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A cloud of discussion has arisen upon the disallowance of the District Magistrates' Bill of last session, yet the principal point involved seems to be so clear as hardly to admit of any doubt. The provincial legislature may exclusively make laws in relation to the constitution, maintenance and organization of provincial courts. The Governor-General has the appointment of the judges of the superior, district and county courts. The District Magistrates' Act (subject to proclamation by lieutenant-governor-in-council) established a special court of record, and abolished the Circuit Court for the district of Montreal (in which Judges of the Superior Court have hitherto presided). But it went further, and provided for the appointment of the justices composing the new Court by the lieutenant-governor-in-council. In other words it divests the Superior Court of part of its jurisdiction, and the substituted judges are to be appointed by the lieutenant-governor-in-council. If by merely calling judges "magistrates," jurisdiction can be given up to $100 to persons appointed by the lieutenant-governor-in-council, similarly jurisdiction can be given to any amount to persons appointed in the same way, and the judges of the Superior Court might be left with nothing to do. So, too, the provincial Court of Appeal might be replaced by a new bench styled "magistrates sitting in appeal." The provision of the B. N. A. Act, giving the Governor-General the power to appoint judges, would thus be evaded and destroyed.

But while the exercise of the veto power was necessarily called for by the manner of appointment prescribed in the Act, it would be a matter for regret if the assignment of the Circuit work to special judges, should not be carried out. The judges of the Superior Court, for the most part, desire to be relieved from Circuit Court work. It will in the end effect an economy in the administration of justice, for the judges appointed to the petty Court need not be paid anything like the salaries assigned to judges of the higher Courts. The only thing required to settle the difficulty is that the bill be re-enacted, leaving the appointment of the judges in the proper hands.

Judge Paxson, of the Supreme Court of Pennsylvania, in a recent address before the Law Academy of Philadelphia, observed: "It is a question of some nicety how far a lawyer may go in defending a man charged with a crime, when he knows that his client is guilty. While I do not say that a lawyer may not defend a criminal with knowledge of his guilt, yet at the same time his duty in such cases is circumscribed within narrow bounds. It should be limited to holding the commonwealth to the proof of its case. A guilty man is entitled to the benefit of the forms and safeguards which the law throws around him, and counsel may properly require that they shall be observed."

The September list in appeal at Montreal, shows 84 cases inscribed. This is an increase of 12 over the May list, but is 5 less than the September list of last year. The long vacation, of course, gives an opportunity to move cases on, and it appears that 28 have been inscribed since the May term.

*COURT OF QUEEN'S BENCH, MONTREAL.**

Right to freight—Mortgagee of ship—Privilege for necessary supplies.

Held:—(Reversing the decision of the Superior Court, M. L. R., 3 S.C. 424), 1. That where there are two distinct hirings of a vessel, the voyage under each hiring is a separate transaction, and freight upon the first hiring is earned by the vessel's arrival and readiness to deliver at the port of destination thereunder, although by the second hiring she may be engaged to convey her cargo to another port without unshipping the same at the first port.

2. Freight so earned may be collected by the master of the vessel, he being also princi-

* To appear in Montreal Law Reports, 4 Q. B.

pal owner, and may be applied by him in payment of an antecedent debt owed by him.

3. The furnishers of necessary supplies upon a completed voyage, having, prior to possession taken by the mortgagee, obtained a draft from the master and principal owner upon the consignees, covering the amount of such supplies, thereby obtain an assignment of freight earned upon such voyage *pro tanto* and are entitled to receive the same in priority to the mortgagee.

4. The mortgagee of a vessel, in taking possession, becomes entitled to all freight accruing due, subject to the claim for necessary supplies for the last voyage, which is privileged, and ranks before him. His rights are not greater than the owner's rights. *Pickford et al. & Dart et al.*, Dorion, C., J., Cross, Tessier, Church, JJ., (Tessier, J., *diss.*), June 20, 1888.

SUPERIOR COURT—MONTREAL. *

Interpretation of written document—Admissibility of extrinsic evidence.

Held:—That where a deed of sale sets out in detail the various properties and goods thereby transferred, the Court cannot take into consideration any other documents between the parties or any extrinsic evidence, but must look at the deed alone to decide what property has passed thereunder.—*In re Mullarky*, insolvent, and *Clary et vir*, petitioners, Jetté, J., Dec. 23, 1887.

