

was of opinion that the rent had been received from the sub-tenant, with the consent of the proprietor, for more than three years. We are of opinion that this should be reduced to one year.

MONDELET, J., and JOHNSON, J., *ad hoc*, concurred.

Judgment reversed.

McCoy & McMahon, for the Appellant.

Moreau, Ouimet & Chapleau, for the Respondents.

REGINA v. THOMAS MURRAY.

Habeas Corpus—Substitution of a Formal for an Informal Warrant.

Held, that a formal warrant of commitment may be substituted for an informal one; and that the substitution need not be referred to in words in the subsequent warrant, since so long as there is a good warrant authorizing the detention of a prisoner, it does not matter how many bad warrants there are.

Quere as to *certiorari* to Queen's Bench.

The writ of *habeas corpus* had been ordered to issue, and the case now came up on the jailer's return. The petition of the prisoner, Thomas Murray, set forth that on the 6th of July last, he had been imprisoned in the common gaol under and by virtue of a warrant of commitment, before Messrs. Brehaut and Beaudry, which warrant alleged that the petitioner was convicted, "for that he, on the 6th of May last, not being an enlisted soldier, did unlawfully, by words and other means, go about to and endeavoured to persuade Edward Adams, an enlisted soldier in Her Majesty's service, to desert and leave such service against the form of the statute in such case made and provided;" and the petitioner was condemned to pay a fine of £40 Stg. and \$6 costs, and also to be imprisoned for six months, and for so long afterwards as the said penalty and costs should remain unpaid.

The petition proceeded to state, that on the 14th of July last, the petitioner presented to the judges of the Superior Court a petition, setting forth his imprisonment, and praying that the warrant of commitment be quashed and set aside. The reasons urged in support of the petition mainly consisted in the fact, that the warrant of commitment did not state upon what day

the petitioner was convicted, and hence there was no time specified from which the imprisonment was to run. The application having been made before Monk, J., the writ was ordered to issue, returnable before him on the 18th of July. On the 17th of July, before the service of the writ on the jailer, another warrant of commitment was left at the gaol, in which the omission of date was rectified, and this warrant was returned by the jailer with the first warrant of commitment, as a cause of the petitioner's detention, whereupon the petition was rejected.

The prisoner now renewed his application to this Court, alleging that he was imprisoned under two warrants, each committing him for six months, and each condemning him to pay a penalty of £40 and costs. The petition also set out that the second warrant of commitment was bad, because it was not stated therein that it had been substituted for the original warrant.

BADGLEY, J. The writ was returned yesterday, and the return of the jailer, stating the causes of the prisoner's detention, has brought before the Court the two warrants of commitment, under which the jailer says he is detained. Both warrants bear date the same day, and specify the same offence. One ground assigned by the prisoner's counsel is, that there is an informality in the commitment. The second ground is that the two warrants being of the same date, and for the same charge, the jailor would not know on which to detain the prisoner, and therefore his detention is illegal.

With reference to the first point, we are of opinion that the warrant is regular and in due form. The words of the statute have been followed. The charge is enticing a soldier in Her Majesty's service to desert, and the words used in the commitment do not render the charge so uncertain as that the prisoner did not know what he was charged with.

The objection then rests upon the other ground—that there are two warrants. We have been referred to the case of *Re Elmy and Sawyer*, (1st Adolphus & Ellis, p. 843.) In that case the prisoner was convicted in a penalty under an act against smuggling. The act empowered justices to amend any such