v. *Dawes* (U. C. R. 340), *Regina* v. *Craig* (21 U. C. R. 552), *In re Joice* (19 U. C. R. 197), *Regina* v. *Huber* (15 U. C. R. 589 )

In *Regina* v. *Peterman*, the convicting Justice was not notified of the *certiorari*, nor was he a party to the rule to quash, the only parties called on to show cause being the complainant and the Justices of the Sessions, who affirmed the conviction on appeal; and the note of the case shews that the Court there held that it was proper in them to see that the convicting Justice was apprised of the proceedings, inasmuch as he was exposed to an action if the conviction should be quashed. If there is any meaning or object in that decision, it is that the Justice should have notice of the application to quash. By Statute he was entitled to notice of the *certiorari*.

In England the general practice appears to be, that when the record of the conviction has been returned its validity is brought under formal discussson, by the case being inserted in the Crown paper, and argued on certain days called Crown Paper Days in due order; *Chitty's* General Practice Vol. II. p. 226; and Mr. Paley in his work on conviction says, when the conviction is returned the case must be set down for argument on the Crown paper, &c.; and we find in several reported cases the case on a *concilium* argued to quash the conviction; but the proceeding to quash by motion, as in this case, is also adopted in numerous reported cases, and where the terms of the rule appear we find the convicting Justice called upon to shew cause as well as the complainant, &c. We refer to *Rex.* v. *Walsh* (1 A. & E. 482;) *Regina* v. *Cridland*, (7 E. & B. 853.)

It is only just and reasonable that the Justice whose conviction is impeached and moved against should have an opportunity of supporting it if he so thinks proper, the step to quash in the majority of cases being taken with a view of bringing an action against the Justice.

In the case before us the conviction is sought to be quashed on grounds which, if true, shew gross improper conduct on the part of the Justice who made these convictions, and we are aware that a rule for a criminal information was granted during last term against the same Justice for acting corruptly in the matter. It would be most unreasonable that he should not be apprised of proceedings which are calculated to affect most materially his character, as well as any ulterior action to be instituted against him. Were we to hold that in such cases it was not necessary to make the convicting Justice a party, great injustice in many cases might result to magistrates.

As no authority was cited to support the view taken by the applicant's counsel, and as we find it is the practice in our own Courts as well as in England to make the Justice a party to a rule of this nature, and as there is an obvious reason why the practice shall be so, we are of opinion that the rule *nisi* must be discharged. It was said that it was not competent for the parties to the rule to object that the Justices were not parties, but, as said by Patteson, J., in *Rex.* v. *Rattisbaw* (5 Dowl. 542), the objection being brought under the notice of the Court, we are bound to deal with it.

*Rule discharged, without costs.*

## ENGLISH REPORTS.

### COMMON LAW

BEARDMAN v WILSON.

If lessee for years demises the residue of his term, the demise shall operate as an assignment, and not as an underlease. [17 W. R. 54, Nov. 5, 1869]

This was a case tried on June 29, at Guildhall, before Byles, J.

There was a verdict for the defendant, and leave was reserved to the plaintiff to move to enter a verdict for himself

The actions had been for dilapidations, and the facts were these:—

The defendant, who was the lessee of the plaintiff, had disposed of the residue of his term to a stranger by an instrument in the form of an indenture of demise, which limited the term so demised by dates, but the dates were such that the residue of the defendant's term was in fact thus conveyed to the stranger. The question was whether this amounted to an assignment or to an underlease.

[The present case is reported because some doubt was thrown on the doctrine on this point by the case of *Pollock* v *Stacy*, 9 Q B 1033.]

*Charles Pollock, Q. C.*, now moved for a rule on the part of the plaintiff.—The lease is an indenture in solemn form, whatever its effect as an assigment. The defendant's argument is, that as the lessors by this lease have parted with the whole of the remainder of the term they had no reversion, and that therefore what was in form a lease was in fact an assignment. I submit, on the other hand, that there can be a lease without a reversion, and that this Court will not go against the clear intention of the parties because of a mere formality. Here it was on accident that the whole term was conveyed by the lease of 1829. I lay great stress on the clear intentions of the parties. Of course if the Court holds that under no circumstances can there be a lease without any reversion, my contention must fail. But I submit that this is not the doctrine of the Court: *Wollaston* v. *Hakewill*, 3 Scott's N. R. 593. [BOVILL, C. J.—There is not a word about *intention* in that case. It is a mere question of operation of law.] There is a great deal of learning upon this point in a note by Serjeant Manning to the case of *Rex* v. *Wilson*, in 5 M. & R. 158–162. I submit that there is a great difference between holding that to be an assignment which would be bad as a lease, and holding that to be an assignment which would be perfectly good as a lease * The modern case in my favour is that of *Pollock* v *Stacy*, 9 Q. B. 1033, and I may refer to 1 Sm. Lead. Cas. 6th ed. 86, the notes to *Spencer's case* †

BOVILL, C. J.—It was decided in *Parmenter* v. *Webber*, 8 Taunt. 593, as early as 1818, that where lessee parts with his whole term, though he affect to let, yet he shall be taken to have assigned his term. That was considered as settled law in note (*a*) to Shep. Touch. 226. The question was elaborately argued in *Wallas-*

* The argument, so far as *Pollock* v. *Stacy* is any authority, is really the other way. See Lord Denman's judgment.

† The opinion indicated in Smith is against the present contention.