sideration was granted by the court, the respondent's counsel protesting against the same and against the power of the court to grant the new trial. On the 12th of June, during the same sittings of the court, the appeal was again called on, when the respondent's counsel declined to appear. After proof of the service of the notice of the appeal and entering into the recognizance required, and after proof given by the appellant that the land was wholly unenclosed, it was ordered by the court that the conviction should be quashed with costs. The costs were taxed by the court at £10 4s. 9d.

A *certiorari* was ordered by Morrison, J., in Chambers, on the 27th of July, to bring up the proceedings. It was served on the 5th of August and a return made to the writ on the 18th.

In Michaelmas Term last, *J. A Boyd* as counsel for Bingleman, obtained a rule *nisi* on the chairman of the quarter sessions and his associate, naming him, two of Her Majesty's justices of the peace who were present at the same sessions in 1868, and Norman Yearke and John Nelson, to shew cause why the order and direction of the court of quarter sessions, at the said sittings, setting aside the verdict of the jury in favour of the respondent in the matter, and also the order and direction of the court that a new trial should be had in respect of the said appeal, and the said entry at the said sittings that the said conviction should be quashed, and quashing the same with costs, made after the said trial had been ordered, or some one of them, should not be set aside, and the said verdict of the jury ordered to stand in full force and effect by this court, for the following reasons:

1. A proper notice of appeal was not served.

2. A jury having been empanelled to adjudicate upon the appeal, their decision was conclusive, and not subject to be set aside and a new tr al ordered.

i3. The court acted illegally in setting aside the verdict and awarding a new trial in respect of the appeal, as they had no power to make any order or rule for such a purpose.

4. When the jury rendered their verdict it was the duty of the court to have ordered the verdict to be entered on record, and to have given judgment in accordance therewith in affirmation of said conviction, and the court had no jurisdiction to set the same aside and order the conviction to be quashed with costs or otherwise.

5. On the appeal of one party convicted the court has no power to quash the conviction as to another party convicted, who does not appeal.

The rule was enlarged until this Term when

F Read showed cause. The notice of appea was properly served by being left with the wife of the justice. The statute, Con. Stat. U. C. cap. 114, sec. 1, requires it to be given to the respondent or left with the convicting justice for him. In *Regina* v. *Justices of Yorkshire*, 7 Q B 154, the statute required the notice to be given to the justice, and it was held sufficient to deliver it at his dwelling house, though not to him personally. The statute authorizes any person aggrieved to appeal. Yearke, therefore, being aggrieved, though only one of two, had a right to appeal; and when the conviction was properly before the court, being illegal, it was right to quash it. The return does not show that any one applied for a jury, and a jury could not properly be empannelled unless required by one party or the other: Con. Stat. U. C. cap. 114, sec. 3. Though the verdict of the jury affirmed the conviction, no judgment of the court was given on it. It is true, in *Cavil* v. *Burnaford*, 1 Burr. 568, it is stated an inferior court cannot grant a new trial. The Court of Quarter Sessions, however, is not an inferior court: Per Lord Tenderton, C. J., in *Rex* v. *Smith*, 8 B. & C. 343, and this court will not interfere with its practice: *Rex* v. *Hewes*, 3 A. & E. 725; or review its decision: *Rex* v. *Justices of Monmouthshire*, 1 D. & R 334; *Rex* v. *Justices of Leicestershire*, 7 M. & S. 443. The conviction is bad on the face of it, because it gives a penalty and compensation both, which the statute 25 Vic. cap. 22, does not allow. *Victoria Plank Road Company* v. *Simmons*, 15 U. C. R. 303; *Regina* v. *Watson*, 7 C. P 495, seems to question if a *certiorari* will lie after conviction appealed to Sessions; but subsequent cases, both in the Court of Queen's Bench and Common Pleas, seem to hold that it will.

Boyd, contra. All that is desired is to put the matter in the Quarter Sessions, where it ought to have been left by the court. They have no power to grant a new trial in a matter of appea , nor to reserve a case under the statute: *Pomeroy*, app. and *Wilson*, resp., 26 U. C. R. 45. Both parties acquiesced in a jury, and having appeared and conducted the case before the jury, neither party can now object that they did not request it. When the new trial took place it was *ex parte*, and the respondent may even now show that a notice of appeal was not served on the proper party. Leaving it with the magistrate is not complied with by leaving it with his wife. The service must be personal on the party, or on the justice as his agent, *i. e.*, substitutional, and substitutional service, when allowed, must be strictly followed It cannot be on some one else as agent for the justice, who is himself only an agent. In the case cited the service was to be on the justice for himself. The proper service of such notice is a condition precedent to having the case heard: *Woodhouse* v *Woods*, 29 L J. M. C. 149; *Morgan* v. *Edwards*, Ib. 108. As to one of two parties appealing, the notice of appeal should at all events have been confined to the conviction as regards the appellant: Paley on Convictions, 350; but *Regina* v. *Justices of Oxfordshire*, 4 Q B. 177, seems an authority that a mere mistake in the form of notice as to whether the conviction is several or joint, is no ground for refusing to try the appeal. The appeleate jurisdiction of the Quarter Sessions is by statute, Con. Stat. U. C. cap. 114, which is silent as to new trials; and *Mossop* v. *Great Northern Railway*, 16 C. B 580, 17 C. B. 136, shows that as a general rule an inferior court cannot grant new trials. The case of *Cavil* v. *Burnaford*, 1 Burr. 568, is to the same effect Tidd's Practice, 9th ed. vol. ii. p. 905; *Rex* v. *Day*, Sayer, 202; Dickinson's Q. S. 651; *Heepeler and Shaw*, 16 U C. R. 108; *Regina* v. *Powell*, 21 U. C. R 215; *Regina* v. *Peterman*, 23 U. C. R. 576, and other cases in our own courts, show that a *certiorari* may issue to bring up a conviction from an inferior court after an appeal to the Quarter Sessions.

RICHARDS, C.J., delivered the judgment of the court.