

RIDDELL, J., IN CHAMBERS.

JULY 21ST, 1916.

***REX v. MERKER AND DANIELS.**

Criminal Law—Keeping Common Gaming-house—Police Magistrate's Conviction under sec. 773 (f) of Criminal Code—Sentence of Imprisonment—Appeal to General Sessions under sec. 749—Order for Bail—Bond Signed by Sureties—Failure of Defendants to Enter into Recognizance—Sec. 750 (c)—Habeas Corpus—Application for Discharge from Custody—Right of Appeal Taken away by Amending Act, 3 & 4 Geo. V. ch. 13, sec. 28—Secs. 771 (a) vii. and 797 of Code—Motion to Quash Conviction—Keepers of House—Officers of Club—Secs. 226, 228, 228(2).

Motion by the defendants, upon the return of a writ of habeas corpus, for their discharge from custody under a warrant of commitment issued pursuant to a conviction of the defendants by one of the Police Magistrates for the City of Toronto, under sec. 773 (f) of the Criminal Code, for keeping a disorderly house. The defendants were sentenced to 30 days' imprisonment.

The defendants also moved to quash the conviction.

T. N. Phelan, for the defendants.

J. R. Cartwright, K.C., for the Crown.

RIDDELL, J., read a judgment in which he said that the defendants had lodged an appeal from the conviction to the Court of General Sessions, under sec. 749 of the Code; and a Judge of Sessions had ordered that, upon the defendants entering into recognizances (of which he approved) before a Justice of the Peace for the County of York, they should be released. A Justice of the Peace went with the bondsmen to the gaol to have the recognizance properly entered into; but, being informed by the gaoler that the defendants were not to be released, the Justice did not proceed. Consequently, although the bondsmen had signed the bail-bonds, and the defendants were ready and willing to enter into the recognizance, they did not in fact do so; and, assuming that sec. 750 (c) of the Criminal Code applied, the defendants had not entered into a recognizance. Accordingly, the gaoler must obey the warrant and hold the defendants; and the application for the defendants' discharge must be refused with costs.

*This case and all others so marked to be reported in the Ontario Law Reports.