1883
*Oct. 31.
1884
*March 8.

WILLIAM H. VENNING.....APPELLANT;

AND

JAMES STEADMAN.....RESPONDENT.

WILLIAM H. VENNING.....APPELLANT;

AND

EDGAR HANSON.....RESPONDENT.

WILLIAM H. VENNING.....APPELLANT;

AND

JAMES DEWOLFE SPURR.....RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NEW BRUNSWICK.

Trespass—31 *Vic., ch.* 60, *ss.* 2, 19 (*D*)—*Order-in-Council,* 11*th June,* 1879, *construction of*—*Fishery Officer, action against*—*Notice not necessary*—*Damages, excessive.*

Three several actions for trespass and assault were brought by *A., B. & C.,* respectively, riparian proprietors of land fronting on rivers above the ebb and flow of the tide, against *V.* for forcibly seizing and taking away their fishing rods and lines, while they were engaged in fly-fishing for salmon in front of their respective lots. The defendant was a Fishery Officer, appointed under the Fisheries Act (31 *Vic.* ch. 60), and justified the seizure on the ground that the plaintiffs were fishing without licenses in violation of an Order-in-Council of June 11th, 1879, passed in pursuance of section 19 of the Act, which order was in these words:—"Fishing for salmon in the Dominion of *Canada,* except under the authority of leases or licenses from the Department of Marine and Fisheries is hereby prohibited." The defendant was armed and was in company with several others, a sufficient number to have enforced the seizure f resistance had been made. There was no actual injury. *A.*

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*PRESENT—Sir W. J. Ritchie, C.J.; and Strong, Fournier, Henry and Gwynne, JJ.

recovered $3,000, afterwards reduced to $1,500, damages; *B.* $1,200; and *C.* $1,000.

Held,—That sections 2 and 19 of the Fisheries Act, and the Order-in-Council of the 11th June, 1879, did not authorize the defendant in his capacity of Inspector of Fisheries, to interfere with *A.*, *B.* & *C.*'s exclusive right as riparian proprietors of fishing at the *locus in quo*; but that the damages were in all the cases excessive, and therefore new trials should be granted.

Held—Also, (*Gwynne*, J., dissenting,) that when the defendant committed the trespasses complained of, he was acting as a Dominion Officer, under the instructions of the Department of Marine and Fisheries, and was not entitled to notice of action under C. S., N. B., ch. 89, s. 1, or ch. 90, s. 8.

APPEAL from three judgments of the Supreme Court of *New Brunswick* refusing to enter non-suits or to grant new trials in actions brought in that court by the respondents respectively against the appellant (the defendant in the court below) for breaking and entering upon the respondents' land, and seizing and depriving them of the use and possession of fishing rods, lines and reels, with which the respondents were there fishing in certain waters situate on the said lands, or contiguous to, and flowing by the same.

A statement of facts for each case is given in the judgment of *Ritchie*, C. J.

Mr. *Harrison* and Mr. *Burbidge* (Deputy Minister of Justice) for appellant, and Mr. *Wetmore*, Q. C., for respondents.

The points relied on and authorities and statutes cited appear sufficiently in the judgments hereinafter given.

RITCHIE, C. J.:

In the cases of *Steadman* v. *Venning*, *Hanson* v. *Venning*, and *Spurr* v. *Venning*, the facts are stated as follows in the appellant's factum:

1st. *Venning* v. *Steadman*—"This was an action for trespass, assault and malicious prosecution, brought by

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the respondent against the appellant. The respondent claimed to be the owner or joint owner of a certain lot of land on the *Nepisiguit* river, situated above the ebb and flow of the tide, and while engaged in fly-fishing for salmon, on the said lot of land, the appellant, who was the Inspector of Fisheries for the Province of *New Brunswick*, and was at the time acting as such fishery officer, and under direct instructions from the Department of Marine and Fisheries, went upon the land when the respondent was fishing and made a formal seizure of respondent's fishing rod, reel and line, under the Fisheries Act, claiming that he had a right to do so by reason of the respondent's violation of the Order in Council, dated June 11th, 1879, which is in these words: 'Fishing for salmon in the Dominion of *Canada* except under the authority of leases or licenses from the Department of Marine and Fisheries, is hereby prohibited.' The respondent had no such lease or license, but claimed the right to fish without such lease or license by reason of his being a riparian proprietor.

"The case was heard before Mr. Justice *Wetmore* at the *Gloucester* circuit, and jury found a verdict for the plaintiff, for $1,220, and the Supreme Court of *New Brunswick*, on motion made for that purpose, refused to enter a non-suit, or to grant a new trial, and this appeal is now taken.

"2nd. In the *Hanson* case, the respondent claimed to be the owner or joint owner of a certain other lot of land on the south-west branch of the *Miramichi* river, situated above the ebb and flow of the tide. That case was also heard before Mr. Justice *Weldon*, at the *York* sittings, and the jury found a verdict for the plaintiff for $1,000, and the Supreme Court of *New Brunswick*, on motion made for that purpose, refused to enter a non-suit, or to grant a new trial.

"3rd. In the *Spurr* case the respondent claimed to be

the owner or joint owner of a certain lot of land on the *Nipisiguit* river, situated above the ebb and flow of the tide, and the case was heard before Mr. Justice *Wetmore* at the *Gloucester* Circuit, and the jury found a verdict for the plaintiff for $1,220, and the Supreme Court of *New Brunswick*, on motion made for that purpose, refused to enter a non-suit, or to grant a new trial.

The two sections that bear particularly on this case are the 2nd and 19th of 31 *Vic.*, ch. 60."

Sec. 2 provides that:

The Minister of Marine and Fisheries may, when the exclusive right of fishing does not already exist by law, issue or authorize to be issued fishery leases and licenses for fisheries and fishing wheresoever situate or carried on; but leases or licenses for any term exceeding nine years shall be issued only under the authority of an order of the Governor in Council.

The 19th section reads as follows:

The Governor in Council may, from time to time, make and, from time to time, vary, amend or alter, all and every such regulation or regulations as shall be found necessary or deemed expedient for the better management and regulation of the sea coast and inland fisheries, to prevent or remedy the obstruction and pollution of streams, to regulate and prevent fishing, to prohibit the destruction of fish and to forbid fishing, except under authority of leases or licenses, every of which regulations shall have the same force and effect as if herein contained and enacted, notwithstanding that such regulations may extend, vary or alter any of the provisions of this Act respecting the places or mode of fishing, or the terms specified as prohibited or close seasons, and may fix such other modes, times or places as may be deemed by the Governor in Council to be adapted to different localities, or may be thought otherwise expedient.

