

Quebec Rep.] *McKAY v. MAYOR OF MONTREAL—PITTSBURG, ETC. R. W. CO. v. HAZEN.* [U. S. Rep.

assistance of all the King's subjects *by way of precaution.*

That Act 1, 2 Wm. 4, expressly authorizes the Justices to call out the King's subjects when tumult or riot is only likely to take place, or is reasonably apprehended. It was hardly called for, according to the Judges on Pinney's trial.

Surely Justices of the Peace having the duty of suppressing riots are not to be refused the right and power to prevent them.

Before any riot, Pinney, Mayor of Bristol, had called upon the people to aid him towards preventing any. Two days before the riot he swore in hundreds of special constables. Littledale, J., who charged the Petit Jury at the trial, said that this was what the defendant was bound to do. Defendant was acquitted, partly from having taken such precautions.

I have satisfaction at pronouncing this judgment; though having myself to bear part of the burden of the condemnation.

The militia military going out ought to be encouraged.

The 31 Vict. cap. 40, I think ought to be interpreted liberally. I think it may be read as follows:

"The corps composing the Active Militia shall be liable to be called out in aid of the civil power in case of riot or other emergency requiring such services, whether such riot or emergency occurs within or without the Municipality in which such corps is raised or organized;" \* \* \* \* "and the officers and men when so called out shall, without any further or other appointment and without taking any oath of office, be special constables;" \* \* \* \* "and they shall, when so employed, receive from the Municipality in which their services are required the following rates of pay, that is to say;" \* \* \* \* "and the said sums, and the value of such lodging if not furnished by the Municipality may be recovered from it by the officer commanding the corps in his own name," &c.

The twelve lines defining the duty of the Deputy Adjutant General of the District appearing in the body of the sec. 27, may be read (I think) as if they had been, always, at the end of that section.

The Militia ought to be encouraged to go out readily, when called upon to aid the civil power. Else order in society will disappear, and rowdiness be encouraged to go rampant, more rampant than at present. In the absence of a regular military force in the country we are con-

stantly in danger. People do not reflect enough upon this. The power of the Executive to enforce the law is poor enough, except theoretically, of which we in Montreal have recently had examples.

If it be that the Justices of the Peace in the case before us issued their requisition for Militia without sufficient cause, let the defendants go against them.

I hold that as between plaintiff and the defendants, this question is of lesser importance; the plaintiff was called out, and it was not for him to catechise the Justices; as well might each of his hundred men have claimed the right to do so.

Judgment for plaintiff, with costs against the defendants.\*

\* The following cases were cited at the hearing:—*Rex v. Pinney*, 3 B. & Ad. 946; 5 C. & P. 264. *Rex v. Kennett*, 5 C. & P. 282. *Rex v. Neale*, 9 C. & P. 431.

## UNITED STATES REPORTS.

### SUPREME COURT OF ILLINOIS.

PITTSBURG, FORT WAYNE & CHICAGO RAILWAY CO., CLEVELAND, COL., CIN. & INDIANAPOLIS R. R. CO., ATLANTIC & GREAT WESTERN RY. CO., AND ERIE RAILWAY CO., *Appellants v. CHESTER HAZEN, Appellee.*

*Appeal from Superior Court of Cook Co.—Liability of Railroad for delay in transporting—Acts of employees—Acts of violence.*

1. RESPONSIBILITY FOR DELAY.—For the delay resulting from the refusal of the employees of the company to do duty, the company is responsible; for the delay resulting solely from the lawless violence of men not in the employment of the company, the company is not responsible, even though the men whose violence caused delay, had but a short time before been employed by the company.

DICKEY, J.—On the 10th of December, 1870, Hazen shipped by the freight line of the railway company, a quantity of cheese from Chicago to New York. The cheese was delivered to the consignees at New York, on the 28th of December, eighteen days after the shipment. The proofs tended to show that the usual period of such transit, at that time, did not exceed twelve days; that the weather from the 10th to the 23d was not severely cold, but that severe cold occurred between the 23d and 28th, and that the cheese when delivered in New York was frozen, and thereby damaged to the amount