

missed he was entitled to costs of all issues found in his favour as against the one issue found against him.

*T. S. Rogers, and A. G. McKenzie, for plaintiff. J. L. Ralston, for defendant.*

Weatherbe, C.J., Townshend, J., Graham, E.J.,  
Meagher, J., Russell, J.]

[Jan. 26.]

REX v. MCGILLIVRAY.

*Canada Temperance Act—Arrest on Sunday—Taking bail and fixing day.*

M. was arrested on Sunday on a warrant issued for an offence against the Canada Temperance Act. When brought before the magistrate he applied to be admitted to bail and was permitted to make a deposit in lieu of bail and the case was set down for hearing on a week day and M. was discharged from custody. M. appeared at the time appointed and secured a further adjournment upon his agreeing to leave the amount of the deposit as bail for his appearance. On the day last mentioned he appeared and objected to the legality of his arrest on Sunday and to the action of the magistrate in taking bail and fixing a day.

*Held*, 1. Sec. 564, sub-s. 3 of the Code was made applicable to the case by the Canada Temperance Act, s. 107, and that the warrant could be executed on Sunday.

2. Per GRAHAM, E.J., MEAGHER, J., and RUSSELL, J., assuming that the releasing on bail and fixing a day for the hearing were illegal, that the arrest being legal there was a negligent escape and nothing to prevent the defendant from being retaken, and that the magistrate had jurisdiction to proceed with the case.

3. For such a defect as that contended for in the procedure prohibition was not the proper remedy.

Per TOWNSHEND, J.:—The taking of bail and fixing a day was not illegal, but an act done in connection with the arrest.

WEATHERBE, C.J., dissented.

*J. J. Power*, in support of application. *W. F. O'Connor*, contra.