Under this statute, on the 11th June, 1879, the Governor in Council passed an Order in Council, which was as follows:

On the recommendation of the Honorable the Minister of Marine and Fisheries, and under the provisions of the 19th section of the Act passed in the session of the Parliament of *Canada*, held in the 31st year of Her Majesty's reign, ch. 60, and intituled: "An Act for the Regulation of Fishing and Protection of Fisheries."

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His Excellency, by and with the advice of the Queen's Privy Council of *Canada*, has been pleased to order, and it is hereby ordered, that the following fishery regulation be, and the same is hereby made and adopted:

Fishing for Salmon in the Dominion of *Canada*, except under the authority of leases or licenses from the Department of Marine and Fisheries, is hereby prohibited.

In construing the 19th section of this statute, I think the authority vested in the Governor in Council to forbid fishing except under the authority of leases or licenses was intended to apply to cases such as are referred to in the second section, where the exclusive right of fishing does not already exist by law, or to cases where the Government may, as riparian proprietor, have the right as such to control the fishing, and ought not to be held to apply to cases where the exclusive right of fishing exists by law. Such an absolute prohibition of the enjoyment of their property by riparian proprietors, or what might be still worse by granting a license to one proprietor and witholding it from another, thereby destroying the value of the property of the one, and enhancing the value of the property of the other, would simply be an arbitrary interference with the rights of property pure and simple, and no statute should be so construed as to have such an effect, unless, assuming parliament has the power to enact such a law, it should appear that, possessing such power, such an intention is indicated by clear and unequivocal language or irresistible inference, which it is quite impossible to say exists here, in the face of that well settled canon of construction, that statutes which encroach on the rights of the subjects, whether as regards persons or property, are to receive a strict construction, or as *Cockburn*, C. J., in *Harrod* v. *Worship* (1), says:—

It is a canon of construction of acts of parliament that the rights

(1) 1 B. & S. 381.

of individuals are not interfered with, unless there is an express enactment to that effect, and compensation given them.

In this case, whether parliament has the power absolutely to prohibit, or when or under what circumstances riparian proprietors may be prohibited from exercising their rights, it is not necessary to discuss or determine, because I can find nothing in the statute to justify the conclusion that parliament intended, for no apparent reason, thus to prohibit the enjoyment of riparian rights, and so directly to interfere with property and civil rights.

I cannot think the legislature contemplated such an interference with the rights of property as the construction contended for would involve. To take away from a proprietor the right of using his property for no assignable reason, and thus to deprive him by statute of the ordinary rights of a subject, is a result which can only be arrived at by necessary and unavoidable construction.

On the contrary, reading the statute as a whole, I think a contrary intention may be fairly inferred, if from no other clause, from the second section which recognizes the existence of and protects the exclusive rights of fishing, indicating that those were not the rights with which Parliament was dealing, or to which the provisions relating to leases or licenses were applicable. I am therefore of opinion that the respondent has established that he had the right of fishing where he was fishing, and in doing so, he was not fishing illegally, and that the appellant had no right to enter on the property of the respondent and interfere with him as he did.

As to the defendant being entitled to notice by reason of his being and acting in this matter as a Justice of the peace, I think the evidence clearly shows, that in interfering with the respondents in all these cases, he

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was not acting as a justice of the peace, or in any way in a judicial capacity, or under judicial responsibility, but was acting in discharge of the duty of an Inspector of Fisheries, and that what he did was not done judically in the exercise of any judicial function or discretion whatever. He did not exercise any judicial discretion or profess to act under judicial responsibility. But, on the contrary, he acted merely ministerially under, as he said, explicit orders, over which he claims he had no control or discretion whatever, but which he was bound implicitly to obey. All that he did was as a fishery inspector in accordance with and in obedience to express orders and instructions from the Department of Marine and Fisheries.

As to the question of excessive damages, I am most reluctant to interfere with the finding of jurors, but in these cases I regret to say that I cannot differ from Chief Justice *Allen* in thinking the damages excessive in each case, nor from the rest of my brethren, that by reason thereof there should be a new trial with a view to a re-assessment of these damages by a jury, the legal and proper tribunal for determining that question and one, generally speaking, within their exclusive province. But in this case the damages being, in my opinion, unreasonably large, I think we are bound to send the matter for the consideration of another jury. I cannot bring my mind to the conclusion that the jury assessing these damages at such excessive amounts were not largely influenced in awarding these damages more by the idea that the damages would be paid by the Dominion Government than by the principle of awarding such fair and reasonable compensation or damages, as between the plaintiff and defendant are the natural and proximate consequences of the wrongful act of the defendant, not necessarily the actual pecuniary loss; for in an action such as this, the jury were

not arbitrarily tied down to that, but taking into consideration the circumstances of each case, they are to award such damages as will be reasonable and fair, having reference to the relative position of the parties and the manner and circumstances attending the perpetration of the wrongs complained of.

I think there should be no costs on either side in this court, and that the rule in the court below should be made absolute for a new trial, on account of the damages being excessive, on payment of costs, as in accordance with the practice of that court.

STRONG, J. :—

These three cases were argued together, the questions involved being the same in each case.

I agree with the court below, that the justification was not proved. The 1st. sub-sec. of sec. 19 of the Fisheries Act, 31 *Vic.*, c. 60, is as follows:

The Governor in Council may, from time to time, make, and from time to time, vary, amend or alter, all and every such regulation or regulations as shall be found necessary or deemed expedient for the better management and regulation of the sea coast and inland fisheries, to prevent or remedy the obstruction and pollution of streams, to regulate and prevent fishing, to prohibit the destruction of fish and to forbid fishing, except under authority of leases or licenses, every of which regulations shall have the same force and effect as if herein contained and enacted, notwithstanding that such regulations may extend, vary or alter any of the provisions of this Act respecting the places or modes of fishing or the times specified as prohibited, or close seasons, and may fix such other modes, times or places, as may be deemed by the Governor in Council to be adapted to different localities, or may be thought otherwise expedient.

Pursuant to the authority conferred by this clause, the Governor General, on the 11th of June, 1879, made an Order in Council, which, amongst other provisions, contained the following:

Fishing for salmon in the Dominion of *Canada*, except under the

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authority of leases or licenses from the Department of Marine and Fisheries, is hereby prohibited.

