

2. The Dominion Government has no power or authority to refuse a fisherman the right to set his net or trap in provincial waters unless he first takes out a license, which entails the payment of a fee therefor.

3. The right to set the various kinds of nets and traps and the places and times where they shall be set can satisfactorily be controlled and regulated by the fishery officers at present so that any person can feel sure of his berth and have the full protection of the officers of the Marine and Fisheries Department and be within the law. If the officers allot to the applicants their several berths in a fair manner the officers determine and define, as in a license, the allotted territory, keeping any and all others off one-eighth of a mile or any distance as at present, but not demanding any fee or compelling any license therefor. This would be the carrying out of regulations, either verbal or written, for controlling the matter of fishing, which is within the plenary powers of the Department and its officers.

Conviction set aside.

A. K. Maclean, for the Crown. *Wade*, K.C., and *J. A. Maclean*, K.C., for defendant.

Province of Manitoba.

Full Court.]

CARRIERE *v.* CHEVRIER.

[March 7.

Cause of action—Alternative claims—Trover—New trial—Erroneous charge to jury—Weight of evidence.

The plaintiffs sued in a county court for the value of script certificates handed to Noe Chevrier for sale and by him sold to his son and co-defendant, Horace Chevrier, less the amount that defendants had paid over. At the trial plaintiffs asked to amend their claim by adding a claim for conversion of the certificates and this was allowed, but the judge in charging the jury directed them not to consider the claim for conversion, holding that, by suing for money had and received, the plaintiffs had debarred themselves from claiming for conversion. There was evidence to go to the jury of such conversion, and also of the value of the certificates, but there was not sufficient evidence to prove the amount the defendants had received for them. The jury returned a verdict for the defendants, but the county court judge afterwards ordered a new trial on the ground that the verdict was against the weight of evidence. Defendants appealed to this court against the order for a new trial.

Held, per RICHARDS, J., following *Bagot v. Easton*, 7 Ch. D., that a plaintiff may, in his statement of claim, plead alternative claims inconsistent with each other, but arising out of the same transactions, and the trial judge should, therefore, have allowed the claim for conversion to go to the