Testamentary executor—Power to substitute—Liability for misappropriation by agent.

Held:—1. That under Art. 913 C. C. an executor has no power to substitute another person for himself, but merely to appoint an attorney for determinate acts.

2. That the appointment by an executrix of a salaried agent to collect and invest the moneys of the estate and to handle the funds, was a delegation of the powers of the executrix prohibited by art. 913 C. C. and not the mere appointment of an attorney for determinate acts.

3. That the executrix could not escape liability for the misappropriations committed by her agent, by simply establishing that such agent was not notoriously unfit at the time of his appointment; and that the immunity granted to the mandator empowered to substitute under art. 1711 C. C. does not apply to the case of a testamentary executrix.

4. That when a testamentary executrix employs an agent as attorney, she is bound to supervise his management of the matters entrusted to him, and to take all due precaution and securities.

5. That in the present case the executrix had acted carelessly and without due precaution in making cheques payable to her agent instead of to the borrowers on the proposed mortgages, and in signing deeds without sufficiently examining their contents.—*Gemley* v. *Low*, Johnson, J., May 30, 1888.

Licences—Cité de Montréal—Expiration.

Jugé:—Que les licences que la cité de Montréal accorde pour vendre sur les marchés publics les produits de la campagne, expirent au premier de mai chaque année, quelque soit la date à laquelle cette licence a été prise, et quand même l'officier chargé de l'émettre l'aurait prolongé au-delà de cette date.—*St-Michel* v. *La Cité de Montréal*, Tellier, J., 5 mai 1888.

Release of joint and several debtor—Partnership—Evidence.

Held:—1. That an ostensible partnership with respect to third persons may exist between traders, without there being an actual partnership between the parties entitling the one to claim from the other contribution to the partnership debts.

2. Consequently, in such a case of ostensible partnership, a release given by creditors to the ostensible but not actual partner does not enure to the benefit of the real partner.

3. A partnership cannot be proved as between the alleged partners by oral evidence, unless there is a *commencement de preuve par écrit.*—*McIndoe* v. *Pinkerton*, Davidson, J., June 29, 1888.

* To appear in Montreal Law Reports, 4 S. C.

Preuve testimoniale—Commencement de preuve par écrit—Remise de créance—Intention de la faire.

Jugé:—Que lorsque dans un écrit signé par un créancier, il est dit que ce créancier a déclaré et manifesté l'intention de faire don et remise de sa créance à son débiteur, pour des causes et raisons à lui connues, la preuve testimoniale de la remise de la dette est admissible, cet écrit constituant un commencement de preuve par écrit suffisant.—*Voligny* v. *Palardy*, Tellier, J., 26 mai 1888.

Révision—Exécution—Acquiescement—Inscription rayée.

Jugé:—Que lorsqu'une partie inscrit une cause en Révision, et, subséquemment, requiert l'exécution du jugement dont elle se plaint, soit par bref d'exécution ou saisie-arrêt après jugement, elle forme un acquiescement qui permet à l'autre partie de demander par motion que l'inscription soit rayée.—*Jones* v. *Moodie*, en révision, Doherty, Jetté, Davidson, JJ., 30 avril 1888.

PROHIBITION—LICENSED BREWERS—QUEBEC LICENSE ACT, CONSTITUTIONALITY OF.

The following are the opinions delivered by the Judges of the Supreme Court of Canada, in the case of *Molson et al.*, appellants, and *Lambe es qual.*, respondent. See *ante*, p. 151, for abstract of decision.

Sir W. J. RITCHIE, C. J.:—

The proceedings in this case commenced before the Court of Special Sessions of the Peace, sitting in the city and district of Montreal, by the following declaration:—

"William Busby Lambe, de la cité de Montréal, dans le district de Montréal, Inspecteur des Licences pour le district du Revenu de Montréal, au nom de Notre Souveraine Dame La Reine; poursuit Andrew Ryan, de la cité de Montréal, dans le dit district de Montréal, commerçant;

"Attendu que le dit Andrew Ryan n'étant muni d'aucune licence pour la vente de liqueurs enivrantes en quelque quantité que ce soit, a, en la dite cité de Montréal, dans le district du Revenu de Montréal, dans le dit district de Montréal, le sixième jour de juin, en l'année 1882, et à différentes réprises avant et depuis, vendu de la liqueur enivrante, contrairement au statut fait et pourvu en pareil cas; Par lequel et en vertu du dit statut, le dit Andrew Ryan est devenu passible du paiement de la somme de quatre vingt-quinze piastres courant;

"En conséquence le dit Inspecteur des Licences demande que jugement soit rendu sur les prémisses et que le dit Andrew Ryan soit condamné à payer la somme de $95 courant, pour la dite offense, avec les frais."