The plaintiffs in each of these cases have proved that at the time the trespasses complained of were committed they were fishing in streams above the ebb and flow of the tide, and upon land which was their own private property, or the private property of persons from whom they had a license to fish. The defendant, however, contends that the Order in Council was *intra vires* of the Governor General, under the 19th section of the Act already read, and that according to the proper construction of its terms it applies to persons fishing on their own property. I cannot agree to the last branch of this proposition, and if it were correct, I should be of opinion that, so construed, the Order in Council would be clearly *ultra vires.*

In the *Queen* v. *Robertson* (1), this court determined that the right of riparian proprietors upon streams above tide water, and whose titles were such as to give them, according to the general common law principle the ownership of the beds of the streams to their middle lines, to fish within the limits of their own lands, was a private and exclusive right of property, a proprietary right of the same character as that to the herbage, or trees growing upon the land, or the minerals or game to be found upon it, and that this right of property could not be impaired by any legislation, but that of the Legislature of the Province in which the property was situated, which, under sub-sec. 13 of sec. 92 of the *B. N. A. Act*, 1867, possesses the exclusive right to legislate concerning "property." And we therefore held that the lease or license of the Dominion Government did not authorize the lessee or licensee to take fish in streams, the beds of which were vested in private owners. It was conceded, however, in that case of the *Queen* v. *Robert*

(1) 6 Can. S. C. R. 52.

son, that the Dominion Government might, under sub-sec. 12 of sec. 91 of the *B. N. A. Act*, make regulations forthe conservation of fisheries--what are called regulations respecting the police of the fisheries—such as prohibitions against taking fish at certain seasons, using destructive engines, and other rules of a cognate kind.

It is argued, now, that the license required by this Order in Council is of this kind, and that a land owner is, by the Order and the Act together, prohibited from fishing in streams upon his own land without a license. Such a power, if it exists, must be attributed to this section 19, which certainly confers unusually large powers of legislation upon the Governor in Council; but I am, nevertheless of opinion that this position cannot be sustained. Granting, for the present, that this clause of the statute is sufficiently comprehensive to include the power, as a matter of police regulation, of making, in the public interest and for the preservation of fisheries, an Order in Council restraining unlicensed owners of streams from exercising their full legal common law rights, of enjoying their own property as they may think fit, by requiring that no one should take fish unless licensed, I am still of opinion that the Order in Council falls short of indicating any intention to make such provision. This Order in Council is, of course, to be construed according to the general rules of intepretation applied to statutes. Then, nothing can be better settled than the proposition that no restraint upon the ordinary rights of property, no derogation from the fullest enjoyment of these rights, can be imposed by statute, except by express words. This principle has been so often recognized of late years that it needs but a slight reference to decided cases to show that it rests on the decisions of courts and judges of the highest authority, and ought not to be allowed to be called in

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question now. In the *Metropolitan Asylum District* v. *Hill* (1), Lord *Blackburn* says:

> It is clear that the burden lies on those who seek to establish that the legislature intended to take away private rights to show that, by express words or necessary implication, such an intention appears.

In the appeal of the *Western Counties Railway Co* v. *Windsor & Annapolis Railway Co.* (2), the same principle was acted upon as an established canon of interpretation. The rule is thus stated by Sir *Benson Maxwell* in his work on statutory construction (3):

> Statutes which encroach on the rights of the subject, whether as regards person or property, are similarly subject to a strict construction. It is presumed that the legislature does not desire to confiscate the property, or to encroach upon the rights of persons; and it is therefore expected that, if such be its intention, it will manifest it plainly, if not by express words, at least by clear implication and beyond reasonable doubt.

And this statement of the law is supported by the citation of numerous decisions referred to by the learned author. Applying this canon then to the construction of the Order in Council, it is plain that we cannot give the word "licenses," a meaning which would justify the trespasses complained of in this action. There are many fisheries for salmon, such as those in tidal rivers, where there is not, and indeed cannot be, without legislative sanction, any exclusive right of fishing, and to these it must be considered that the licenses required by the Orders in Council were intended to apply. The consequence is, that neither explicitly nor by implication is the requirement of a license made applicable to riparian owners as regards fishing in private streams. To hold otherwise and to determine that the right of fishing by a private owner on his own property was restricted by terms so general as those in which the Order in Council is expressed, would be a flagrant dis-

(1) 6 App. Cases 208. (2) 7 App. Cases 176.
(3) Ed. 2, p. 346.

regard of this most sacred rule for the exposition of written laws.

The 2nd section of the Act, by which it is provided that the Minister of Marine and Fisheries may issue fishery licenses where the exclusive right of fishing does not already exist by law, has manifestly no application to a case like the present, where the exclusive right of fishing did actually exist by law. Further, it seems to me, that construing the 19th section of the statute itself on the same principle as that applied to the Order in Council, that it does not empower the Governor General to make Orders in Council restricting the exercise of rights of property by prohibiting the owners of the beds of private streams from taking fish, which are their own property, without having been authorized to do so, by taking out a license.

This being, in my opinion, the construction of the Order in Council and the Act under which it was issued, it is not necessary to consider the constitutional question which was argued, as to the powers of the Dominion Parliament under the 12th sub-sec. of sec. 91 of the *B. N. A.* Act, so to legislate as to require private owners of streams to take out licenses.

In *Parsons* v. *Citizens Insurance Co.* (1) we are advised by the Privy Council to abstain from expressing opinions on constitutional questions as to legislative powers, unless such opinions are absolutely requisite for the decision of the case in hand, and the Privy Council has itself lately acted on this principle in the case before referred to, of the *Western Counties Ry. Co.* v. *The Windsor & Annapolis Ry. Co.*, (2) where their lordships, deciding against the appellants on the construction of the Act, declined to state their views on the question which had been argued before them, as to the constitutional validity of the legislation in question.

(1) 7 App. Cases 96.

(2) 7 App. Cases 176.

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This rule is also invariably acted on in the Supreme Court of the *United States*, and has in its favor the weighty reasons which are well pointed out by Mr. Justice *Cooley*, in his work on Constitutional Limitations (1).

I entirely agree with the Supreme Court of *New Brunswick*, in holding that the defendant was not, in the commission of the acts complained of, acting in the character of a justice of the peace, and so entitled to notice of action. Notice of action is not, of course, restricted to cases in which the party claiming the right to it has acted legally, and so has a legal justification. In such cases, notice of action, which is intended to enable the person to whom it is given to tender amends, is of no use, inasmuch as there is a full justification, but it must be shown that the alleged wrongs were committed *bonâ fide* with the intention of acting in the character of an officer of the class for whose protection the statute law has required a notice to be given, and in the line of duty of such an officer. In these cases, entering on the lands and the seizures of the rods cannot be attributed to a *bonâ fide* intention on the part of the defendant to exercise the functions of a justice of the peace, even supposing him to have been legally invested with that office. The proper duties of a justice of the peace are magisterial and judicial, and these were in no sense judicial acts, but such as we must consider the appellant intended to perform in the execution of the functions of a fishery officer, an office which the defendant undoubtedly held, but one which does not entitle its holder to notice of action.

