

10. The law is clear that in case of an overlapping and a mixed occupation or cutting, the constructive possession of the area is in the person who has the senior or better title. See *McInnes v. Stewart*, 45 N.S.R. 345.

*Paton*, K.C., for appellant. *D. F. Matheson*, for respondent.

Ritchie, J.]

THE KING v. GRAVES.

[Aug. 7.

*Criminal law—Change of venue—Publication of the names of jurors in violation of statutory prohibition—Code s. 884—Newspaper comments—Possibility of prejudice not a sufficient ground.*

Where a statute directed officials engaged in drawing any panel of grand or petit jurors to keep secret the names appearing on such panel (except as otherwise directed) until four days before the opening of the term of the court at which the jurors named in such panel are summoned to attend and in a criminal case the prothonotary, in violation of such provision, permitted a newspaper reporter to copy for publication the names of the jurors.

*Held*, a sufficient reason for directing a change of venue: Code s. 884.

A change of venue will not be ordered in a criminal case on the ground that comments upon the crime made in the local press are likely to prejudice the accused persons in their trial, notwithstanding that such comments, in the opinion of the court, are such as ought not to have been made, unless something more than the possibility of prejudice is disclosed, the rights of peremptory challenge and challenge for cause being regarded as sufficient protection in such case.

*Roscoc*, K.C., for prisoners, in support of application. *Wickmire*, K.C., for Crown, contra.

Full Court.]

[August 31.

STARRATT v. DOMINION ATLANTIC RY. CO.

*Jury notice—Striking out—Judge's discretion wrongly exercised—Venue—Change of in civil action—Difficulty in obtaining unprejudiced jury—Conditional order.*

A party who has given a jury notice has a *prima facie* right to a jury trial subject to liability to be deprived of such right