Upon which complaint the following summons was issued:—

"CANADA: Province de Québec, District de Montréal, Cité de Montréal. } Summons. Bureau de Police.

"A Andrew Ryan, commerçant de la cité de Montréal, dans le district du Revenu de Montréal:—

"Les présentes sont pour vous enjoindre d'être et de comparaitre devant moi le soussigné, Mathias Charles Desnoyers, Ecuyer, Magistrat de Police pour le district de Montréal, à une Session de la Cour des Sessions Spéciales de la Paix, qui se tiendra au Palais de Justice, en la cité de Montréal, dans le dit district, le quinzième jour de juin courant, à dix heures de l'avant midi, ou devant tel Juge de Paix ou Juges de Paix pour le dit district, qui sera ou seront alors présent ou présents, aux fins de répondre à la plainte portée contre vous par William Busby Lambe, Ecuyer, de la cité de Montréal, dans le district de Montréal, Inspecteur des Licences pour le district du Revenu de Montréal, qui vous poursuit au nom et de la part de sa Majesté, pour les causes mentionnées dans la déclaration ci-annexée; autrement jugement sera rendu contre vous par défaut.

"(L.S.)—Donné sous mon seing et sceau ce dixième jour de juin, dans l'année de Notre Seigneur 1882, au bureau de Police, dans la cité de Montréal, dans le district susdit.

"M. C. DESNOYERS,
"Magistrat de Police."

In answer to which the defendant pleaded as follows:—

"The defendant for plea alleges:

"That he is and was at the time mentioned in the information, a servant and em-

ployee of the firm of J. H. R. Molson & Bros., brewers, of the said City of Montreal, who hold a license from the Dominion of Canada, under the provisions of the Act of the Parliament of Canada, and who have been in business as such brewers in Montreal for over eighty years;

"That during the whole of the said term and up to the present time, it has always been the custom and usage of trade of brewers to send around through the country their drays with beer, which beer was sold by their draymen during their trips to the said customers;

"That on the occasion charged in the said information, the said defendant was a servant and drayman of the firm of J. H. R. Molson & Bros.;

"That if the said defendant sold any beer whatever, he sold it as the agent and as the drayman of the said J. H. R. Molson & Bros., and under and by virtue of their authority under the said license, and sold it according to the custom and usage of trade in the said Province ever since the brewers were first established therein;

"That the said John H. R. Molson & Bros. being licensed under the provisions of the said Act of the Parliament of Canada, are not liable to be taxed either by or through their employees or draymen under the provisions of any Act passed by the Legislature of Quebec;

"And defendant further saith that he is not guilty in manner or form as set forth in the said information and summons;

"Wherefore, defendant prays the dismissal of the said prosecution."

The register of the proceedings, as appears in the printed case, is as follows:—

"SPECIAL SESSIONS.

"The fifteenth day of June, 1882.

"Present: Mathias C. Desnoyers, Esquire, Police Magistrate for the District of Montreal.

"Wm. B. Lambe, "Complainant, Against "Andrew Ryan, "Defendant."	On charge of selling liquor without a license.

Defendant by attorney and pleads not guilty.

Mr. Bourgouin, for prosecution.

Mr. Kerr, for defendant.

The counsel for defence files a plea in writing, and the case is continued to the 1st September next, 1882.

Friday, 1st September, 1882.

Present: Mathias C. Desnoyers, Esq., P.M.

Wm. B. Lambe and Andrew Ryan.	Selling liquor without a license, continued from the 15 June.

Wednesday, 6th September, 1882.

Present: Mathias C. Desnoyers, Esq., P.M.

Wm. B. Lambe and Andrew Ryan.	Selling liquor without a license, continued from 1st Sept.; continued to the 8th.

Friday, 8th September, 1882.

Present: Mathias C. Desnoyers, Esq., P.M.

