

*Held*, that the issue of the distress warrant was a ministerial and not a judicial act, and therefore a writ of prohibition to the magistrate would not lie.

Judgment of ROSE, J., 26 O.R. reversed.

*Avlesworth*, Q.C., for the magistrates.

*Shepley*, Q.C., contra.

Divisional Court.]

[Dec. 14, 1895.]

LARKIN *v.* GARDINER.

*Sale of land—Agreement—Option.*

A parcel of land having been placed in a land agent's hands for sale, the defendant went to him and offered to purchase it at a less sum than the agent was authorized to sell, whereupon the agent said he would submit the offer to the plaintiff, and procured the defendant to sign a form of agreement for the sale and purchase of the land, which was taken by the agent to the plaintiff, who then signed same, but before the defendant was notified thereof, he gave notice to the agent, withdrawing his offer.

*Held* that the instrument, though in form an agreement, was in substance a mere offer, and as defendant had withdrawn before he was notified of its acceptance, there was no completed agreement.

*Arnold*, for the plaintiff.

*Bicknell*, for the defendant.

Divisional Court.]

[Dec. 14, 1895.]

REGINA *v.* WOODYATT.

*Certiorari—Magistrate—Notice to—Contempt—Attachment.*

Where, after the issue of a writ of certiorari for the removal of a conviction made by a magistrate for the purpose of quashing it, which, though served on the Clerk of the Peace, did not come to the magistrate's notice or knowledge, who enforced the conviction by issue of a distress warrant.

*Held*, that the magistrate could not be held to be guilty of contempt, so as to justify a writ of attachment being issued against him.

*McCulloch*, for the applicant.

*Wilkes*, Q.C., contra.

Divisional Court.]

[Dec. 14, 1895.]

REGINA *v.* FLEMING.

*Police magistrate—Ratepayer of city to which fine payable—Paid by salary—Disqualification.*

Section 419 (a) of the Municipal Act, 1892, which provides that magistrates should not be disqualified from acting as such by reason of the fine or penalty, or part thereof, going to the municipality of which he was a ratepayer, includes a police magistrate.

Where a police magistrate appointed under R.S.O., c. 172, is paid a salary instead of fees, such salary being in no way dependent on any fines