

Com. Pleas.]

NOTES OF CANADIAN CASES.

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REGINA V. ATKINSON.

Canada Temperance Act, 1878—Police magistrate of county—Evidence of towns therein containing 5,000 population—Defendant summoned to appear before police magistrate on other findings.

Conviction under the Canada Temperance Act. The information was laid before J. K., who described himself as "one of her Majesty's police magistrates in and for the county of Oxford," and the summons and conviction gave the like description. His commission was issued on the 12th January, 1887, and described him as police magistrate for the county of Oxford. Woodstock and Ingersoll are two towns in the county, and it was urged that the population of each is and was at the time of the complaint more than 5,000, so as to have by law each a police magistrate under R. S. O. ch. 72, sec. 1, and that it must therefore be presumed that at said time each had a police magistrate, and therefore, J. K., who was appointed police magistrate for the county, could not be such for the county which included these towns.

Held, that there was no evidence to show that Woodstock and Ingersoll contained such population, and he could not judicially say that such was the fact: that if the fact that J. K.'s describing himself as one of the police magistrates for the county showed that there was more than one police magistrate, there was nothing to show that J. K. was not appointed first, and the subsequent appointments would be the ones that were invalid.

The summons required the defendant to appear before the police magistrate "or such justice of the peace as may then be there to answer to the said information." The police magistrate who issued the summons was himself present to hear and did hear the complaint; and the defendant appeared then also and pleaded not guilty.

Held (following *Regina v. Durnan*), that under R. S. O. ch. 106, sec. 117, that defect did not render the conviction invalid and incurable.

Held, also that on the evidence the Canada Temperance Act was in force in the county.

McKenzie, Q.C., for the applicant.

Delamore, for the Crown.

MCDERMOTT V. REDDICK.

Mortgage—Will—Appointment—Interest.

A mortgage was made on 14th December, 1867, by T. K. to his father. The proviso for payment was that the mortgage was to be void on payment of \$800 unto the executors or administrators of the mortgagee in eight equal annual instalments of \$100 each, the first of such instalments to be made one year after the mortgagee's decease, upon trust to and for such executors and administrators "to pay the same to such person or persons as the said mortgagee shall by deed endorsed hereon or otherwise by deed direct and appoint, and in default of any such appointment, and so far as no such appointment shall extend in trust to pay the same to the children of the said mortgagee other than the said mortgagor in equal shares, and in case of the death of any of the said children without lawful issue, the proportion of such child to be equally divided amongst the survivors, and in case of lawful issue such issue to stand in the place of her or her parent." The mortgagee made no appointment by deed endorsed on the mortgage or otherwise by deed; but on 18th April, 1886, he made his will, wherein he states: "Understanding that the sum of \$800 coming to my heirs and assigns from my estate consisting of, etc., has not been specified as to which or whom of my heirs it is payable or when it shall be paid," he directs it shall be thus disposed of, namely: to his daughters A., M. and B., each \$200; to his grand-daughters A. and K., \$100, and to his wife \$100; and that the said sums shall be paid forthwith after his death.

Held, that the will constituted a valid appointment under the proviso in the mortgage, and that the said legatees or appointees under the said will were entitled to the said sums devised to them; but that the time for the payment of the money must be in accordance with the terms of the mortgage.

The mortgage was a printed statutory form. The proviso is for payment of the \$800, the printed words *with* interest being struck out; but the mortgagor covenants to pay the mortgage money and interest and observe the above proviso; and these are the provisos that the mortgagee may distrain for arrears