

These are therefore to command you, the said Chief of Police, or constable, to convey the said Eliza Slater to the said gaol, and her to deliver to the keeper thereof, together with this warrant.

And I do hereby command you, the said keeper, to receive the said Eliza Slater in your custody in the said gaol of the said city, and her there safely keep for the space of three months, unless aforesaid amount is sooner paid; and for so doing this shall be your sufficient warrant.

Given under my hand and seal, at Hamilton, this third day of December, in the 26th year of the reign of our Sovereign Lady Queen Victoria, in the year of our Lord 1862.

(Signed) G. H. ARMSTRONG, P. M.

The second or amended warrant, under which Catharine Wells was detained in custody, was in the following form:—

CITY OF HAMILTON, } To the Chief of Police, or any constable
to wit: } of the city of Hamilton, and to the keeper
of the gaol of the said city:

Whereas, Catharine Wells was, on the complaint of Robert Graham, police constable of said city, duly convicted before me, G. H. Armstrong, Police Magistrate of the said city, for that she on the third day of December, 1862, in the said city, was guilty of being an inmate of a house of ill-fame, in said city, contrary to the provisions of chapter 105 of the Consolidated Statutes of Canada, and was by me adjudged to be committed for the said offence to the common gaol of the county of Wentworth, there to be kept for the space of three months, unless she pay the sum of fifty dollars fine.

These are therefore to command you the said Chief of Police, or constable, to convey the said Catharine Wells to the said gaol, and her to deliver to the keeper thereof, together with this warrant.

And I do hereby command you, the said keeper, to receive the said Catharine Wells into your custody, in the said gaol of the said city, and her there safely keep for the space of three months, unless aforesaid amount is sooner paid, and for so doing this shall be your sufficient warrant.

Given under my hand and seal, at Hamilton, this third day of December, in the 26th year of the reign of our Sovereign Lady Queen Victoria, in the year of our Lord 1862.

(Signed) G. H. ARMSTRONG, P. M.

Robert A. Harrison having asked for and obtained leave to file the writ and return, moved to discharge the prisoners, upon the ground, among others, that an imprisonment for three months, unless the fine imposed were not sooner paid, was illegal, inasmuch as by the statute the proper mode of enforcing payment of such fines is by distress of the goods and chattels of the persons subject to the fine; and it was not shewn that any effort had been made so to collect the fine. He referred to Con. Stat. Can., cap. 105, sec. 16; *Rez v. Chantler*, 1 Ld. Rayd. 545; *Rez v. Whitlock*, 1 Str. 263.

T. H. Spencer shewed cause, contending that the warrants substantially complied with the statute, and argued that if defective in form they could not be held void because supported by good and valid convictions. He produced the convictions, and referred to sec. 29 of Con. Stat. Can. cap. 105.

The following is a copy of the conviction of Eliza Slater:

CITY OF HAMILTON, } Bo it remembered, that on the third day of
to wit. } December, in the year of our Lord one
thousand eight hundred and sixty-two, at the city of Hamilton
aforesaid, Eliza Slater, being charged before me, the undersigned
George H. Armstrong, Esquire, police magistrate of the said city,
by Robert Graham, a police constable of the said city, is con-
victed before me in open court, for that she, the said Eliza Slater,
at the time the said information was laid, had been keeping and
then was keeping a house of ill-fame within the said city of
Hamilton, and I adjudge her, the said Eliza Slater, for the said
offence, to pay a fine of fifty dollars to me as such police magis-
trate forthwith, to be applied by me in accordance to the provi-
sions of chap. number 105 of the Consolidated Statutes of Canada,
and in default of such payment to be imprisoned in the common
gaol of the county of Wentworth, situate within the city of Ham-

ilton, for the period of three months or until such fine be paid, if the same shall be paid within said three months.

Given under my hand and seal the day and year first above mentioned, at Hamilton aforesaid.

(Signed) G. H. ARMSTRONG, P. M. [L.S.]

The following is a copy of the conviction of Catherine Wells:

CITY OF HAMILTON, } Bo it remembered, that on the third day of
to wit. } December, in the year of our Lord one
thousand eight hundred and sixty-two, at the city of Hamilton
aforesaid, Catharine Wells, being charged before me, the under-
signed George H. Armstrong, Esquire, police magistrate of the
said city, setting in open court, by Robert Graham, police con-
stable of the said city, with being an inmate of a house of ill-fame
kept by one Eliza Slater, within the said city, and such charge
being brought against her, the said Catharine Wells, she confessed
before me in open court that she resided in said house of ill-fame
and was an inmate thereof, and therein had carnal communica-
tion with men visiting said } of ill-fame. She is upon her
own confession convicted before } for that she, the said Catha-
rine Wells, at the time the said information was laid, was an
inmate of a house of ill-fame within the said city of Hamilton.

And I adjudge the said Catharine Wells, for the said offence, to pay a fine of fifty dollars to me as such police magistrate forth-
with, to be applied by me in accordance to the provisions of chap.
number 105 of the Consolidated Statutes of Canada, and in
default of such payment to be imprisoned in the common gaol of
the county of Wentworth, situate in the city of Hamilton, for the
period of three months or until such fine be paid, if the same shall
be paid within the said three months.

Given under my hand and seal the day and year first above mentioned, at Hamilton aforesaid.

(Signed) G. H. ARMSTRONG, P. M. [L.S.]

Mr. Harrison argued that the convictions so far from being good and valid were themselves void, on the same ground of objection that he urged against the warrants.

HAGARTY, J.—The second warrants of commitment produced by the gaoler in return to the *habeas corpus*, shew that each of the prisoners was convicted by the police magistrate and adjudged to be committed to gaol for three months, unless she pay \$50 fine; and the gaoler is commanded to keep her "for the space of three months, unless the aforesaid amount is sooner paid." The convictions which are produced shew an adjudication that prisoners should respectively pay a fine of \$50 to the police magistrate forthwith, and in default of such payment be imprisoned for three months, or until such fine be paid.

The case turns on the 16th section of cap. 105 Con. Stat. Can. The recorder (or police magistrate) is authorized to commit the offender to gaol, with or without hard labor, for any period not exceeding six months, or may condemn her to pay a fine of not exceeding, with the costs, \$100, or to both fine and imprisonment not exceeding the said period and sum; and such fine may be levied by warrant of distress, &c.; or the party convicted "may be condemned (in addition to any other imprisonment in the same conviction) to be committed to the common gaol for a further period not exceeding six months, unless such fine be sooner paid."

We are told in sec. 26 that we must not refer to either of the acts in the same volume in relation to summary convictions, or as to indictable offences for guidance.

I feel no small difficulty in construing the 16th clause from the peculiar wording of the latter part of it.

In the cases before me no imprisonment is awarded as a substantive sentence or punishment. The fine is the only penalty if paid. But it was not paid, nor does it seem that any attempt was made to levy it by distress. The magistrate adopts the last alternative of the section, viz., imprisonment to enforce payment, or for non-payment. The words are that he may award the offender to be committed (in addition to any other imprisonment on the same conviction) to be committed for a further period, unless the fine be sooner paid. I think, according to ordinary grammatical construction, I might read the sentence without the parenthesis: and were it not for the use of the word "further" no difficulty might arise. But can this word be rejected? Did the legislature mean by a further period, especially after the words in the paren-