to goods purchased to be paid for out of earnings of such a business.

Meakin v. *Gampson*, 28 C.P., 360, doubted, per Burton J. A.

Judgment of the C.P.D.affirmed.

THE QUEEN *v.* THE CITY OF LONDON.

Criminal procedure—Indictment for nuisance—Appeal—R. S. C., chap. 174-268, 50-51 *Vict. ch.* 50 (D.)

The defendants having been convicted on an indictment for a nuisance, which had been removed into the Queen's Bench by *certiorari*, moved for a new trial, which was refused.

Held, that no appeal would lie to this Court from the judge refusing the new trial, and that it could make no difference that the indictment had been removed by *certiorari* and tried on the civil side.

Regina v. *Eli*, 13 A.R., 626,and *Regina* v. *Laliberte*, I.S.C.R., 117, referred to.

Quære, whether in any case of misdemeanor a new trial can now be granted. C.S.U.C. chapters 13, 112, 113; 32 & 33 Vict. ch 29,sect. 80 (D.)

DUNKIN *v.* COCKBURN.

Free Grant and Homesteads Act, R. S. O., 1877, *c.* 24, *s.* 4—31 *Vict., c. 8, s.* 3—*Patent—Reservation by order in council—Trespass.*

Plaintiff was a locatee of a Free Grant and Homestead lot, which at the time he located it, in May, 1879, was subject to a regulation of an Order in Council of the 27th of May, 1869, providing that holders of timber licenses should have the right to haul their timber or logs over the uncleared portion of any land so located, and to make necessary roads thereon for that purpose, etc. The patent in favor of plaintiff was issued in June, 1883, and contained only the usual reservations of mines, minerals and navigable waters. The defendant was the holder of a timber license issued after the date of the patent, and justified the trespasses complained of under the authority of the Order in Conncil.

Held, that the only reservations or exceptions from the grant were those mentioned in the patent, and that the plaintiff's land was not subject to the regulations of the Order in Council.

Semble, that such regulations apply only before the issue of the patent to lands located under the Order in Council, and then only so far as rights of way, etc., may be expressly conferred upon the licensee by the terms of his license.

Judgment of Q.B.D. affirmed.

HIGH COURT OF JUSTICE FOR ONTARIO.

Queen's Bench Division.

Div'l Ct.] [Nov. 19, 1888.

MARSHALL *v.* MCRAE.

Master and servant — Wrongful dismissal—Written contract—Consideration—Remedy on covenant—Construction of contract—Right to dismiss—Reasonable grounds—Bona fide exercise of power—Manner of exercise.

The plaintiff agreed to obtain patents for certain improvements in a machine of his invention and to assign them to the defendant, and the defendant, in consideration thereof, agreed to employ the plaintiff for two years for the purpose of demonstrating and placing the patents on the market, the defendant covenanting to pay the plaintiff a certain sum per month and expenses, during the two years, and to give him a share of the profits, and the plaintiff covenanting to devote his whole time and attention to the "business of the defendant."

By the 10th clause of the agreement it was provided that the defendant should be the absolute judge as to the manner in which the plaintiff performed his duties, and should have the right at any time to dismiss him for incapacity or breach of duty.

The defendant summarily dismissed the plaintiff within three months for alleged breach of duty in relation to work not within the terms of his employment as above specified.

Held, that the work to be performed not being the only consideration for the wages to be paid, but for the tenth clause the defendant would have had no right to dismiss the plaintiff at all, but would have been left to his remedy upon the plaintiff's covenant.

"The business of the defendant" meant the business for which the plaintiff was employed, and the defendant had no legal right