Wm. B. Lambe and Andrew Ryan.	Selling liquor without a license, continued from the 6th. *En délibéré.*

Before any decision was given in this case, which is still under advisement, J. H. R. Molson, J. T. Molson and Andrew Ryan, doing business under the firm of J. H. R. Molson & Bros., applied by petition to the Superior Court for a writ of prohibition to prohibit the said M.C. Desnoyers, Police Magistrate, from further proceeding upon the said summons and complaint, on the ground that Ryan committed no offence whatever against any Act of the local legislature:—

"(*a*). Because there is no Act of the Legislature of the Province of Quebec, which authorizes the said complaint and prosecution;

"(*b*). Because the pretended Act of the Legislature, upon which such prosecution is founded, is not an Act of the Legislature of the Province of Quebec, but purports to have been made and enacted by Her Majesty the Queen, Her Majesty the Queen having no right or title to pass Acts binding on the Province of Quebec;

"(*c*). Because the pretended Act intituled, 'The Quebec License Law of 1878,' under which the said prosecution is instituted, is entirely illegal, null and void and unconstitutional, the same not being passed by the proper body gifted with legislative powers upon the subject in the Province of Quebec;

"(*d*). Because the said Act purports to treat of and regulate criminal procedure;

"(*e*). Because the penal clause is by fine and imprisonment;

"(*f*). Because your said petitioner, Andrew Ryan, being in the employ and being the drayman of your other petitioners, and acting under their orders, the act of your petitioner Ryan, selling the said intoxicating liquor, to wit, beer, was the act of your other petitioners, co-partners, who, in their license from the Government of the Dominion of Canada, were authorized and empowered so to sell such intoxicating liquor;

"(*g*). Because your said petitioners, co-partners, being licensed brewers, had the right of selling by and through their employees and draymen, without any further license whatever, under the provisions of the Quebec License Act of 1878;

"(*h*). Because the Legislature of the Province of Quebec have no right whatever to limit or interfere with the traffic of brewers duly licensed by the Government of Canada;

"That under these circumstances the said Court of Special Sessions of the Peace, and the said Mathias C. Desnoyers, have unlawfully and improperly taken jurisdiction over said Andrew Ryan, your petitioner, and the other petitioners, and that it has become necessary for them for their own preservation, to apply for a writ of prohibition, to prohibit the said Court of Special Sessions of the Peace, sitting at the said City of Montreal, and the said Mathias C. Desnoyers, from taking jurisdiction over them, your petitioners, and further proceedings on the said summons and complaint."

In view of the cases determined by the Privy Council since the case of *Severn* v. *The Queen*, was decided in this Court, which appear to me to have established conclusively, that the right and power to legislate in relation to the issue of licenses for the sale of intoxicating liquors by wholesale and retail, belong to the local legislatures, we are bound to hold that the Quebec License Act of 1878, and its amendments, are valid and constitutional. By that Act, section 2, the sale of intoxicating liquors without license obtained from the Government, is forbidden. By section 1, intoxicating liquors means, *inter alia*, ale, beer, lager, &c. Section 71 provides that whosoever, without license, sells in any quantity whatsoever, intoxicating liquors in any part of this province, municipally organized, is liable to a fine of $95, if such contravention takes place in the City of Montreal. And section 196 of 41 Vic., ch. 3, provides for the Courts which shall have power to try actions or prosecutions for breach of this law, in these words: "All actions or prosecutions, where the amount claimed does not exceed one hundred dollars, may be, optionally with the prosecutors, brought before the Circuit Court, but without any right of evocation therefrom to the Superior Court, or before two Justices of the Peace in the judicial district, or before the Judge of the Sessions of the Peace, or before the Court of the Recorder or of the Police Magistrate, or before the district magistrate; but if the amount claimed exceeds one hundred dollars, they shall be brought before the Circuit Court or the Superior Court, according to the competency of the Court, with reference to the amount claimed."

The code of procedure, by Art. 1031, provides for the issue of writs of prohibition in these words: "Writs of prohibition are addressed to Courts of Inferior jurisdiction whenever they exceed their jurisdiction.'"

