

QUASHING SUMMARY CONVICTIONS.

To the Editor of the Canada Law Journal.

Procedure to quash a summary conviction, which is wrong both as to law and evidence, by way of certiorari and rule nisi, is both circuitous and costly, and a remedy in name only. The unfortunate defendant, being wrongly convicted in a criminal court, must either submit to have the conviction stand against him, and be mulcted in the sum of from \$10 to \$20 in fine and costs, or run the risk, all too frequent of late, of having it quashed "without costs," and the "usual order of protection for the convicting justices," which means an item of anywhere from \$50 to \$75 of costs, to which he has been put in defending himself in the first instance and in vindicating his position by such an empty order as above mentioned.

There are many such cases—let me quote from your last issue at page 570 in *Re Queen v. McLeod*, before the full Court of Nova Scotia, in which it was held that the conviction was bad and must be quashed, there being no jurisdiction under the statutes in one magistrate to try and convict for the offence charged, and "the motion being unopposed no costs were allowed. Terms were imposed that no action should be brought by defendant."

Now admit for the purpose of argument that the evidence in this case has proven the defendant guilty of the committal of the offence charged, and that he succeeded in quashing the conviction against him on solely legal grounds, *i. e.*, want of jurisdiction in the convicting magistrate under the statute, should it not be laid down as a principle that magistrates are presumed to know the law under which they assume to act, and that when they act without jurisdiction that they must assume, with the complainant in the case, the responsibility for the consequences? In this case the merits might have been against the defendant, and the Court might be justified in the particular circumstances in so disposing of the costs, but the report certainly does not read that way. Is it a mat-