

KING'S BENCH.

Macdonald, J.]

[May 25.]

THE KING v. SUCK SIN.

Magistrate—Bias—Disqualification—Pecuniary interest—Trial of charge by magistrate who is also a member of the board of police commissioners of a city—Resolution of commissioners instructing prosecution of that class of offences—Prohibition—Practice—Civil or criminal proceeding.

Held, 1. The police magistrate of the city of Winnipeg, who is also by statute a member of the board of police commissioners, is not disqualified to hear and determine a charge of selling liquor without a license by reason of having, at a meeting of the board previously held, moved a resolution instructing a particular member of the police force to take active steps for the prosecution of offences against the Liquor License Act in unlicensed places, without naming any individual or class of persons, although the charge in question had been laid by that officer. *Queen v. Handsley*, 3 Q.B.D. 383, and *Reg. v. Pattimangin*, 9 L.T.N.S. 683, followed. *Queen v. Lee*, 9 Q.B.D. 394; *Queen v. Allan*, 4 B. & S. 915, and *Queen v. Henley* (1892), 1 Q.B. 504, distinguished.

2. The police magistrate of the city is not disqualified to hear and dispose of such a charge by reason of his being a ratepayer of the city and so benefiting to a small extent by any fine which might be imposed, part of which would be received by the city, or by reason of his being paid a salary by the city. *Ex parte McCoy*, 1 C.C.C. 410, followed.

3. An application for an order to prohibit a magistrate from hearing a criminal charge on the ground of disqualification through bias is itself a civil and not a criminal proceeding, and the practice to be followed is that laid down in the King's Bench Act, R.S.M. 1902, c. 40, and the rules thereunder, instead of by rule nisi as in criminal proceedings.

Phillips and *Whitla*, for defendants. *Patterson*, K.C., D.A.G., for the Crown.