

2. An order for the issue of a writ of execution made by a judge of the court, ex parte, during the currency of the period of twenty years from the recovery of the judgment, the judgment debtor having died out of the province intestate, and no administrators having been appointed, conferred no new right upon defendant sufficient to keep the judgment alive and unbarred by the statute.

3. To obtain a new right against anyone defendant must have given notice, which he could have done either by applying as a creditor to have administrators appointed or by notifying the heirs.

H. McInnes, K.C., for plaintiff. *W. B. A. Ritchie*, K.C., for defendant.

Province of Manitoba.

KING'S BENCH.

Killam, C.J.]

REX v. RIDEHAUGH.

[May 5.

Criminal Code, ss. 785, 786—*Summary trials of indictable offences—Common assault—Magistrate's clerk addressing the accused for the magistrate—Habeas corpus—Amending conviction.*

Application for a habeas corpus for discharge of prisoner sentenced by the police magistrate of the City of Winnipeg to one year's imprisonment for common assault. The principal objections to the proceedings were as follows: That the magistrate had no jurisdiction to impose more than two month's imprisonment under s. 265 of the Criminal Code; that, before proceeding to summarily try the prisoner under s. 786 of the Code, the magistrate had not personally addressed her in the words prescribed by that section or informed her that she had a right to elect to be tried by a jury; and that the warrant of commitment was defective in containing the figures "1902" instead of "1903," and the word "him" instead of "her."

Held, 1. Sec. 785 of the Code, as re-enacted by 63 & 64 Vict., c. 46, gives to the police magistrate of a city power to impose the same punishment for a common assault as could be imposed upon a person convicted on an indictment.

2. The magistrate may ask the question provided for by s. 786 of the Code through the mouth of his clerk.

3. The errors in the warrant of commitment were not sufficient ground for the issue of a habeas corpus since a new and correct warrant might be substituted.

Application dismissed.

Patterson, for the Crown. *Bonnar*, for prisoner