

Record, an objection of error in the proceedings must be by Writ of Error; that the Writ of Habeas Corpus was, therefore, imprudently issued, and should be quashed.

*T. S. Farvis*, for the prisoners.

*Delamere*, for the Crown.

#### HILLOCK V. SUTTON.

*Lease by person having title by possession to original owner—Effect of—Fraud in obtaining lease—Setting aside.*

In 1867, the plaintiff purchased the land in question from N. who was in possession under a bond from P., the owner, which was registered, to convey the land on payment of the purchase money. The plaintiff entered into possession, and notified P. of his purchase, and P. gave a like bond to the plaintiff. The plaintiff at the time paid P. a portion of the purchase money, but made no further payments, and did nothing thereafter to acknowledge P.'s title, remaining in possession until 1880, thereby acquiring a title by possession. The defendant, who had purchased the interest of P.'s heirs in the land, and his solicitors who were aware of the existence of the bonds, and of plaintiff's possession, by representing to the plaintiff, who was an illiterate man, and ignorant of the effect of his possession, and who had no independent legal advice, that he had no title, persuaded the plaintiff to accept a lease from the defendant in the statutory form, for two years, at a nominal rent, containing the covenant to give up possession at the end of the term.

*Held*, that under the circumstances, the lease must be set aside; but even if allowed to stand, it would not constitute an acknowledgement of the defendant's title under the statute, so as to displace the plaintiff's title, for its effect would only be to estop the plaintiff from denying the plaintiff's title during its continuance.

*Meyer* (of Orangeville), for the plaintiff.

*Osler*, Q.C., for the defendant.

#### EMERSON V. NIAGARA NAVIGATION COMPANY.

*Assault by purser—Liability of defendants—Summary conviction—Bar to civil remedy.*

The plaintiff, who had purchased a special excursion ticket from Toronto to Niagara and return, by the Steamer *Chicora*, good only for the

day of its date, and which had been taken up by the purser on that day, claimed the right to return by it on the following day, under an alleged agreement to that effect with the purser, which the purser denied. On the purser demanding the plaintiff's fare, and the plaintiff refusing to pay anything, the porter of the steamer, by the purser's direction, seized hold of and attempted to take as a lien for the fare, a valise which the plaintiff had in his hand, whereupon a scuffle ensued, and the plaintiff was injured.

*Held* [OSLER, J., dissenting], that the purser was not acting in the discharge of his duty in thus forcibly attempting to take possession of the valise out of the plaintiff's possession, and that, therefore, the defendants, the owners of the vessel, were not liable for his unauthorized act.

It appeared, also, that the purser had been summoned by the plaintiff for the assault before the Police Magistrate at Toronto, and convicted, and a fine imposed on him which he paid.

Per WILSON, C.J.—The imposition and payment of the fine for the assault, was a bar to any further proceedings, civil or criminal, for the same cause.

*J. K. Kerr*, Q.C., and *W. Roaf*, for the plaintiff.

*D'Arcy Boulton*, Q.C., for the defendants.

#### CUMMINGS V. LOW.

*Reference—C. L. P. Act, sec. 189—Appeal.*

An action for an account and delivery up of a trust estate, entered for trial at the Picton Assizes, was referred by the Judge at the Assizes, under an order, which was stated to be drawn up on reading the pleadings and hearing counsel, to the certificate of S. S. Lazier, Master of the Chancery Division at Picton, with all the powers of the Judge of the High Court as to certifying and amending pleadings, etc., and to enquire and report as to the plaintiff's right to bring the action; the defendant to have the right to claim all such fees and reasonable allowances for his care, pains and trouble, which in the Master's opinion he should show himself entitled to. The costs to be in the Master's discretion, and the whole report to be reviewed or appealed from according to the statute in that behalf.

*Held*, (by OSLER, J.)—A reference under sec. 189 of the C. L. P. Act, and that an appeal from