The objections to all the verdicts on the ground of excessive damages are, it seems to me, well founded. This court, under the 4th section of the Supreme Court

(1) Ed. 4, p. 198.

Amendment Act of 1880, is not now, as it formerly was, disabled from interfering with a verdict on this ground. I read that section as conferring jurisdiction in all cases where the ends of justice may require it, and not as confined to cases in which the verdict is objected to as being against the weight of evidence.

The damages here are entirely out of proportion to the wrong. No actual damage was done, except in the case of *Spurr*, by the seizure and taking away of the rod and the slight injury to the plaintiff's thumb in a struggle, which, according to the evidence of Mr. *Burbidge*, he engaged in as a practical joke. The whole proceeding seems to have been formal, and to have been so understood by all parties. Nothing like contumely or insult is complained of. The exhibition of a pistol, mentioned in the cases of *Hanson* v. *Venning* and *Steadman* v. *Venning*, was wrong, but even in these cases, too, the whole matter seems to have been preconcerted and understood between the parties.

In cases of personal injury like assaults, the damages must always be more or less arbitrary, as there is no means of measuring them, but I do not understand that the courts will never interfere in such cases. On the contrary, the present state of the law appears to be, as it is laid down in *Mayne* on Damages (1), where it is said.

> It is now, however, so well acknowledged, that whether in actions for malicious prosecution, words, or any other matter, if the damages are clearly too large, the court will send the inquiry to another jury.

The original verdicts of $3,000 in *Steadman's* case, $1,220 in *Spurr's* case, and $1,000 in *Hanson's* case are, in my opinion, enormous, considering the facts in evidence before the jury, and well warrant, in all three cases, the inference which the court below drew in *Steadman's* case—"that the jury were under the influence of undue motives;" and from the nature of the

(1) Ed. 3, p. 513.

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cases and the evidence presented to the jury, I do not think it an unreasonable presumption that the jury might have supposed that any damages which they might award would ultimately be paid by the Dominion Government, an error against which they might have been usefully warned by the court.

I have come to the conclusion that this appeal must be allowed, and that there should be a new trial in each case.

FOURNIER, J. :

L'Intimé est avec quelques autres personnes, acquéreur de la *New Brunswick and Nova Scotia Land Co.*, d'un certain terrain, situé sur le côté ouest de la rivière *Miramichi*, au dessus du flux et reflux de la marée. Ce terrain qui s'étend de chaque côté de la rivière appartenait à la susdite compagnie en vertu d'un titre légal. L'Intimé et ses associés sont convenus avec la dite compagnie de l'acheter, ont payé, partie du prix d'acquisition et ont été mis en possession par la compagnie en 1874 ; ils l'ont occupé chaque année depuis, comme poste de pêche et y ont fait divers autres actes de possession.

En 1881, lorsque l'Intimé et *Mr. Phair* étaient à pêcher, l'appelant alors inspecteur de pêche pour le *New Brunswick*, accompagné de plusieurs autres personnes se rendit sur le terrain et informa *Phair* qu'il allait saisir sa pêche de ligne. Sur le refus de ce dernier de le laisser faire, à moins d'y être contraint, l'appelant montra un pistolet en disant que dans ce cas il serait obligé de s'en servir. En présence de cette menace, *Phair* céda et l'appelant saisit alors sa ligne et autres appareils de pêche. Il en fit autant de ceux de l'intimé qui ne les céda que sous protêt. Il paraît que le pistolet n'était pas chargé—mais ni l'Intimé ni *Phair* ne connaissaient cette circonstance.

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La prétention de l'appelant est que l'intimé faisait la pêche en contravention à l'acte des pêcheries et à l'ordre en conseil du 11 juin 1879.

L'Intimé avant de se rendre sur sa propriété ayant rencontré l'appelant, l'informa de son intention d'y aller faire la pêche. Celui-ci déclara alors qu'il le suivrait pour l'en empêcher. A quoi l'Intimé lui répondit en le référant à la cause de *Steadman* v. *Robertson* (sa propre cause) comme établissant ses droits; qu'il serait injuste d'en agir ainsi. L'appelant invoquant l'ordre en conseil du 11 juin 1879, prétendait que personne ne pouvait pêcher sans avoir une licence du département de la marine et des pêcheries, l'Intimé lui répondit que cet ordre n'affectait pas ses droits et offrit, dans le but de faire régler la question à l'amiable, une admission du fait de pêche. L'appelant refusa d'accepter cette proposition, donnant pour raison qu'il avait des instructions du département et qu'il devait s'y conformer.

Un verdict a été rendu pour $3,000. Le jugement de la cour inférieure refusant un *non suit*, ordonna un nouveau procès pour le motif que les dommages sont excessifs, à moins que le verdict ne fut réduit à $1,500. Appel de ce jugement.

La principale question soulevée ici est encore de savoir si un propriétaire riverain peut, sans une licence du département des pêcheries, exercer le droit de pêcher dans les eaux non navigables ni flottables qui bordent où traversent sa propriété.

La section 91 de l'Acte de l'Amérique Britannique du Nord a bien donné au gouvernement fédéral le pouvoir de légiférer au sujet des pêcheries, mais sans lui en avoir attribué la propriété là où elle appartenait déjà aux particuliers en vertu de la loi. Les droits des propriétaires riverains n'ont été aucunement modifiés à cet égard. Ils sont maintenant ce qu'ils étaient avant la Confédération. Telle a été la décision de cette cour

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dans la cause de la *Reine* v. *Robertson* (1). Cependant l'appelant invoque encore comme il l'a déjà fait sans succès, dans la cause de *Venning* v. *Phair* (2) les pouvoirs étendus conférés par la 19me section de l'acte des pêcheries au Gouverneur en conseil de faire des règlements au sujet des pêcheries. Elle se lit comme suit (3) :

En vertu de cette section le règlement suivant a été passé le 11 juin 1879 :

Fishing for salmon in the Dominion of Canada, excepting under the authority of leases or licenses from the Department of Marine and Fisheries, is hereby prohibited.

