

Some particulars are properly required under this pleading, as the alternative claim for damages is too vague. The order should be modified so as to require the plaintiffs to deliver the particulars ordered with reference to the making of the contract and to require delivery of particulars of the damages claimed. Such damages are probably the only remedy the plaintiffs are entitled to, as they do not shew that the property in the lumber in question has passed, and the defendants are entitled to know what damages are sought. If the lumber is not yet sold, this will be the difference between the contract price and the market price. If the lumber has been sold, this may be the difference between the contract price and the sale price. Whatever the claim is, the plaintiffs ought to put it forward in some definite and tangible form, so that the defendants, if so advised, may pay some sum into Court in satisfaction.

Under the circumstances the costs here and below ought to be in the cause.

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HON. MR. JUSTICE MIDDLETON.

OCTOBER 4TH, 1913.

REX v. JUNG LEE.

5 O. W. N. 80.

*Criminal Law—Keeping Common Gaming House—Magistrate's Conviction—Summary Jurisdiction—Criminal Code, secs. 228, 773 (f), 774, 781—Amending Act, 1909—Evidence to Shew Offence—Code, sec. 226—Failure to Shew Keeping of Bank or Gain to Accused—Presumption—Secs. 985, 986—Warrant—Wilful Obstruction.*

MIDDLETON, J., *held*, that *Rex v. Honan*, 26 O. L. R. 484, is conclusive against the contention that a Magistrate may not proceed to try the accused without giving him an election to go before a jury.

That the locking of a door does not intend to create a presumption of the intention to prevent or obstruct a constable from attempting to enter premises within sec. 986 Criminal Code. The presumption is created when something active is done, amounting to a wilful obstruction or prevention.

Motion to quash conviction made by S. J. Dempsey, Police Magistrate, at Cochrane, for unlawfully keeping a common gaming house.

The only evidence taken was that of the Chief of Police, who, on the night in question, went to the laundry operated by the accused, and found twenty-five men in the room play-