

the provisions of c. 47, sec. 20, R. S. N.S. (an Act requiring all the ratepayers of a section, without distinction, to perform certain labor on the highways, or pay a reasonable per diem commutation), plaintiff notified defendant to work on the highway, and upon the latter's non-compliance, an action was brought to recover the forfeiture provided by the above Act. Defendant pleaded the character of his employment, that he could not obey the direction of the surveyor without impairing the railway service; that the penalty, if enforced, would come out of an income derived from a Dominion source. On these grounds defendant sought to establish that the above Act was ultra vires of the provincial legislature. On appeal from the County Court,

Held (MACDONALD, C.J., dissenting), that it was perfectly within the competence of the local legislature to pass such an Act; that a compliance therewith did not necessarily involve the absence of defendant from his duty, and that he could not be exempted from the operation of the law merely because he happened to derive an income from a Dominion source. *Leprahon v. Ottawa*, 20 A. R. 522, distinguished.

J. A. Chisholm and H. C. Borden, for appellant.

Longley, Attorney-General, for respondent.

RITCHIE, J. }
In Chambers. }

GRAY v. WALLACE.

[Feb. 21.]

Amendment of address on writ—Judicial notice of facts—Waiver of irregularity by absolute appearance—Stay until amendment.

The address of B., one of the plaintiffs, as indorsed on a writ of summons, was "Dresden, Germany." A conditional appearance was entered by all of defendants, among whom was McL., but the latter subsequently by a different solicitor entered an absolute appearance. Defendants moved to compel plaintiffs to amend the writ by giving a proper and better address of B., or in the alternative to have proceedings stayed. Neither party adduced evidence to show what kind of a place "Dresden" was, whether city with numbered streets, or village, etc.

Held, that as the object of O. 4, r. 1, which requires plaintiff's solicitor to indorse on the writ the address of plaintiff, was doubtless to enable defendant to find plaintiff if he so desired, or to make inquiries respecting him, and as the address given was obviously insufficient for that purpose if D. were anything more than a mere village (and judicial notice could not be taken of any of these matters), plaintiffs must amend their writ by giving the full and proper address of B., and in default thereof that further proceedings should be stayed.

Held also, that defendant McL. had waived the irregularity by entering an absolute appearance, and unlike the defendants, who had appeared conditionally, was not entitled to a stay until amendment of the address was duly made.

W. Macdonald, for plaintiffs.

T. Wallace, for defendants.