NOTES OF CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

SUPREME COURT.

OCTOBER SESSIONS, 1880.

APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

FRASER, *Appellant*, v. TUPPER, *Respondent.*

Appeal — Habeas Corpus — 38 Vict. c. 11, sec. 23.

The appellant, imprisoned under executions for penalties for selling liquors without license (Rev. Stat. N.S., 4 series, c. 75) applied under Rev. Stats. N.S., 4 series, c. 99, "An Act for securing the liberty of the subject," for a discharge. The order was made returnable before the Supreme Court of Nova Scotia, and the discharge was refused. Before instituting an appeal from the judgment of the Supreme Court of Nova Scotia, the appellant, whose time for imprisonment had expired, was at large. On motion to dismiss the appeal for want of jurisdiction, the Supreme Court.

Held, that an appeal will not lie in any case of proceedings upon a writ of Habeas Corpus, when at the time of the bringing of the appeal the appellant is at large.

Graham, for respondent,

Rigby, Q. C., for appellant.

EXCHEQUER COURT.

ROBERTSON, *Suppliant*,
THE QUEEN, *Respondent.*

B. N. A. Act, sec. 91 & 92; 31 Vict. c. 60— Fishing leases issued under authority of s. 2 of said Act — Validity of—Exclusive right of fishing ad filum aquæ in rivers above tidal waters in New Brunswick— Rights, as riparian proprietors, of the Nova Scotia &c., Land Company.

On the 5th November, 1835, a grant issued to the Nova Scotia and New Brunswick Land Company of 580,000 acres, which included within its limits that portion of the Miramichi above tidal waters, covered by a fishery lease issued to the suppliant on the 1st January, 1874, by the Minister of Marine and Fisheries under the provisions of the Act of the Parliament of Canada, intituled "An Act for the regulation of fishing and protection of the Fisheries," 31 Vict. c. 60. During the year 1875, J. S. and E. H., with the permission and consent of and under and by virtue of conveyances from the said N. S. and N. B. Land Company, entered, and fished for, and caught salmon by fly-fishing upon the portion of the river so leased, and the suppliant prevented them from fishing thereupon. J. S. and E. H. sued and recovered against the suppliant damages before the Supreme Court of New Brunswick. The suppliant by his petition of right prayed for compensation for losses sustained through the illegal issue of a lease by the Dominion Government, and the following questions were submitted in the special case.

"1. Had the Parliament of Canada power to pass the 2nd section of said Act, entitled "An Act for the regulation of fishing and protection of the fisheries?"

2. Had the Minister of Marine and Fisheries the right to issue the fishery lease in question?

3. Was the bed of the S. W. Miramichi within the limits of grant to the Nova Scotia and New Brunswick Land Company, and above the grants mentioned and reserved therein, granted to the said Company?

4. If so, did the exclusive right of fishing in said river thereby pass to the said Company?

5. If the bed of the river did not pass, had the Company as riparian proprietor the right of fishing *ad filum aquæ;* and if so, was that right exclusive?

6. If an exclusive right of fishing in a portion of the Miramichi River passed to said Company, could the Minister of Marine and Fisheries issue a valid fishery lease of such portion of the river?

7. Where the lands (above tidal waters), through which the said river passes, are ungranted by the Crown, could the Minister of Marine and Fisheries lawfully issue a lease of that portion of the river?"