Ce règlement doit-il être considéré comme devant avoir une application générale et obliger même un propriétaire riverain dans les rivières non navigables ni flottables qui veut exercer le droit de pêche chez lui, à se munir d'une licence ? Si tel était le cas le riverain n'aurait donc pas le droit exclusif de pêche que la loi lui a reconnu et que les tribunaux ont consacré par leurs décisions. Cependant, loin de le soumettre à cette nécessité, la 2me sec. de l'acte, en exempte les endroits où le droit exclusif de pêche existe. Cette exception n'est pas en contradiction avec la sec. 19 et le règlement du 11 juin 1879. Ces diverses dispositions peuvent facilement se concilier de manière à recevoir chacune leur effet. La loi n'a certainement pas voulu reconnaître d'un côté les droits du riverain par la 2me section, pour les lui retirer de l'autre par la section 19 et l'ordre en conseil du 11 juin 1879. En exceptant de leur opération les endroits où il existe un droit de pêche exclusif, il reste encore un champ assez considérable où le ministre de la marine et des pêcheries peut exercer le droit de licence. Les sec. 3 et 7 et ss. 6 de la sec. 7 en fournissent des exemples. C'est sans doute à ces cas que doivent s'appliquer la sec. 19 et l'ordre en conseil qui peuvent ainsi recevoir leur effet sans qu'il y ait conflit

(1) 6 Can. S. C. R. 52. (2) 22 N. B. Rep. 362.

(3) [For this reference see p.213.]

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avec la 2me sec. La prohibition décrétée ne doit donc avoir lieu que dans les endroits où il n'existe pas un droit de pêche exclusif. En conséquence, les riverains dans les eaux non navigables ne sont pas compris dans cette prohibition et peuvent exercer leur droits de pêche sans être tenu de prendre une license.

L'Appelant a fait à l'Intimé l'objection qu'il n'avait pas fait preuve de son droit de pêche à l'endroit où il avait pêché, que le titre au rivage et au lit de la rivière appartenait à la *Nova Scotia and New Brunswick Land Co.* Il est vrai que son titre n'était pas encore parfait, mais il était alors légalement en possession du terrain en vertu d'une convention pour acheter des propriétaires, et cela lui donnait le droit à une action contre toute personne qui le troublerait sans droit dans l'exercice de son droit de pêche. L'Appelant, en intervenant comme il l'a fait, n'était qu'un *wrong doer*, parce qu'il n'avait aucune autorité quelconque, ni en vertu de l'acte des Pêcheries, ni en vertu de l'ordre en conseil du 11 juin 1879, pour justifier la saisie qu'il a faite. L'obligation de prendre des licences de pêche ne s'appliquant pas aux rivières non navigables, l'Appelant n'avait aucun droit à y exercer.

L'Appelant a fait encore deux autres objections : 1° qu'il était protégé contre toute poursuite par le ch. 89 des Statuts Consolidés, N.-B. ; 2° que comme juge de paix, il avait droit à un avis d'action en vertu du ch. 90 des mêmes statuts.

A ces deux objections, je citerai comme réponse concluante l'opinion de l'honorable juge en chef *Allen* dans la cause déjà citée de *Phair* et *Venning*.

I think neither of these objections is tenable. We had occasion to consider ch. 89 in the case of *Wood vs. Reed* (*ante* p. 279.) I doubt if the defendant comes within the first section of that Act, the words of which are : 'All sheriffs and other officers of the law,' which, I think, mean policemen and constables, and would not include a fishery officer appointed by the Dominion Government. Neither

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would the third section apply to the defendant, because in taking the plaintiff's fishing-rod, he was not acting as a justice of the peace. But in addition to these objections, I think the defendant, in what he did, was not acting according to the directions of the Fisheries Act, nor within the jurisdiction thereby intended to be given him, because, in my opinion, the Act never intended to give a fishery officer power to seize fishing rods and in a place where an exclusive right of fishing existed, and which was consequently excluded from the operation of the Fisheries Act. With respect to the other objection, that the defendant was entitled to notice of action, it is sufficient to say he was not acting as a justice of the peace when he did the act complained of, but in another capacity, and therefore the provisions of ch. 90 do not apply."

Quant au montant des dommages, je le considère comme excessif. Il n'y a pas de doute que l'Intimé a été troublé avec menace de violence dans la jouissance de ses droits comme propriétaire riverain. Dans les circonstances c'était faire un outrage très grave à un citoyen honorable et paisible qui ne faisait qu'exercer des droits que les tribunaux du pays lui avaient reconnus et qui semblaient être devenus incontestables. Il n'y a pas de doute que des dommages assez élevés devaient être accordés pour marquer la réprobation de la conduite illégale de l'appelant, mais la juste mesure de ces dommages est assez difficile à établir. Cependant je crois que le montant accordé par le jury est trop élevé et pour cette raison je crois qu'un nouveau procès doit être accordé.

HENRY, J.:

In the case of the *Queen* v. *Robertson* (1) this court decided, I think, unanimously, that a riparian owner was not called upon to take out a lease to fish in the river in the exercise of his riparian rights. The authority of the Dominion Government and the Dominion Parliament is, as I take it, altogether under the Confederation Act, and there the power given to Parliament is to legislate

(1) 6 Can. S. C. R. 52.

as to the regulation of the sea-coast and inland fisheries. There is no title conveyed to the Government there, either of the sea-coast or of the inland fisheries. Parliament takes its rights to legislate from this Act over inland fisheries, but there was no power given to the Dominion Parliament, in my opinion, to legislate away the private rights of individuals. We decided there was no such power existing; that it is the right of the riparian owner, bounding on unnavigable streams and rivers, to use half the width of the stream or river upon which his land so borders. It is a right appertaining to the property: it is one of the appurtenances to the property, as much as any other. It is a common law right that he has, and unless that right is, at all events, expressly taken away by statute, no legislation otherwise can affect it. The Dominion Government here passed an Act, 31 *Vic.*, ch. 60, authorizing the Governor in Council to make regulations for the better management and regulation of the sea coast and inland fisheries, to prevent and remedy the obstruction and pollution of streams, to regulate and prevent fishing, to prohibit the destruction of fish and forbid fishing, except under the authority of leases or licenses. The next point in the case is to consider what the leases referred must, I think, be intended. It is quite possible that the Dominion may be the riparian owner of large quantities of land in this Dominion through which flow streams where salmon and other fish run, and therefore the power to give leases of these was one that was necessary in order that a party might have an exclusive right of fishing. Under this Act they can grant leases where the land is owned by the Dominion, but, I think, it goes no further. When a party is said to be authorized to give a lease, it pre-supposes that he is the owner of the property to be leased. If the Dominion Government had the riparian rights by ownership, it was necessary that the Act

