

Boyd, C.] JONES v. LINDE BRITISH REFRIGERATION CO. [Oct. 24.

Master and servant—Secret profits in service—Costs—Jus tertii.

Profits acquired by the servant or agent in the course of or in connection with his service or agency fall to the master or principal.

The manager of a cold storage company, at the request of the company, undertook to advise a meat company as to some changes in their plant, and used his position of adviser to influence the purchase by the meat company of a new plant from the defendants, who had promised him a commission on any order they might receive through his assistance. This was not disclosed to his employers or the meat company.

Held, that the transaction was one in connection with his service as manager of the cold storage company, and he could not recover a commission from the defendants.

The defendants having at first conceded the plaintiff's right to recover, and then paid the money to the cold storage company, taking a bond of indemnity, the action was dismissed without costs.

Riddell, Q.C., for plaintiff. *H. S. Osler*, for defendants.

FIFTH DIVISION COURT, STORMONT, DUNDAS AND GLENGARRY.

TUTTLE v. McDONALD.

Justice of the peace—Fees of—R.S.O. 1897, c. 95, s. 2.

Held, that there is no provision for fees to a magistrate or a constable under the tariffs in R.S.O. 1897, c. 95 or s. 81 of Crim. Code for any proceedings which do not come within the summary jurisdiction of justices.

[Cornwall, Aug. 18. O'REILLY, Co.J.]

The defendant, a justice of the peace for the above united counties, demanded and received from the plaintiff \$9.50 alleged to be due as his own costs and the costs of his constable acting in the matter of a search warrant issued under s. 569 of the Criminal Code, to recover stolen goods, and of a search warrant issued under the same sec., sub-s. 6, to recover a case of dynamite, in relation to which an indictable offence was sworn to have been committed, contrary to the provisions of s. 101 of the Criminal Code, and also of an unsuccessful prosecution under said s. 101.

The plaintiff now sought to recover the said sum of \$9.50 from the defendant, who retained same on the plea that he was entitled to \$3.00 of said amount to his own use for services as justice of the peace, in above matters, and to \$6.50 alleged to have been paid by him to said constable as the latter's fees in the same matter, and the plaintiff asked to recover said sum of \$9.50 as money had and received for his use and benefit by the defendant. Notice of action was delivered to the defendant, under R.S.O.