

357. A new warrant cannot be substituted after return of the jailor : *Ex parte Cross*, 26 L.J.M.C. 201. The Commissioner is functus officio when he signed the first warrant : Acts, 1894, c. 4, s. 9. Assuming that a warrant can be amended where there is a good conviction there is nothing here to amend by, as the commitment and conviction are in one document, and both bad.

Pitchie, Q.C.—The new warrant holds the prisoner, and cannot be ignored. The Commissioner had power to substitute a new warrant at any time before discharge : R.S., c. 117, ss. 5, 10 ; *In re Phipps*, 11 W.R. 730 ; *Ex parte Cross*, 26 L.J.M.C. 201 ; *Ex parte Smith*, 3 H. & N. 227 ; *Reg. v. Turnan*, 53 L.J.M.C. 291 ; *Charter v. Grueme*, 13 Q.B. 216.

HENRY, J., held that the warrant was bad, and that he should not have delayed the discharge of the prisoner. He did not think a new warrant could be legally substituted after the return of the jailor under R.S., c. 117, 5th series. The Commissioner acting under Acts, 1894, c. 4, was functus officio when he made the first warrant. The words of R.S., c. 117, s. 10, refer to a warrant filed in another proceeding, and are not authority for substituting a good warrant for a bad one. The prisoner was discharged.

Province of Prince Edward Island.

SUPREME COURT.

HODGSON, J.]

MCPHERSON v. McDONALD.

[Sept. 7.

Ca. sa.—Irregularity.

The plaintiff having recovered judgment issued a writ of fi. fa. to the Sheriff of Queen's Co. under which defendant's goods were sold. The Sheriff made return that he had seized and sold certain goods of defendant, but did not state that the defendant had no other goods to levy on. The plaintiff then issued a ca. sa. for the whole amount of the judgment without reference to the previous fi. fa., but in endorsing the amount due on the back of the ca. sa. credit was given for the sum realized under the fi. fa.

The defendant was committed to jail and an application was made to discharge him and set aside the ca. sa. for irregularity inasmuch as it was issued without any entry on the record of the previous fi. fa. and return and award of the ca. sa., and because it did not recite the first writ and the amount levied under it.

Held, that the ca. sa. was irregular.

Stewart, Q.C., for defendant. *McDonald*, Attorney-General, for plaintiff.