

C. of A.]

NOTES OF CASES.

[Q. B.]

defendant as having the premises, by sending people who inquired about the place to the defendant as the person who had it to dispose of: that the defendant had claimed the fixtures in the shop as part of the assets that reverted back to him in consequence of the deed of confirmation and had tried to dispose of them to an incoming tenant. The plaintiff resumed possession on the 1st of July, 1876.

Held (Moss, C.J.A., Burton and Patterson, J. J.A., and Galt, J.), reversing the judgment of the County Court that an action for use and occupation would lie against the defendant for the quarter's rent.

Seem, that the transfer was sufficient to reconvey the property.

H. J. Scott, for the appellant.

McMichael, Q.C., for the respondent.

Appeal allowed.

QUEEN'S BENCH.

IN BANCO.—MICHAELMAS TERM.

DECEMBER 28, 1877.

REGINA V. WILKINSON.

Criminal Information—New Trial, adding new ground not taken at the trial or in rule nisi.

After a trial of a criminal information for libel, in which defendant was found guilty, defendant obtained a rule *nisi* for a new trial for misdirection and rejection of evidence. Upon the argument, defendant's counsel wished to argue a ground of misdirection not taken at the trial or mentioned in the rule *nisi*. The court, after hearing counsel, allowed this ground to be argued as of favour and not as an amendment of the rule.

Bethune, Q.C., for the Crown.

McCarthy, Q.C., for defendant.

REGINA V. LAKE.

Certiorari—Identifying Magistrates.

On an application for a writ of *certiorari* to remove a conviction into this court, the affidavit of service on the magistrates did not identify the persons served as the justices who had made the conviction, further than that the persons served had the same names as the justices, and were described as "two of Her Majesty's Justices of, &c."

J. G. Scott, Q.C., for the Crown.

Ferguson, Q.C., for defendant.

Re REVELL V. THE COUNTY OF OXFORD.

County Assessment—Basis of.

The Assessment Act, 32 Vict., ch. 36, sec. 77, declares that the County, in apportioning a county rate among the different townships, &c., within the county, shall, in order that the same may be assessed equally on the whole ratable property of the county, make the amount of property returned on the assessment rolls of such townships, &c., or reported by the valuers as finally revised and equalized for the preceding year, the basis upon which the apportionment is made.

Where a County made an apportionment for 1877 upon the basis of the rolls for that year instead of those of 1876, *held*, that by-laws passed upon such equalization were illegal.

Held, also, that it is now proper to quash an illegal by-law.

Bethune, Q. C., for applicant.

Ball, Q. C., contra.

BENSON V. OTTAWA AGRICULTURAL INS. CO.

Fire Insurance—Agency—Concealment.

Held, that the non payment of a premium note had been waived by a defendants' writing the plaintiff's assignee (C. S., the insured) not to pay the premium note which had been mislaid.

The policy provided that "if any misrepresentation or concealment of facts has been made in the application, or if the applicant has mis-stated his interest in the property, or if he shall in any manner make any attempt to defraud this Company, the policy shall be void." The third plea averred that in the said application for insurance, C. S., (the insured,) concealed from the defendants that the premises were situate near and opposite to a blacksmith's shop, which was alleged to be a material fact.

The evidence shewed that defendants' agent measured the distance of the surrounding buildings, and instructed C. S.'s agent that it was not necessary to enter the blacksmith's shop. It was also provided that the Company's agent should be considered the agent of the insured for the purpose of filling up the application.

Held (Wilson, J., diss.), that the plaintiff was entitled to recover; that the omission of the blacksmith's shop was immaterial, and that there was no concealment.

Robinson, Q.C., for plaintiff.

J. K. Kerr, Q.C., contra.