The only question that I can discover that we have to determine in this case is: Had the Police Magistrate before whom the complaint was made by the Inspector of Licenses for the district of Montreal, and who issued the summons in this case, jurisdiction over the matter of this complaint, and jurisdiction and authority to try the offence charged in the declaration of information and summons? If he had, no prohibition, in my opinion, can be awarded. On this point, it seems to me, the authorities are clear and conclusive. In the *Mayor of London* v. *Cox*, L. R. 2 H. L. 276, Willes, J., delivering the opinion of the Judges in the House of Lords, says: "In cases where there is jurisdiction over the subject matter, prohibition will not go for mere irregularity in the proceedings, or even a wrong decision on the merits. *Blaquière* v. *Hawkins*, 1 Douglas, 378." And again he says: "The proceeding in prohibition, therefore, does not stand upon the footing of an action for a wrong. In a prohibition for want of jurisdiction, the question is not whether the party or the Court has

done a wilful wrong, but 'whether the Court has or has not jurisdiction. *Ede* v. *Jackson*, Fortescue, 345.' And again, "The law upon this question of discretion is thus stated in the judgment of the Queen's Bench, in *Bender* v. *Veley*, 12 A. & E. 263. "If called upon, we are bound to issue a writ of prohibition as soon as we are duly informed that any Court of inferior jurisdiction has committed such a fault as to found our authority to prohibit, though there may be a possibility of correcting it by appeal."..... The question, then, remains, what are the defects that authorize and require us to issue the writ of prohibition? The answer is, that they are in every case of such a nature as to show a want of jurisdiction to decide the case before them. *Gardner* v. *Booth*, 2 Salk. 548."

"In whatever stage that fact is made manifest to us, either by the Crown or by one of its subjects, we are bound to interpose."

Lord Cranworth says, delivering judgment in the House of Lords:—

"Where an Inferior Court is proceeding in a cause which arose on a subject over which it has jurisdiction, no prohibition can be awarded till the party sued in the Inferior Court sets up a defence on some ground raising an issue which the Inferior Court is incompetent to try. Until that is done no ground for a prohibition has been shewn."

"Prohibitions, by law, are to be granted at any time to restrain the Court to intermeddle with or execute anything which, by law, they ought not to hold the plea of. 2 Inst., 602. In *Toft* v. *Reyner*, 5 C. B. 162, it was held that the Court had no power to issue a prohibition to the judge of a county Court, in a matter that was within his jurisdiction. In this case it was stated that the plaintiff had already recovered judgment against the defendant in an action for the same debt in the Borough Court of Cambridge, and that his goods had been taken and sold under that judgment, and the plaintiff who was present, admitted such statement to be true. A prohibition was moved for to restrain the County Court Judge, on the ground that the matter being *res judicata*, he had no jurisdiction—that his jurisdiction ceased when the defendant's plea was admitted to be true, but per Wylde, C. J. "Whether the plea was good or bad, was a matter of law which he was bound to decide, and his decision was final." Adding—"A mistake in that respect would, ordinarily speaking, be matter of error; but the Act creating these County Courts has taken away that form of remedy; there is no ground, therefore, for granting a prohibition, which lies only where the Inferior Court has assumed to act with or beyond its jurisdiction."

And Maule, J., says: "This might have been error if the writ of error had not been taken away in these cases, and that shows that it is not ground for a prohibition." And Williams, J., says: "I am of the same opinion. The ground of this application is neither more nor less than that the Judge of the County Court, in deciding what it is competent for him to decide, has made a mistake in point of law; and that clearly is not a case in which prohibition lies."

In *Elles* v. *Watt*, 8 C. B. 614, per Maule, J.: "Your application is for a prohibition which can only be granted when the Inferior Court has not jurisdiction to proceed."

Writs of prohibition are, therefore, framed to restrain inferior Courts in cases where the cognisance of the matter belongs not to such courts, but this is the the first time I have heard it propounded that they can be used to restrain Courts from intermedding with matters over which they are specially authorised to take cognizance and hold plea. Can there be a doubt as to the Police Magistrate's having authority to hear and determine this matter? If so, how is it possible for the Police Magistrate to decide whether there was a breach of the License Law by the sale of intoxicating liquors without license, contrary to the provisions of the Quebec License Act, until he hears the case? If the defendants' contentions are correct, which I more than doubt, and he establishes them before the Police Magistrate, he will have furnished a defence and be entitled to an acquittal. If not correct and the recorder holds they do not amount to a defence, he will be bound to convict, and the defendant will be left to any remedy he may have by way of appeal or otherwise as he may be advised. It was, in my opinion, unquestionably for the Police Magistrate to say whether the sale, if proved, was lawful or unlawful, which question it is clear it is quite

impossible for him to determine without hearing the case, and whether his determination was right or wrong either in matter of law or of fact it was no question of jurisdiction. The justice may give an erroneous decision either of law, or of fact, or of both, though no person has a right to assume that he will do so, and if he does, if he acts within his jurisdiction, his decision is conclusive, unless appealed against, and whether appealable or not, it is no case for prohibition.

