

mortgages made by J. alone were also paid. No tender was made by plaintiff, nor any demand made for arrears of annuity or dower. An action was brought by plaintiff to establish the will and to have the rights of the building society declared.

Held, that the proper construction of the will was that the widow was to have a life estate in the bedroom and parlour she should select and also in the kitchen yard garden, and also the annuity of \$20; and that the building society could not claim to have the mortgages consolidated, and that as the plaintiff had not made any tender to the building society she could not claim her costs, but it was directed in lieu of her paying costs the arrears of annuity and dower should be wiped out.

Osler, Q.C., and *Follinsbee* for the plaintiff.
Meredith, Q.C., for the defendant.

Div'l. Ct.]

[Sept. 7.]

REGINA v. HENDERSON.

Conviction—Carrying on "petty trade"—Evidence of.

The defendant, a wholesale and retail dealer in teas in the county of W., where he resided, went to the county of H. and sold teas by sample to private persons there, taking their orders therefor, which were forwarded by him to county of W., and the packages of teas subsequently delivered, all the packages being sent in one parcel to H. county and then distributed. The defendant was convicted under a by-law passed under R.S.O., c. 184, sec. 495, sub-sec. 3, par. (a.) and (b.), for carrying on a petty trade without the necessary license therefor.

Held, that the conviction could not be sustained and must be quashed.

McGibbon, of Orangeville, for the applicant.
Kappelle contra.

Div'l Ct.]

[Sept. 7.]

REGINA v. HIGGINS.

Canada Temperance Act—Village joined to another county for municipal purposes—Jurisdiction of Justices of county within which village situated—Conviction differing from minute of conviction—Validity of.

The defendant was convicted by two Justices of the Peace of the District of Muskoka for a breach of the 2nd part of the Canada Temper-

ance Act, for selling liquor in the village of B. in the district of M. The Act was in force in the village of B. only, by reason of its being no municipal purposes within the county of V., within which county the Act was in force, there being no evidence to show that the Act was in force in the district of M., within which B. was situated.

Held, that the Justices of the Peace of the M. district had no jurisdiction to convict the defendant, for he could only be convicted by Justices of the Peace whose commissions lay within V. county.

The adjudication and minute of conviction did not award distress, but provided that in default of payment forthwith of fine and costs, imprisonment, while the conviction ordered that in default of payment forthwith, distress, and in default of sufficient distress, imprisonment.

Held, following *Regina v. Kennedy*, 12 O.R. 358, 360, 361, the conviction was bad on this ground.

Aylesworth for the applicant.
Delamere contra.

MACMAHON, J.]

[July 20.]

YOUNG v. CORPORATION OF RIDGETOWN.

Municipal corporations—Invalid by-law—Injunction restraining acting under—Passing new valid by-law.

The municipal corporation of R. were restrained by injunction from purchasing a site for a town hall under a by-law passed therefor, because the by-law did not provide for the levying a rate therefor, and there was no money on hand for the purpose. After the injunction was obtained the corporation passed a new by-law reciting that the validity of the existing by-law had been questioned, and directed its repeal, and that their solicitors should move the Court to have proceedings stayed thereunder and to settle the action therein. The new by-law provided for the levy of a rate during the year to raise the money required to purchase said site.

Held, that the corporation, by repealing the old by-law and directing the purchase of the same property under the new by-law valid on its face, was not disobeying the injunction which prohibited the purchasing of the property under the old by-law; and a motion for a writ of sequestration was therefore refused.

Meredith, Q.C., for the plaintiff.
Matthew Wilson contra.