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should be passed to authorize the fishery officers to grant leases, and we have the right, therefore, to conclude that the word "lease" in the Act, or "regulation," meant a lease of property owned by the Dominion Government. But if it was intended to grant leases of property they did not own, then comes the question as to the power under the Order in Council or under the statute. That question was settled in the case before referred to. Now, what is the Order in Council as to licenses? It is to authorise the fishery commissioner to issue licenses to parties to fish where the exclusive right of fishing does not already exist. What does that mean? If there is an exclusive right already existing—and I maintain, under the common law principle, the riparian owner had the exclusive right—this provision for the issuing of licenses by the Department does not apply at all. It applies only to cases where the exclusive right did not exist. If this be so, what is the jurisdiction here of the defendant? He says:

> Under these statutes and regulations I went there to prevent the party who had the riparian right to fish from fishing on his own land, because he did not take a lease from the Government,

who had no power to give it to him, or a license where none was required. I have shown he did not require a license, because the law said, as plainly as words could make it, in my opinion, that a party who had an exclusive right did not require a license. Here, then, is one of the rights of property tacitly accorded by the terms of the regulation attempted to be attacked, and if the Government had the right to say, "You cannot fish on your own land without taking a license," they could demand a tax so heavy as to prevent the parties using their rights. It is possible that the extreme right to legislate to that extent does exist, but it could only be exercised where there was an extreme public necessity for it. It is possibly true that extreme course, for the

purpose of revenue, might be resorted to by the Government, but then very great necessity must be shown before, I think, Parliament would have the right to say to a riparian owner "you shall not exercise your common law rights of property without paying a tax to the Government." It is quite possible that it might be done, and I do not say that in extreme cases it could not be done; but from what we know of the condition of the country, we have no right to conclude that any such necessity exists or existed.

As regards notice of action, I have come to the conclusion that the defendant was not acting as a magistrate. He was a magistrate by statute, but only so when he was acting in the capacity of magistrate, or justice of the peace. Here he shows, himself, that he was not acting as such—that he went there under the orders of the department as any agent authorized by the department would have done, and made a seizure. He made the seizure, then, as an officer by the command of the Government. It is true that he might have done what he did as a magistrate, and it is true that under the statute he could, on view, make a seizure of nets or other matters that were being used contrary to the terms of the Act, and he could also make an order to confiscate them, but he shows that he did not make the seizure in that way. If he had said that he went there as a magistrate, of his own motion, and, acting as a magistrate, he would be entitled to notice, but he says:

> I went before a magistrate afterwards to do what I might have done myself had I been acting as a magistrate in the first instance.

He was not, I take it, acting as a magistrate in anything he did, and he is therefore not entitled to claim the protection of the statute.

The only other question is the question of damages. I think the jury assessed the damages under an improper idea. I think that these damages were assessed under

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the idea that it was a case calling for vindictive damages. It is true, they had a right to assume that the Government might, in its discretion, indemnify the officer called upon to perform this particular duty, still I do not think they had a right to take that into consideration, when they were deciding the only question they ought to decide—what the party was entitled to get for the damage done. Taking that into consideration (and that is the only principle on which a jury is entitled to assess damages in a case like this) I think they exceeded it, and to a pretty large extent. If it had been even a good deal more than I would have thought right under the circumstances, I would not have interfered, but I think the difference here is too much when we get up to thousands of dollars in a case where a party is interfered with for a short time, and the damage done to him not of a very serious character. Under the circumstances, I think, if this court could agree upon an amount to which the damages should be reduced, and the parties were willing to take that reduced amount, we could give judgment to that extent, but that not having been done, and the damages being, in my opinion, excessive, the only course, I think, left open to this court, is to set aside the verdict on the ground of excessive damages. Under the peculiar circumstances of the case, I think the ends of justice would require the respondent should not be saddled with the costs in this court, and I quite agree with the decision the learned Chief Justice has arrived at with regard to costs. I think the verdict ought to be set aside on the ground of excessive damages, but on the terms the learned Chief Justice has already stated.

GWYNNE, J.:

These are actions brought by the respective plaintiffs against the defendant, who is Fishery Inspector for the

Province of *New Brunswick*, appointed under the provisions of the Dominion statute, 31 *Vic.*, ch. 60. The declaration in each of the actions, at the suit of *Steadman* and *Hanson* respectively, contains counts in trespass and one in case for malicious prosecution, but, as at the trial, verdicts were rendered for the defendant upon the count in case, it is not necessary to refer to that count. The declaration in the action at the suit of *Spurr* contained but one count, and that in trespass.

The trespasses complained of were, that the defendant had entered upon the close of the respective plaintiffs, from and upon which they then respectively were fishing in the waters of the river *Miramichi*, in the Province of *New Brunswick*, and then and there wrongfully seized and deprived the plaintiffs respectively of the use and possession of a certain fishing rod, fishing line and reel with which the respective plaintiffs were then fishing in said waters, and then and there hindered and prevented the respective plaintiffs from fishing as aforesaid.

To these counts the defendant pleaded not guilty per statute, and specified the following statutes, namely, ch. 89, secs. 1 and 2, and ch. 90, sec. 8 of the Consolidated Statutes of *New Brunswick*, and the Dominion Parliament Statute, 31 *Vic.*, ch. 60, secs. 1, 16, 17, 18 and 19, known as the Fisheries Act of 1868.

At the trial, the acts relied upon by the plaintiffs respectively as the acts complained of being proved, the defendant insisted that in doing what he did he was acting in his capacity of Fishery Inspector, and in pursuance of instructions given to him from the Department of Marine and Fisheries for his guidance in acting as such Fishery Inspector, under the authority and provisions of the Fisheries Act of 1868. This was admitted on the part of the plaintiffs.

By order in Council of the 11th day of June, 1879,

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the following fishing regulation was made and adopted:

Fishing for salmon in the Dominion of Canada, excepting under the authority of leases or licenses from the Department of Marine and Fisheries, is hereby prohibited.

