

His right of action would, for the same reason, not be limited as to time by the special provisions of sec. 306 of the Railway Act, for, while incidentally his damages are suffered by reason of the "construction" of the railway, his right to indemnity therefor is based primarily upon the agreement.

For this and the reasons contained in the judgment of the learned trial Judge, I think the appeal should be dismissed with costs.

BOYD, C., IN CHAMBERS.

SEPTEMBER 23RD, 1909.

REX v. PALANGIO.

*Criminal Law—Sale of Intoxicating Liquors within Prohibited Area—Royal Proclamation—Criminal Code, sec. 150—6 & 7 Edw. VII. c. 9—Magistrate's Conviction Based on Confession—Admission of Having Cider for Sale—Absence of Proof of Intoxicating Character—Defective Information—Territorial Jurisdiction of Magistrate.*

Motion to quash the minute of conviction made in this and six or seven other like cases.

J. B. Mackenzie, for the defendant.

R. McKay, for the Commissioner of Police, the informant.

BOYD, C.:—The offences are, having liquor for sale illegally at Cochrane, alleged to be within twenty miles of the line of the National Transcontinental Railway, the area within which prohibition of intoxicating liquors is declared by Royal Proclamation of June, 1907. The convictions are not formally drawn up, but proceed upon the violation of sec. 150 of the Canada Criminal Code, as amended by 6 & 7 Edw. VII. ch. 9, sec. 2 (1907).

The summary proceedings were of most expeditious character: the parties appeared on the information; no evidence was taken, but upon alleged confessions the fines of \$50 and costs were imposed, which were forthwith paid.

Many objections were raised and argued, but, to my mind, the most serious one is disclosed upon an examination of the affidavits. The defendants deny making any confession of guilt; they say they did not plead guilty, but admitted having cider for sale, claiming that it was non-intoxicating. As put by the offenders, when the sale of cider was admitted, the magistrate said that was enough, as it was intoxicating, and they would have to pay the fine and costs