To determine, in the case before us, whether Ryan has been guilty of a breach of the licence Act, questions of fact as well as of law are, by defendant's own showing, necessarily involved, the determination of which is now in progress of trial before a tribunal having jurisdiction over the subject matter in controversy, and the only ground on which prohibition appears to me to be asked is the assumption that the judge will decide, not only the question of law but of fact, incorrectly against the defendant. There certainly is no usurpation of jurisdiction in this case, and no issue which the inferior court is incompetent to try; on the contrary, the only issue in this case, namely, whether the defendant was or was not guilty of selling liquor without a license, contrary to the provisions of the Quebec License Act of 1878, could only be tried under, and by virtue of, the section before referred to, and under which section, in my opinion, M. C. Desnoyers, the Police Magistrate, had unquestionable jurisdiction, and constituted the legal and proper tribunal to deal with any alleged infringement of the said Act, and therefore, no cause is shown to justify the issue of a writ of prohibition, and this appeal should be dismissed with costs.

FOURNIER, J. : —

La demande d'un bref de prohibition adressé à la Cour des Sessions Spéciales de la Paix du district de Montréal, avait pour but d'empêcher cette Cour d'entendre et juger une poursuite dirigée contre un nommé Ryan employé des appelants, brasseurs et distillateurs, pour avoir vendu des liqueurs enivrantes distillées par eux, sans être muni d'une licence à cet effet en vertu de l'acte des licences de Québec. Les principales raisons invoquées au soutien de cette demande sont : 1o. Que la législature de Québec n'avait pas le pouvoir de passer l'acte des licences au nom de Sa Majesté ; 2o. Que le dit acte établit des peines cumulant l'amende et l'emprisonnement ; 3o Que le dit acte est *ultra vires* en autant qu'il affecte le commerce et qu'il impose une taxe sur l'industrie des appelants, laquelle n'est soumise à aucune licence provinciale.

La première objection, que la législature n'avait pas le pouvoir d'édicter les lois au nom de Sa Majesté, a été abandonnée. Sur la seconde qui dénie à la législature le pouvoir de prononcer des peines comportant l'emprisonnement et l'amende à la fois, je partage entièrement l'opinion exprimée à cet égard par l'Hon. Juge Cross. La ss. 15 de la sec. 92 de l'Acte B. N. A. donnant le pouvoir de punir par amende, pénalité ou emprisonnement, a conféré le pouvoir de cumuler ces divers châtiments aussi bien que de les imposer séparément. Les raisonnements de l'Hon. Juge pour établir cette proposition me paraissent concluants et je me borne à y référer.

Quant à la constitutionalité de l'acte des licences de 1878, question si souvent discutée devant les tribunaux depuis quelques années, elle doit être considérée comme finalement réglée par le cas spécial soumis à cette Cour en vertu de l'acte 47 Vic. ch. 32, Capell's Digest 279, Liquor License Act 1883, et porté plus tard en appel au Conseil Privé de Sa Majesté. La décision rendue sur cette question fait maintenant loi sur le sujet. Il n'est plus permis d'élever de doute sur le pouvoir exclusif des législateurs de passer des lois réglant les licences pour la vente des boissons enivrantes, ni sur la constitutionnalité de l'acte des licences de Québec de 1878. Cette dernière question a été portée devant cette Cour dans la cause de la corporation des Trois-Rivières v. Sulte (11 Can. S. R. 25) et la validité de la loi y a été reconnue.

Cette loi, par la section 196 donnant une juridiction complète à la Cour des Sessions Spéciales de la Paix pour entendre et juger la poursuite intentée devant elle contre le nommé Ryan, il ne peut pas y avoir lieu de faire émaner un bref de prohibition pour empêcher cette Cour d'exercer sa juridiction.

L'appel doit être renvoyé avec dépens.

