

THE GOVERNOR AND COMPANY }
 OF ADVENTURERS OF ENG- } APPELLANTS ;
 LAND (RESPONDENTS)..... } *May 14,
 *May 31.

AND

F. X. JOANNETTE (PETITIONER)..... RESPONDENT
 ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR
 LOWER CANADA (APPEAL SIDE).

*Game Laws—Arts. 1405-1409 R. S. (P. Q.)—Seizure of furs killed out of
 season—Justice of the Peace—Jurisdiction—Prohibition, writ of.*

Under art. 1405 read in connection with art. 1409 R. S. (P. Q.), a
 game keeper is authorized to seize furs on view on board a
 schooner without a search warrant and to have them brought
 before a justice of the peace for examination.

2. That a writ of prohibition will not lie against a magistrate acting
 under secs 1405-1409 R. S. P. Q. in examination of the furs so
 seized where he clearly has jurisdiction and the only complaint is
 irregularity in the seizure.

APPEAL from a judgment of the Court of Queen's
 Bench for Lower Canada (appeal side), reversing a
 judgment of the Superior Court and dismissing a writ
 of prohibition addressed to the judge of the Sessions of
 the Peace at Quebec and to F. X. Joannette, a game-
 keeper for the district of Quebec.

The facts which gave rise to the litigation are as
 follows :—

On the first day of July, 1893 the respondent F. X.
 Joannette, game-keeper for the City and County of
 Quebec, was notified that furs liable to confiscation were
 on board the schooner "Stadacona," in the boundaries
 of the city of Quebec. He went on board the aforesaid
 schooner, showed his commission and ascertained that
 the furs were there. Then he went to the office of the

*PRESENT :—Sir Henry Strong C.J. and Fournier, Taschereau,
 Sedgewick and King JJ.

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Judge of the Sessions of the Peace, and took out a search warrant, according to art. 1420 R. S. Q.

He went back on board the schooner "Stadacona" and seized, notwithstanding the opposition of the captain and sailors, sixteen boxes of furs, which were removed to a safe place in the police court at Quebec.

The following days the parties proceeded to the examination of the said furs. The petitioners were represented by Mr. Hunt, the local agent in Quebec, the chief factor of the appellant company Mr. Mackenzie, and an inspector sent by them. At the time of appointing a third inspector, for part of furs on which petitioners and respondent's inspector disagreed, a writ or prohibition was served on the respondent.

To this writ, whereby the legality of all the proceedings and the jurisdiction of the magistrate were called in question, the respondent pleaded the general issue; that he was a game-keeper for the district of Quebec; that he had a right to seize the furs; that the magistrate had jurisdiction; that the appellants had not pleaded to the jurisdiction before the magistrate; that the appellants had acknowledged the jurisdiction by proceeding to the examination of the furs and in naming an expert for that purpose; that at the time of the service of the writ of prohibition, the two experts had examined all the furs and there only remained to name a third expert.

To the 5th, 6th and 7th paragraphs, being allegations of acknowledgment of jurisdiction by not pleading and by naming an expert, the appellants demurred, and their demurrer was maintained and this part of the plea struck out by Mr. Justice Casault.

The magistrate did not appear or plead. Mr. Justice Andrews, in the Superior Court, made absolute the writ of prohibition upon the ground that there was no authority or jurisdiction to issue a search warrant for

skins or peltries on board a navigable vessel and that consequently all the proceedings were unlawful and without jurisdiction on the part of the defendants.

This judgment was reversed, Bossé and Blanchet JJ. dissenting, on two grounds. 1st. That the game-keeper had authority, irrespective of the search warrant which had been issued, to seize the furs and peltries on board the schooner; and 2nd. that even if the search warrant were illegal such fact would not render the seizure made under the authority of article 1405 of the revised statutes illegal.

The articles of the revised statutes which bear upon the case are the following:

1405. "Every game-keeper shall forthwith seize all animals or birds mentioned in the preceding articles, or any portion of such animals or birds (except the skin, when the animal has been killed during the time when hunting is allowed) found by him in possession or custody or in the care of any person during any close season, or which appear to him to have been taken or killed during such period or by any of the illegal means set forth in the preceding articles 1402, 1403 and 1404, and bring them before any justice of the peace who shall, if proved that the law has been broken, declare them confiscated either in whole or in part for the benefit of the province and condemn the party in whose possession, custody or care such animals or birds have been found to the penalty provided in article 1410."

1406. "Every game-keeper may cause to be opened or may himself open in case of refusal any bag, parcel, chest, bag, trunk or other receptacle outside the limits mentioned in the following article in which he had reason to believe that game, killed or taken during the close season, or peltries or skins out of season, are kept."

1407. "Every person found guilty of having had or having actually in his possession or keeping or under

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his care any articles so confiscated or liable to be so, shall in each case be condemned to a fine of not less than five dollars but no more than twenty dollars, and in default of immediate payment, to an imprisonment not exceeding three months in the common gaol of the District within the limits whereof the offence was committed or the seizure or confiscation was effected."

