

vided half interest; and directing a reference to the Master at Ottawa to ascertain and report upon certain matters in connection with the applications and patents. Further directions and costs of claim and counterclaim reserved until after report.

RIDDELL, J., IN CHAMBERS.

JANUARY 15TH, 1919.

\*REX v. HACKAM.

*Criminal Law—Police Magistrate's Conviction Quashed with Costs to be Paid by Magistrate and Prosecutor—Refusal to Protect Magistrate and Prosecutor from Actions—Reconsideration of Order before Passing and Entry—New Affidavits—No Variation of Order.*

Upon a motion to quash a conviction of the defendant, by the Police Magistrate for the Town of Bracebridge, "for that he, the said Sam Hackam, did neglect to register as an alien enemy," RIDDELL, J., on the 6th December, 1918, pronounced an order quashing the conviction, directing payment of the costs of the motion by the Magistrate and prosecutor, and refusing to protect them from actions: ante 190.

The respondents (magistrate and prosecutor) afterwards applied for leave to answer an affidavit made by the defendant; leave was given; affidavits were filed; and the motion was reconsidered.

H. H. Davis, for the defendant.

W. R. Smyth, K.C., for the magistrate and prosecutor.

RIDDELL, J., in a written judgment, said that he stayed the issue of the order to allow evidence to be adduced of the conduct of the magistrate and officer toward the defendant. Until an order is passed and entered, a Judge can always reconsider his judgment: Holmsted's Judicature Act, pp. 1138, 1139; and an order made as this was made (as to costs) without the one party answering material allegations of the other, because of a misunderstanding, is an order which may well be held up to enable both parties to be heard.

On the merits, the learned Judge saw no reason to change his view that the conviction could not stand.

The affidavits filed by the respondents were mainly made up of allegations against the defendant, and were largely irrelevant.