

Armour, C.J., Street, J.] JOHNSTON *v* GALBRAITH. [Jan 17.
Division Court—Appeal from—Issue as to satisfaction of judgment—Prohibition—Chambers.

An appeal by the plaintiff from an order of the Judge of the County Court of Halton dismissing an application by the plaintiff for a new trial of a question or issue tried by the Judge, upon oral evidence, in Division Court Chambers, as to the satisfaction of a judgment recovered by the plaintiff in the 2nd Division Court in that county. The plaintiff moved, in the alternative, for prohibition.

Held, that the appeal did not lie, and the application for prohibition should be made in Chambers.

R. S. Appelbe, for plaintiff. *D. O. Cameron*, for defendant.

Province of Nova Scotia.

SUPREME COURT.

CROWN CASES RESERVED.

Full Court.] THE QUEEN *v* HARTLEN. [Jan. 11.
Unnatural offence—Boy under age of fourteen held incapable of committing—Assault—Code s. 260.

Defendant, a boy under the age of fourteen years, was tried before the judge of the county court for the County of Halifax, and convicted of the offence of committing an unnatural offence upon the person of a younger boy.

Held, that at common law (which, in this particular, was unchanged by anything in the Criminal Code) defendant was incapable of committing the offence charged, and that the conviction must therefore be set aside.

Per RITCHIE, J.: If the act was committed against the will of the other party defendant could be punished for an assault under sec. 260 of the Code.

Attorney General, for Crown. *J. J. Power*, for prisoner.

Full Court] THE QUEEN *v* TROOP. [Jan. 11.
Assault causing bodily harm—Rejecting of evidence as to statements made by witness before magistrate inconsistent with statements on trial—New trial.

Defendant was indicted, tried and convicted for an assault committed upon S., causing actual bodily harm. At the trial counsel for defendant, who gave evidence on his own behalf, proposed to ask certain questions with the view of showing that one of the principal witnesses for the prosecution when examined before the committing magistrate made statements at variance with her testimony given upon the trial of the indictment. The trial judge having rejected the evidence,

Held, that he erred in doing so, and that there should be a new trial.