

strate asked the prisoner as to whether he elected to be tried by him or before a jury, but did not state at what Court his case would be tried. The prisoner was represented by counsel.

*Held*, Maclaren, J. A., dissenting, that,

1. The Police Magistrate had no jurisdiction to try the case, as he had not named the Court at which the prisoner would be soonest tried.

2. The Magistrate having entered upon the trial he had no power to amend the indictment by making a further charge, unless the prisoner should be again put to his election and consent to such trial.

Conviction quashed and new trial ordered.

*Counsel* and *E. N. Armour*, for prisoner. *Cartwright*, K.C., for the Crown.

Teetzel, J.]

KEENAN v. OSBORNE.

[Jan. 29.

*Interpleader—Mortgage to execution creditor—Assignment of, before seizure—Attack by action.*

The right of a sheriff to an interpleader order depends upon either having the subject matter of the interpleader in his possession, or having the right under an execution accompanied with an intention to take possession.

And when an execution debtor, who was a mortgagee of lands, had assigned the mortgage even although the assignment was not registered :

*Held*, that the mortgage could not be seized under the provisions of the Execution Act, R.S.O. 1897, c. 77, s. 23 et seq, and that the sheriff could not proceed until the execution creditors had in an action obtained a declaration of the Court that the assignment was void and that he could not interplead.

*Middleton*, for claimant. *F. A. Anglin*, K.C., and *Raney*, for the sheriff and execution creditors.

Full Court.]

REX v. SHAND.

[Feb. 2.

*Criminal law—Obstructing officer—Seizure of chattel—Sale of goods—Conditional sale.*

The retaking of possession of a chattel by the vendors thereof under the provisions of a conditional sale agreement, is not a seizure within the meaning of the Criminal Code, s. 144, sub-s. 2 (b), so as to subject the purchaser of the chattel, who in good faith disputes the right to retake it, to the penalty prescribed in that sub-section. Conviction quashed.

*W. H. Wright*, for prisoner. *Cartwright*, K.C., for Crown.