

maintained, and the conviction was quashed, but without costs.

Remarks on the question of costs in such cases.

Aylesworth, Q.C., for applicant.

Langton, Q.C., *contra*.

REGINA v. WESTGATE.

Conviction—Quashing—No offence shown—Question of costs considered.

A conviction under s. 1 of 52 Vict., c. 43 (D.), for supplying to a cheese factory milk from which the cream had been removed, was quashed, as neither in the evidence nor in the conviction was any offence against the Act shown, it not having been proved that the milk was supplied to be manufactured, but without costs.

The court, in considering the question of costs, suggested that in future with the notice of motion for a certiorari a notice might also be served stating that unless the prosecution was then abandoned and further proceedings rendered unnecessary, costs would be asked for and a strong case would then be made for granting the defendant costs in cases in which it would be unjust and unfair to put defendant to such costs.

Aylesworth, Q.C., for applicant.

D. W. Saunders contra.

Div'l Court.]

[Feb. 9.]

REGINA v. YEAMAN.

Gambling—Conviction for—No evidence to sustain charge—Quashing—Costs.

A conviction for unlawfully gambling contrary to a municipal by-law was quashed, as no offence was disclosed, and also on grounds of irregularity, but without costs, as the prosecutor, a constable, apparently acted in good faith in instituting and carrying on the prosecution.

Regina v. Westgate supra referred to.

M. G. Cameron for the applicant.

No one showed cause.

STREET, J.]

[JAN. 4.]

ALLEN v. FAIRFAX CHEESE COMPANY.

Partnership—Action by partner to recover share of monies paid firm—Prohibition.

Held, that an action was maintainable in the County Court by a partner to recover his

share of insurance monies paid to the firm, and prohibition therefor was refused.

Beaumont for plaintiff.

Aylesworth, Q.C., for defendant.

BOYD, C.]

[Feb. 8.]

WALLIS v. SKAIN.

Mechanics' lien—Form of claim—Omission of name and residence of person on whose credit work done—Demurrer—Costs.

The omission from the registered claim of lien of the name and residence of the person for whom or upon whose credit the work was done or materials furnished required by s. 16 of the Mechanics' Lien Act, R.S.O., c. 126, is fatal to the lien, and the objection can be taken by the contractor as against the sub-contractor.

Where the objection was taken by the defendant contractor at the trial, costs were allowed him as of a successful demurrer, to be set off against the costs of a judgment for the plaintiff on the pleadings for an admitted debt.

McMichael, Q.C., and *J. A. Mills* for the plaintiff.

G. G. Mills for the defendant McNamara.

BOYD, C.]

[Feb. 17.]

ROBERTS v. DONOVAN ET AL.

Contempt of Court—Non-performance of an act necessitating the payment of money—Commitment.

On a motion to commit defendants for non-compliance with a judgment by consent, directing him to discharge a certain mortgage, it was

Held, following *Male v. Bouchier*, 1 Ch. Cn. 359, and 2 Ch. Ch. 254, that if in effect and substance the essential thing to be done is the payment of money, whether by a party or a stranger, an order to commit would be a contravention of the statute (then C.S.U.C. c. 24, ss. 3 & 14, now R.S.O. (1887), c. 67, s. 6.)

Hoyles, Q.C., for the plaintiff.

Donovan in person.

A. C. Macdonell for defendant Hayes.