

file the depositions with the Clerk of the Peace, as required by sec. 8 of the Ontario Summary Convictions Act, R.S.O. 1914 ch. 90. This default arose from the fact that the depositions were mislaid by the magistrate. They had been found since this motion was launched, and were now with the papers. The depositions amply supported the conviction.

It was argued that the fact that the depositions were not where they ought to have been had prejudiced the defendant, because he could not obtain satisfactory advice upon the question of the validity of his conviction. That he was in any way prejudiced was not shewn; and the learned Judge could find nothing to support this contention.

The learned Judge's views as to the effect of failure upon the part of a magistrate to obey the provisions of a statute were given in *Rex v. McDevitt* (1917), 39 O.L.R. 138. Since that judgment was written the decision of the Privy Council in *Montreal Street R.W. Co. v. Normandin*, [1917] A.C. 170, had been received, and much the same rule was there stated.

To hold that a conviction became void by reason of the default of the magistrate occasioned by his mislaying the papers would not "promote the main object of the Legislature."

The learned Judge knew of no instance in which a failure to observe the requirement of a statute subsequent to the conviction had been allowed to render void a conviction valid and unobjectionable at the time it was made. All the cases were those in which a provision of the statute had been held to be a condition precedent to the jurisdiction to convict.

In any case which may arise in the future, in which it is shewn that the accused is really the victim of injustice arising from some accident or mischance by which the depositions are lost or destroyed, or in which there is evidence that the magistrate is acting in bad faith, a remedy may be found.

*Motion dismissed with costs.*