

the whole 1,500 tons on or before 1st April, 1907. The agreement contained the following provision: "And for the insuring of the more effectual performance of this agreement, the purchasers further agree to pay to the vendors on April 1, 1907, the sum of one dollar as a penalty by way of liquidated damages for every ton of the said full amount of 1,500 tons not ordered and paid for by them on April 1, 1907." The defendants failed to order and pay for 467 tons of the coal within the period limited by the contract and the plaintiffs sued to recover \$467 by way of liquidated damages for the defendants' breach of the contract. The plaintiffs, however, had sold their whole supply of coal at a greater profit than they would have realized had the defendants ordered the full amount.

Held, that the contract should be construed as providing for a penalty only and that, as the plaintiffs suffered no damages, they could not recover, because:—

1. The intention was to secure the performance of the contract: *Hudson on Building Contracts*, p. 519;

2. When doubtful the Courts will generally construe the sum payable as a penalty: *Joyce*, par. 1298, 1300; *Mayne*, pp. 155, 156.

3. When the parties themselves call it a penalty, the onus lies on those who seek to shew that the money is to be payable as liquidated damages: *Wilson v. Love* (1896) 1 Q.B., at pp. 630, 632.

4. The actual damages for a breach of the contract could in this case be readily and accurately computed: *Joyce*, par. 1301; *Mayne*, p. 158; 19 *Am. & Eng. Enc.* 402 and 407.

T. R. Ferguson and Mackay, for plaintiffs. *Minty and Donovan*, for defendants.

Cameron, J.]

KING v. McEWEN.

[Jan. 27.

Criminal law—*Crim. Code*, ss. 777, 951—*Habeas Corpus Act*, 31 Ch. 2, c. 2, s. 2—*Summary trial*—*Jurisdiction of police magistrate*.

The prisoner was tried before the police magistrate of the City of Portage la Prairie in the charge of carnally knowing a girl under fourteen years of age, not being his wife. He consented to be tried summarily on that charge. The magistrate held that there was not sufficient evidence to justify a conviction.