

or go to gaol; and the payment was under protest. Now, in juxtaposition with this I place the affidavit of the Commissioner of Police, who says: "The defendant admitted he had in his premises . . . liquor discovered and seized, and was selling the same, and upon the said statement by the defendant and admission of his guilt the conviction herein was made."

I find no evidence here of an admission of guilt, but only that cider was being sold—which may or may not be intoxicating. The whole point of the legislation is as to the use of intoxicants within the proclaimed area, and no proof is made or admission given as to this vital point.

The offence is defectively alleged in the information, which states that "the defendant did have intoxicating liquor called cider for sale, contrary to chapter 9, R. S. C. 1907." This may by implication incorporate the statement of the offence given in the statute 6 & 7 Edw. VII. ch. 9 with the information as being a sale within the limit specified in the Proclamation. Proof would, however, require to be given to shew the jurisdiction of the magistrate territorially over the particular place where the sale was made, and that it was within the area of prohibition. A sufficient and unequivocal confession of guilt might, upon this information, have implied an admission of jurisdiction in the magistrate, but the confession relied upon in these cases cannot be so used.

It would be better also to follow the words of the Act and allege that the offender had "in his possession," though these words are not essential in my opinion.

Altogether there appears to me an entire lack of evidence to support any of these convictions, and they must be quashed and the moneys returned. I grant the usual protection to the magistrate as to actions.

BOYD, C., IN CHAMBERS.

SEPTEMBER 23RD, 1909.

TITCHMARSH v. GRAHAM.

TITCHMARSH v. McCONNELL.

*Security for Costs—Actions against Magistrate and Constable —
R. S. O. 1897 ch. 89, sec. 1—Defences to Actions—Want of
Notice of Action—Trial of Merits on Motion for Security.*

Appeal by the plaintiff from order of the Master in Chambers,
14 O. W. R. 277, requiring the plaintiff in each case to give security