HENRY, J. :—

This is an action brought by the Respondent Lambe as Inspector of Licenses for the revenue district of Montreal, against Andrew Ryan for an alleged breach of the License Law of the Province of Quebec in having sold spirituous liquors without license and contrary to law.

In addition to the general plea of non-guilty, Ryan pleaded a justification as the servant and employee of the firm of J. H. R. Molson and Brothers, doing business as brewers under a license as such brewers from the Dominion Government, to sell the liquors brewed and manufactured by them at Montreal. The questions to be decided in the action were arranged to be submitted for the decision of the justice who issued the writ, and were substantially embodied in admissions signed by the counsel of both parties, and are in substance the points raised by the pleas in this action.

The case was submitted for the consideration of the justice, but before any decision by him, a writ of prohibition was issued by the Superior Court ; and, after argument before that Court, the learned Judges in their judgment decided substantially that the Local License Act of 1878 did not supersede the Act of the Dominion as to Brewer's Licenses, and that Ryan was justified in selling beer as he did, but inasmuch as the justice had jurisdiction to decide the matters of fact and law, and that as the decision of the justice could be revised by a higher court by means of a writ of certiorari, the Court quashed the writ of prohibition. That judgment was affirmed, but apparently for other reasons, by the Court of Appeal at Montreal, and from the latter judgment an appeal was taken to this Court.

The question then is as to the applicability of the writ of prohibition to the circumstances of this case.

The writ of prohibition is an extraordinary judicial writ issuing out of a Court of a superior jurisdiction, and directed to an inferior Court for the purpose of preventing the inferior tribunal from usurping a jurisdiction with which it is not legally vested.

It is an original remedial writ and is the remedy afforded by the common law against the incroachments of jurisdiction by inferior Courts ; and is used to keep such Courts within the limits and bounds prescribed for them by law. Such being the object, and I may say the only one, it should be upheld where it can be legitimately employed.

In vol. 3, Comm. Blackstone says : "A "prohibition is a writ issuing properly out "of the Court of King's Bench, being the "King's prerogative writ, but for the furtherance of justice it may now also be had "in some cases out of the Court of Chancery, "Common pleas or Exchequer directed to "the Judge and parties of a suit in any in- "ferior Court, commanding them to cease "from the prosecution thereof, upon suggest- "ion that either the cause originally or some "collateral matter arising therein does not "belong to that jurisdiction, but to the "cognizance of some other Court."

The writ "does not lie for grievance which "may be redressed in the ordinary course "of judicial proceedings." Nor is "it a writ "of right granted *ex debito justiciæ* but rather "one of sound judicial discretion, to be "granted or withheld according to the cir- "cumstances of each particular case. Nor "should it be granted, except in a clear case "of want of jurisdiction in the Court whose "action it is sought to prohibit." High on extraordinary remedies 606.

On an application for the writ, the want of jurisdiction about to be exercised should be clearly shown, and regardless of the law and facts to be considered by the Court sought to be prohibited, the sole question is as to its jurisdiction to deal with them. If that is not clearly shown, the issue of the writ would be unjustifiable.

I have carefully considered the petition for the writ of prohibition in this case and the admissions of the counsel ; but neither contains any allegation of the want of jurisdiction of the justice who issued thewrit between the original parties, and therefore it must be presumed that such jurisdiction existed. See Shortt on Prohibition 446 and case there cited, Yates v. Palmer, 6 D. & L. 288. If so, there is no jurisdiction shown for the issue of the writ of prohibition. Besides, I hold that, under the law, the Justice before whom the case was originally brought had ample jurisdiction to try all the issues raised before him.

The Justice therefore must be held to have had jurisdiction to dispose of the case submitted to him, and no Court by prohibition could prevent him from the performance of the duty imposed upon him by law by a decision on the matters of fact and law involved.

After his decision, a review of it may be had by a Superior Court as pointed out in the judgment of the Superior Court : but under the law as to the writ of prohibition that writ could not be interposed even if his judgment would be unappealable or could not in any way be reviewed by a higher Court. I will not discuss the merits of the case as between the original parties, as they should in the first place be disposed of by the Justice, the only tribunal in my opinion at present having power to deal with them in the first place. I think therefore the appeal in this case should be dismissed and the judgments of the two Courts below affirmed with costs.

(Opinion of Gwynne, J., in next issue.)