

conviction should bring it within that time when compared with the date alleged for the offence: Paley, 7th ed., p. 230.

The objection to the form of the detainer has no force.

The next objection is that, while the prisoner is ordered to pay the costs, they are not ascertained or fixed or stated in the order. But this question does not arise at the present time. The prisoner is in custody under an order for his imprisonment for one year. In addition to this, he is ordered to pay a penalty of \$400 and costs within thirty days, and in default to imprisonment for three months, unless sooner paid. But in an order such as this is, the part relating to the payment of the costs is readily separable from the other part, and the order stands good as regards the imprisonment for one year. As remarked by Street, J., in *Rex v. Forster*, 2 O. W. R. 312, there is no reason why the sentence of imprisonment should not stand good, even if the adjudication of the fine were objectionable. At the expiration of that period, the question of the prisoner's further detention will arise, and it may then prove difficult for the Crown to shew any warrant for it. No authority has been shewn to justify the reference to one of the taxing officers, to tax or ascertain the amount of the costs. The ordinary rule is that the convicting justice should fix and insert the amount in the order, and the direction in sub-sec. (15) of sec. 188 of the Ontario Election Act that the costs shall be included with the penalty in the same order, points to that being the proper practice in this case.

This also disposes for the present of the objection that the warrant of commitment erroneously states that the time for payment of the penalty and costs had expired.

These are the objections appearing to have any substance, and they fail to support the application for the prisoner's release. The appeal must be dismissed and the prisoner remanded to custody. But the order to be drawn up will reserve to the prisoner the right to apply again for his discharge at the expiration of the year's imprisonment.

MACLENNAN, GARROW, and MACLAREN, JJ.A., concurred.
OSLER, J.A., dissented.

CARTWRIGHT, MASTER.

OCTOBER 27TH, 1903.

CHAMBERS.

HISCOCK v. McMILLAN.

Costs—Dismissal of Action for Seduction—Death of Plaintiff's Daughter—Discretion—Dismissal without Costs.

This action was brought by a father and daughter as joint plaintiffs for the alleged seduction of the daughter by the