It was admitted that the plaintiffs were aware of the Order in Council, having seen it published in the *Official Gazette*, and it was also admitted that under this authority it was that the defendant was acting, but it was contended that (although, as was admitted, the respective plaintiffs were fishing for salmon) this Order in Council had not any application to them, as they were fishing up on their own lands, and where, in consequence, they had the exclusive right of fishing; and it was contended that the regulation by the Order in Council must be limited to the same extent as the 2nd section of the Fisheries Act is, which is limited to places where the exclusive right of fishing does not exist. On the other hand, it was contended that the regulation, as well as the 19th sec. of 31st *Vic.*, ch. 60, under which it was made, must be construed as having general application, and moreover, that whether they should or not be so construed, the defendant was protected in respect of the acts complained of under ch. 89 of the Consolidated Statutes of *New Brunswick*, or that at any rate he was entitled to a notice of action under the provisions of ch. 90 of the Consolidated Statutes of *New Brunswick*, and that no notice having been given, he was entitled to have a verdict in his favor, or judgment of non-suit entered. The learned judge refused to non-suit and submitted the cases to the jury as cases proper for them to award damages against the defendant, ruling that the defendant was not entitled to protection under either of the above statutes, and the jury rendered a verdict for $3,000, on the trespass counts in the action at the suit of *Steadman*, and for $1,000 on the trespass counts in the action of the suit of *Hanson*, and for $1,220 in the action at the suit

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of *Spurr*. Upon motions to set aside these verdicts and to enter a non-suit upon the grounds insisted upon at the time the court sustained the ruling of the learned judge who tried the cases, and upheld the verdicts rendered in all the cases, except in that at the suit of *Steadman*, in which, having said that they would grant a new trial unless the plaintiff should consent to have his verdict reduced to $1,500, and the plaintiff having consented, the verdict was reduced accordingly, and thereupon they discharged the rule *nisi* in that case also.

The defendant appeals from all of these rules.

The defendant, in my opinion, is entitled to prevail upon the point raised by him at the trial under the provisions of the 90th chapter of the Consolidated Statutes of *New Brunswick*, that is to say, the defendant was entitled to succeed upon the objection that he had not been served with notice of action. By the 1st sec. of the Dominion Statute for the regulation of fishing and the protection of fisheries, it is enacted that:

The Governor may appoint fishery officers, whose power and duties shall be defined by this Act and the regulations made under it, and by instructions from the Department of Marine and Fisheries; and every officer so appointed under oath of office and instructed to exercise magisterial powers shall be ex-officio a justice of the peace for all the purposes of this Act and the regulations made under it, within the limits for which he is appointed to act as such fishery officer.

And by the 18th section it is enacted that—

Any fishery officer or other magistrate may convict, upon his own view of any of the offences both as infractions and for non-compliance, punishable under the provisions of this Act: and shall remove or cause to be removed instantly, and detain any materials illegally in use.

[The learned Judge read also section 19.]

And by section 16 it is enacted that—

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Each and every offender against the provisions of the Act or the regulations under it, shall, for each offence, incur a fine of not more than twenty dollars, besides all costs.

The above Order in Council of the 11th June, 1879, containing the prohibition of salmon fishing, except under a lease or license, was proved by the production of the *Canada Gazette*, in which it was published. In the action at the suit of *Steadman*, the defendant gave evidence to the effect that he has been and acted as a fishery officer since 1868. His further examination upon this point was dispensed with by the admission of the fact by counsel for the plaintiff, and the statement inserted in the judge's notes, that no question was raised upon this ground. He further stated that he had received instructions what to do, and that he was to exercise magisterial powers under the Fisheries Act, and that in what he did do in the particular case, he did under instructions from the Department of Marine and Fisheries—that he seized the rods for the *Queen* and gave them up, on condition to be returned when called for. Mr. *Steadman* having himself been called, said that he knew the defendant was Fishery Inspector, and that he was acting as such. He knew of the Order in Council of 1879, having seen it in the *Gazette*: that he was satisfied that the defendant was only doing what he was ordered to do, and that the rods were given up immediately, on the understanding that when required they should be returned.

In the action at suit of *Hanson*, it was expressly admitted that the defendant at the time of the alleged trespass was Fishery Inspector for the Province of *New Brunswick*, duly appointed and sworn, and had been so for some years previously; that he had received instructions from the Department of Fisheries to exercise such power and authority, and to carry out the orders of the Department, and that in the acts complained

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of he was acting under instructions of counsel for the Department, and under the advice of the agent of the Minister of Justice, and in the action at suit of *Spurr*, it was also proved that the defendant was Fishery Inspector for *New Brunswick*, and sworn in as such, and that he had received instructions from the Department to exercise magisterial powers within his district, which was the Province of *New Brunswick*, and that in doing what he did, he was acting under instructions from the Department, and in his capacity as fishery officer. The contention of the plaintiffs was, that the regulation contained in the Order in Council of the 11th June, 1879, must be construed to be limited to cases coming within the 2nd section of the Fisheries Act, namely, to places where the exclusive right of fishing does not already exist by law, and therefore that it does not apply to the plaintiffs, who were fishing upon their own lands. On the other hand, the contention urged by Mr. *Burbidge*, on behalf of the defendant, was that the prohibition contained in the Order in Council is not to be so limited, for that it is general in its terms and is made under the authority of the 19th section of the Act, which purports to authorize the Governor in Council to forbid fishing except under the authority of leases or licenses, and that the regulation containing such prohibition should have the same force and effect as if specially contained in the statute, notwithstanding that such regulation might extend, vary or alter any of the provisions of the Act, respecting the places or modes of fishing. This, no doubt, would raise a very important question, if the construction of the Act or its validity were now under consideration; but which of those views is correct, or what is the true construction of the Act, or whether it did or did not authorize the defendant to do the acts complained of and whether if open to the construction, that in terms it did, that

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part of the Act would or not be *ultra vires* of the Dominion Parliament, are questions upon which we are not called upon now to express, nor is it, in my opinion, proper that we should express, any opinion, as they have no bearing whatever, nor are they of any importance as regards the question which is now under consideration, namely, whether the defendant was entitled to notice of action or not.

That the defendant was acting in his capacity of a magistrate as Fishery Inspector of the Province of *New Brunswick*, and under the instructions of the Department of Marine and Fisheries, whose orders the statute directs him to obey, and that he was acting under the best legal advice, which, as an officer of the Department, he could get, namely, that of the Deputy Minister of Justice, are points which are not disputed, and these are the points upon which the question of right to notice of action depends. It is as Fishery Inspector and to enable him to discharge efficiently the duties of that office that he is made a magistrate; and all acts done by him in the character of Fishery Inspector and which might have been done by him in his character of a magistrate, acting upon view, as authorized by the statute, must be regarded as done by him in his character of a magistrate which, as being Fishery Inspector, and only as such, he is. The purpose for which notice of action is required to be given assumes that a statute, under the assumed authority of which an act is done, fails for some reason to afford complete protection to the defendant, for if it did afford such protection the statute would be a sufficient defence, but notice of action is required to be given for the purpose of giving to a defendant an opportunity to tender amends, which, of course, involves an assumption that the statute may not afford a justification of the acts complained of.

