

JUNE 11TH, 1903.

## DIVISIONAL COURT.

## RE DENISON, REX v. CASE.

*Mandamus—Police Magistrate—Sentence for Criminal Offence—Personation of Voter—Referendum—Status of Applicant for Mandamus—Informant—Liquor Act, 1902.*

Appeal by E. J. Ritchie, private prosecutor, from order of BRITTON, J., ante 152, dismissing an application by the appellant for a mandamus to the police magistrate for the city of Toronto to impose upon Adam S. Case the sentence prescribed by sec. 167 of the Ontario Election Act, or, in the alternative, for an order of this Court imposing such penalty, under sec. 889 of the Criminal Code. Case was convicted by the magistrate for personation at the Referendum vote under the Ontario Liquor Act, 1902, and was sentenced to pay a fine of \$50 and costs or to imprisonment for six months at hard labour. The prosecutor sought to have a fine of \$400 and imprisonment for one year imposed. An information was laid by Sturgeon Stewart before the deputy returning officer, E. J. Ritchie, against E. A. Taylor (which was the name given by Case when he asked for a ballot), on the polling day, and before Case had left the polling place, charging him with personating James Brophy. Ritchie, on this information, issued his warrant for the apprehension of Andrew E. Taylor, and Case was thereupon apprehended and brought before the magistrate. On the 5th December, upon Case being brought up before the magistrate for trial, Ritchie laid an information against Case for an attempt to personate, and Case was tried and convicted as above.

A. Mills and W. E. Raney, for appellant.

J. Haverson, K.C., for defendants.

THE COURT (BOYD, C., FERGUSON, J., MACMAHON, J.) held that under secs. 4, 5, and 6 of the Election Act, R. S. O. ch. 10, the information which gave the magistrate jurisdiction was that laid by Stewart, and without such information the magistrate was powerless; and Stewart being the informant, he was the only person who could apply for a mandamus, and Ritchie was without any locus standi in this Court. Appeal dismissed. No costs.