"Such fine shall be disposed of as provided by article 1410. 50 Vic., c. 16 s. 9."

1408. "Every game keeper, if he has reason to suspect and if he suspect that game, killed or taken during the close season, are contained or kept in any private house, store, shed or other buildings shall make a deposition before a justice of the peace in the form A. of this section and demand a search warrant to search such store, private house, shed or other building and thereupon such justice of the peace is bound to issue a warrant according to form B." 49 Vic. c. 25, 12; 50 Vic. c. 16, 10.

1409. "Every game keeper shall after each seizure and confiscation of peltries or skins, cause to be established as soon as possible by a competent person duly sworn, the condition of the peltries or skins so seized and confiscated, place them in a safe place, and then immediately report to the Department of Crown Lands."

G. Stuart Q.C. for appellant, contended that the judge had no authority to swear experts at the time he did and all the proceedings were irregular and the only remedy was the writ of prohibition. *Clarke v. Crowder* (1); *Martin v. Mackonochie* (2); *Jones v. Jones* (3); *Blake v. Beech* (4).

Sections 1405 and 1409 are contradictory in terms, and the only jurisdiction which he pretended to exer-

(1) L.R. 4 C.P. 638.

(3) 17 L.J. Q.B. 170.

(2) 3 Q.B.D. 730.

(4) 1 Ex. D. 320.

cise was that given by section 1408. There is no authority in that section to issue a search warrant to seize furs or peltries on board a schooner.

Languedoc Q.C. for respondent, contended that without a search warrant under articles 1405-1409 R.S.P.Q. the game keeper has power to seize all furs killed out of season, and that a schooner was within the words of art. 1408, R.S.P.Q. As to the prohibition it does not lie when the justice of the peace has jurisdiction and even if it can be said that they were irregularities as to the proper time of the swearing of the experts this irregularity is not a matter of prohibition. *Piché v. Corporation of Quebec* (1); *Ex parte Gauthier* (2).

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THE CHIEF JUSTICE:—I have no doubt the Judge of Sessions had jurisdiction, though it may be he was proceeding irregularly, but this is no ground for a prohibition. As regards the interpretation of the act, it is clear that section 1405 authorises the seizure and confiscation of skins and peltries; this interpretation is especially clear when read with section 1409. Then such peltries and skins may be seized wherever found. But a game-keeper cannot search a private house, store, shed or other building without a search warrant. He could not justify his entry into such places without a warrant, but if he found peltries and skins he might seize them, though if he had no warrant and found no skins he might be a trespasser. There is nothing in the statute exempting skins, furs or peltries aboard a ship or vessel from seizure, or requiring a search warrant to seize on board a vessel or to search a vessel. I repeat there was no want of jurisdiction. That the judge before confiscation swore experts who were proceeding to establish the condition of the furs which under section 1409 is a proceeding to be taken after

(1) 8 Q.L.R. 270.

(2) 3 L.C.R. 498.

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confiscation, at the most amounted to an irregularity for which prohibition is not the appropriate remedy.

The appeal should be dismissed with costs.

FOURNIER J. concurred.

Taschereau
 J.

TASCHEREAU J.—This litigation arises out of a seizure of skins and peltries belonging to the appellant company made by the respondent, as game-keeper, under the provisions of sections 1402 and following, of the Revised Statutes of Quebec, in virtue of a search warrant purported to have been issued under sec. 1408 thereof, by the police magistrate at Quebec, acting as a justice of the peace. The seizure having taken place on board of a navigable vessel the appellant caused a writ of prohibition to issue against the magistrate's proceedings on the ground, amongst others, that under that said section it is only in a private house, store, shed or other building, and not in a navigable vessel, that any such skins can be seized under a search warrant, and that consequently the seizure made in this case was void. That contention is altogether unfounded and the Court of Appeal rightly rejected it. A search warrant was altogether unnecessary to justify the seizure made by the respondent, and the fact that he issued one cannot vitiate proceedings which are otherwise perfectly legal. Another contention of the company, in support of their writ of prohibition, is that the magistrate was proceeding illegally to have the furs examined and confiscated under sec. 1409, without having first issued a summons to the company. That contention was also rejected by the judgment appealed from, and whilst we do not see any error in any of the reasons given in the Court of Appeal to dismiss the writ of prohibition, we more specially affirm that judgment upon the ground that the writ of prohibition did

not lie in this case, as the subject matter was clearly within the jurisdiction of the magistrate. I refer to the cases, in this court, of *Poulin v. Corporation of Quebec* (1); *Molson v. Lambe* (2); and *Pigeon v. The Recorder's Court* (3); as clear authorities against the appellant's right to a writ of prohibition in this case.

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SEDGEWICK and KING JJ. concurred.

Appeal dismissed with costs.

Solicitors for appellants: *Caron, Pentland & Stuart.*

Solicitor for respondent: *T. Lefebvre.*

(1) 9 Can. S.C.R. 185.

(2) 15 Can. S.C.R. 253.

(3) 17 Can. S.C.R. 495.