

*Held*, setting aside the decree with costs, that the estate was not liable for any claim against or arising out of that fund; that neither of the claimants was a creditor of or otherwise interested in the estate, and that the judge of probate had no authority to hold the enquiry or to make the decree appealed from.

*J. J. Ritchie*, Q.C., for appellants. *Ervin and Covert* for respondents.

Full Court.] THE QUEEN v. SMITH. [Dec. 3, 1898.

*Criminal Law—Crim. Code ss. 596, 765—Power of County Court Judge to try summarily limited to cases where accused is committed to jail by magistrate.*

Defendant, after preliminary enquiry before the stipendiary magistrate for the City of Halifax, was put upon her trial, but was admitted to bail, conditioned to appear at the next Court of Oyer and Terminer and General Jail Delivery, and surrender herself to the keeper of the jail and plead to such indictment as might be preferred against her by the grand jury. Before the meeting of the Supreme Criminal Court, defendant was surrendered by her surety, and while in jail was brought before the Judge of the County Court for District No. 1, and having elected to be tried by him was tried and convicted.

*Held*, following *The Queen v. Gibson*, 29 N.S.R. 4, that the Judge of the County Court had no jurisdiction to try the defendant and that the conviction must therefore be set aside.

*Held*, that the "committal to jail for trial" referred to in the Code, and which confers jurisdiction upon the judge of the County Court to try is a committal by the magistrate, and not a committal by order of the Judge of the County Court when the party is surrendered by his bail, the latter not being a committal for trial, but a committal for want of sureties to appear and take his trial.

*Power for the prisoner. Leigley*, Q.C., Attorney-General, for the Crown.

Full Court.] MCKENZIE v. LEWIS. Dec. 3, 1898.

*Livery stable keeper—Duty to warn customer of risks incident to road—Road over ice used as highway during winter months.*

Plaintiff, a livery stable keeper, at Sydney, C.B., hired a horse and sleigh to defendant, a resident of Pictou, N.S., for the purpose of driving from Sydney to North Sydney and back. At the time at which the hiring took place the river and harbour between Sydney and North Sydney were frozen over, and were generally used by the travelling public as a highway. Plaintiff was aware that defendant intended to make use of the road over the ice and gave him directions as to the road he was to take. In returning after dark the horse and sleigh went through the ice and were lost.

*Held*, affirming the judgment of the County Court Judge in favour of