RISON, J., that this also would have been a bar to plaintiff's action.

Bethune, Q.C., for plaintiff.

Beaty, Q.C., for defendant.

IN RE JOHNSON AND THE CORPORATION OF LAMBTON.

Temperance Act of 1864—Voting for By-law—Poll closed too soon.

Where a by-law under the Temperance Act of 1864 had been carried in a county by 193 majority, but it appeared that in one township where the names of the qualified municipal electors on the assessment roll were more than 800, the poll was left open only two days, leaving 250 votes unpolled there, the by-law was set aside.

The names of owners appearing in the sixth column of the roll, under the heading "Owners and address," should be counted, in order to ascertain the number of electors, although not appearing in the second column headed, "Name of occupier or other taxable party," and not bracketed or numbered in the first column.

C. Robinson, Q.C., for applicant.

Bethune, Q.C., for county.

STONESS V. LAKE AND WALKER.

Conviction—Insufficiency of information—Waiver of—Variance between conviction and warrant—C. S. U. C. cap. 126, sec. 17.

The plaintiff, on an information against him under 37 Vict. cap. 32, O., for selling liquor without a license, was brought before the defendants, magistrates. It was proved that this was his second offence, though the information did not charge it as such. The plaintiff disputed the evidence as to the first conviction, but did not object to the information, and the magistrates convicted and adjudged him to be imprisoned for ten days, which they had power to do only for a second offence. *Held*, that the plaintiff had waived the objection to the information, and that defendants were not liable in trespass.

Held, also, that the variance between the conviction and warrant, the former saying nothing as to hard labor and the latter providing for it, could not deprive the defendants of protection under the statute Con. Stat. U. C. cap. 126.

Held, also, that in any event defendants could not have been liable for plaintiff's suffering caused by the harsh regulations of the prison during his confinement; and that having been proved to have been guilty of the offence for which he was convicted, he could have only recovered three cents and no costs, under Con. Stat. U. C. cap. 126, sec. 17.

Bethune, Q.C., for plaintiff.

Britton, Q.C., for defendants.

BROWN V. GREAT WESTERN RAILWAY CO.

R. W. Co.—Two lines crossing—Collision—Use of brakes—Negligence.

The defendants' railway crossed the Grand Trunk Railway on a level—the train on the defendants' line was approaching the crossing, and the air brakes for some reason did not act. It was too late after discovering this to stop the train with the hand brakes, or by reversing the engine, though every effort was made, and a collision occurred with a train on the other line, of which the plaintiff was a conductor, by which he was seriously injured. It was shewn that these brakes were in common use on railways, and that the brakes in question had been twice examined and frequently used on that day, and found all right and effective. The learned Judge, who tried the case without a jury, held that defendants were liable, for that the air brakes should have been applied at a sufficient distance to enable the train to be stopped by other means in case of these brakes giving way.

Per HARRISON, C.J.—The finding was right. Per MORRISON, J.—There was no evidence of negligence, for the defendants were not bound to have any other than the air brakes, and were justified in depending upon them. Wilson, J., being absent, and the court thus equally divided, Morrison, J., withdrew his judgment, so as to avoid the expense of a re-argument, and enable the defendants to appeal.

Rock, Q.C., for plaintiff.

Barker for defendants.

[March 10.

STEWART V. COWAN ET AL.

Division Court bailiff—Interpleader issue—Detenti of goods after judgment for plaintiff—Notice of action—Liability of attorney.

Defendant C., a Division Court bailiff, was employed by the plaintiff to sell certain goods under a chattel mortgage given to the plaintiff by one L., advertised and took possession of them, and afterwards executions came into his hands against L., under which the attorney for the execution creditors told him to seize these goods. The plaintiff claimed them, and obtained judgment in his favour upon an interpleader issue. Defendant C. refused on demand