 1850, after giving a life estate to his wife, provided as follows: "After the death of my said wife I devise the lands . . . known as Russel