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A party's right to notice of action must, of course, depend upon the wording of the particular statute requiring notice to be given to him, but as a general rule, it has been long established, that where the facts are such that a party may be considered as having fair color for supposing that he is warranted by the Act of Parliament in doing that which is made the subject of the action, he is entitled to notice,—that all persons who believe or suppose they are acting in pursuance of the Act of Parliament under which they profess to act are within the protection of a clause requiring notice to be given to them—even though they may have acted illegally. In accordance with these principles a magistrate has been held to be entitled to notice of action for an act done by him as a magistrate, although what he did was not within the scope of his authority, and so likewise, even though he may have acted maliciously; and it has been held that if a defendant was acting as a revenue officer, or even supposed he had legal authority so to act, he was entitled to notice without proving his appointment. *Bird* v. *Gunston* (1); *Prestidge* v. *Woodman* (2); *Daniel* v. *Wilson* (3); *Cook* v. *Leonard* (4); *Beachey* v. *Sides* (5); *Hughes* v. *Buckland* (6); *Kirby* v. *Simpson* (7); *Wadsworth* v. *Murphy* (8).

Now, the provision of the *New Brunswick* statute, ch. 90, is, that no action shall be commenced against a justice for any official act until one month at least after notice in writing of such action served upon him, &c., &c., &c., and every such action shall be brought within six months next after the cause thereof, and the venue shall be laid and the cause tried in the county where the act was committed, and the defendant may

(1) 4 Doug. 275.
(2) 1 B. & C. 12.
(3) 5 T. R. 1.
(4) 6 B. & C. 351.
(5) 9 B, & C. 809.
(6) 15 M. & W. 350.
(7) 23 L. J. M. C. 165.
(8) 1 U. C. Q. B. 190.

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plead the general issue and give the special matter in evidence; and if on the trial of any action the plaintiff should not prove the action brought—notice thereof given within the time limited in that behalf, the cause of action stated in the notice—and that it arose in the county where brought, he shall be non-suited, or the verdict may be entered for the defendant.

The word "justice" in the above Act is by the Interpretation Act, ch. 118, of the Consolidated Statutes of *New Brunswick*, declared to signify any justice of the peace for any city, county, or city and county.

That the defendant at the time of the committal by him of the alleged grievances which are the subject of these actions, was under the provisions of the Dominion Statute, 31 *Vic.*, ch. 60, sec. 1, a justice of the peace for the county within which he was acting as Fishery Inspector, has not been disputed.

By the 18th section of that Act he was authorized, as such Fishery Inspector and justice of the peace to convict, on his own view, for any infraction of any of the regulations made by the Governor in Council under the Act, which regulations were, by sec. 19, given the force and effect of a statutory enactment.

Neither can it, I think, be doubted that the defendant was acting in his official character of justice of the peace as well as of Fishery Inspector, in virtue of which office he became and was justice of the peace, and so that his acts were official acts within the provision of ch. 90 of the C. S. of *N. B.*, and that he was acting in the belief, and, indeed (as he was acting under express instructions from the Department and under the advice of the Deputy Minister of Justice) in the reasonable belief, however mistaken that belief may have been, that the acts complained of were authorized by the Act.

Under these circumstances, the defendant, as it appears to me, is entitled to the benefit and protection

given by chap. 90 of the Consolidated Statutes of *New Brunswick*. I can see no reason why a person acting as a justice of the peace under an appointment as such under the authority of a Dominion Act of Parliament, is not entitled to the benefit of the provincial statute, equally as any other justice of the peace, however appointed; and being, as I think the defendant was, entitled to a notice of action, and not having received any, the plaintiffs should have been non-suited, or verdicts should have been rendered for the defendant.

The defendant was also, I think, entitled to the protection intended to be given by chap. 89 of the Consolidated Statutes of *New Brunswick*, by which it is enacted that:—

> In any action, suit or proceeding, either at law or in equity for, or by reason, or in consequence of any matter or thing done under and according to the provisions of any Act of the Legislature of this Province, or of the Parliament of *Canada*, passed or to be passed, that the same was done under and according to the provisions of said Act or Acts, shall be a good defence to any such action, suit or proceeding, either at law or in equity, and the subject matter of such defence may be given in evidence under the general issue or other plea; and any justice shall be deemed to have acted within his jurisdiction for the purposes of this chapter, who acts or has acted within a jurisdiction given, or intended to be given, by any Act of the Legislature of this Province, or of the Parliament of *Canada*, whether within or beyond the power of such Legislature or Parliament, as the case may be.

The words in this statute "under and according to the provisions of any Act," &c., &c., must receive the same construction as, in *Hughes* v. *Buckland* (1), was given to the words "for the protection of persons acting in the execution of this Act, be it enacted that all actions and prosecutions to be commenced against any person for anything done in pursuance of this Act, shall," &c.

In that case the rule was held to be that a person was protected who acted *bonâ fide*, and in the reasonable

(1) 15 M. & W. 350.

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belief that he was acting in pursuance of the Act of Parliament; that the protection was only required by him who acts illegally, but under the belief that he is right. That those words, "anything done in pursuance of this Act," do not mean acts done in strict pursuance of the Act. So, likewise, as it appears to me, the words "anything done under and according to the provisions of any Act," &c, &c., do not mean anything done in strict accordance with the provisions of such Act, but that in both cases the protection is extended to all who *bonâ fide* and reasonably believed that they were authorized to act in the character and manner in which they did act.

Here the defendant undoubtedly, in his character of Fishery Inspector, filled the character of a justice of the peace, persons filling which character were plainly intended to be protected by the Act, and that the defendant acted as such, and in the belief that he was authorized to act as such, cannot, I think, be doubted, and as he acted under the advice of the Deputy Minister of Justice, it could not, I think, be doubted, that he *bonâ fide* and reasonably believed that under of the provisions of the Dominion statute and in his character of justice of peace, which, as Fishery Inspector, he was, he was authorized to do what he did do. This does not appear to have been disputed at the trial; if there had been any doubt upon that point, the question of fact should have been submitted to the jury. Upon this ground, as well as on the other point, as to the defendant's right to have had a notice of action, the defendant was, I think, entitled to have had a non-suit or a verdict for him entered. The appeals, therefore, in my opinion, should be allowed with costs, and rules absolute for non-suit be ordered to be issued from the court below, with costs.

Appeals allowed without costs.

Solicitors for appellants: *L. H. Harrison.*

Solicitors for respondent: *J. Henry Phair.*