

first instance quashing the summary conviction of the defendant by a justice of the peace for the County of Renfrew, under section 84 of the Liquor License Act, R. S. O. c. 194, for tampering with a witness, upon the ground that that section is ultra vires of the Ontario Legislature: *Reg. v. Lawrence*, 43 U. C. R. 164. The Attorney-General, the magistrate and the complainant consented to the conviction being quashed without costs with the usual protection to the magistrate. The result of the recent judgment of the Privy Council being, so far as this point is concerned, to confirm the decision in *Reg. v. Lawrence*, that case must be followed. Rule absolute quashing conviction without costs, and with the usual protection to the magistrate. W. H. Blake for defendant. J. R. Cartwright, Q.C., for Attorney-General. H. M. Mowat for magistrate and complainant.

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## RE C. P. R. AND CARRUTHERS.

[BEFORE ROBERTSON, J., 26TH SEPT., 1896.]

*Carriage of shipment of grain—Mixture with other grain in carriers' elevator—Failure to deliver specific grain.*

Judgment upon appeal by Joseph Harris, a claimant, from order of Master in Chambers, made upon application of railway company as carriers of 667 bushels of wheat delivered to them at Indian Head, Manitoba, by W. R. Bell, to be sent to Fort William, and addressed to the order of La Banque Nationale, by whom the bill of lading was endorsed over to the appellant, the Scottish American Investment Co. The appellant contended that the railway company were not entitled to interplead,

because they had mixed the grain shipped with the other grain in their elevator, and could not deliver the specific grain. The learned Judge negatives this contention, following *Attenborough v. St. Catherines Dock Co.*, 3 C. P. D. 450, and *Rice v. Nixon*, 97 Iowa, 97. Appeal dismissed, with costs to be paid by appellant to both respondents. Marsh, Q.C., for appellant. Aylesworth, Q.C., for railway company. C. W. Kerr for investment company.

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## MOONEY v. JOYCE.

[BEFORE MEREDITH, C.J.]

*Joinder of two causes of action in one—Two plaintiffs suing together for different causes though arising out of same matter.*

Judgment on appeal by defendants from order of Local Judge at Sandwich refusing to stay proceedings until plaintiffs should have elected for which of the causes of action sued on they would proceed. Plaintiff Harman sued for the wrongful interference of defendants with him in the completion of a building which he was erecting under a contract with the Building Committee of a church, and for assaulting and arresting his plaintiff Mooney, his servant, who was engaged in doing the work, and claimed \$500 damages. Plaintiff Mooney sued for the same assault and arrest, and claimed \$2,000 damages. Held, that each of the causes of action is separate and distinct, and cannot be joined. *Smurthwaite v. Hannay* (1894), A. C. 494, specially referred to. Appeal allowed, and order made that the plaintiffs do elect within two weeks which plaintiff's claim will be proceeded with in this action, and do within the same period amend the writ