

Q. B. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

IN BANCO.

MCKAY V. CRAWFORD ET AL.

*Malicious arrest—Order for arrest not set aside—
Failure of action.*

In an action for malicious arrest, and in trespass for arrest,

Held, per ARMOUR and O'CONNOR, J.J., that the claim for malicious arrest could not be maintained, because the order directing the arrest had not been set aside. Per WILSON, C.J., it did sufficiently appear it had been set aside.

Dickson, Q.C., for motion.

Osler, Q.C., and Burdett, contra.

O'Connor, J.]

REGINA V. GRAVALLE.

*By-law—Con. Mun. Act 1883, sec. 503,
sub-sec. 6—Conviction quashed.*

By-law under sub-sec. 6, sec. 503, Con. Mun. Act 1883, and conviction thereunder,

Held, not bad, for not embodying or referring to the exceptional proviso as to time mentioned in sec. 500; for this sec. does not refer to the subject of sub-sec. 6, of sec. 503; and apart from that, sec. 500 is expressly limited to municipalities in which no market fees are imposed, whereas here there were such fees.

Such by-law is not *ultra vires*, express power being given, by sec. 503, to pass a by-law respecting the matter mentioned in sub-sec. 6; and

Held, that as the reasonable or unreasonable exercise of the power could only be entertained on a motion to quash the by-law, the objection was not open on this motion, which was to quash the conviction. But

Held, that the conviction was bad for imposing but one penalty while covering two several and distinct offences.

Clement, for motion.

MacLennan, Q.C., contra.

CHANCERY DIVISION.

Boyd, C.]

[January 20.]

MURPHY V. THE KINGSTON AND PEMBROKE R. W. CO.

*Consolidated Railway Act of 1879—42 Vict. c. 9,
D.—Expropriation of land—Plans and book of
reference—Limits of deviation.*

The defendants having in 1872 filed their plan and book of reference, under the Railway Act, showing their terminus at a certain point, and having built and used their line up to that point, desired in 1885 to extend their line about one third of a mile further on, and took proceedings to expropriate certain land required for that purpose, and possession having been refused, applied to a county judge for an order for immediate possession. In an action for an injunction to restrain the Company proceeding before the judge, on the ground that no new plan and book of reference showing the land required had been filed, and in which the Company contended that none were necessary as they were within the limits of deviation of one mile provided for by the statute. It was

Held, that deviation is a term not to be restricted to a lateral variance on either side of the line, but may mean a change *de via* in any direction within the prescribed limits whether at right angles to, or deflecting from or extending beyond the line.

Britton, Q.C., for plaintiff.

Cattanach, for defendant.

Proudfoot, J.]

[January 28.]

PLATT V. GRAND TRUNK RAILWAY CO.

*Action—Breach of covenants for title—Continuing
damages—Survivorship—Motion to set aside
order of revivor.*

This action was brought by S. P., to whom the defendants had conveyed certain lands for a mill site and certain easements and privileges having reference to the said mill site with the usual covenants for title. S. P. now complains that the defendants had no title so to convey to him, and that his quiet enjoyment of the premises had been interfered with by persons having a better right, and he claimed for all damages sustained and to be