

832, affirmed by the Divisional Court, 17 O.R., 38, and now before the Court of Appeal, and cited for the defendant, is an authority against him. There it was held that the contract was for the insurer's protection, and was voidable, not void, and that they could and did waive the forfeiture. In *Wells v. Foresters*, 17 O.R., 317, it was held on the facts that there had been no waiver and the insurers were not liable. In a recent case of *Redmond v. Canada Mutual* (not reported), Mr. Justice McMahon held that the fact of previous waiver of forfeiture by the receiving of dues long in arrear was not a bar to a defence setting up a forfeiture by non-payment of subsequent dues.

All these cases lead to the conclusion that the forfeiture clauses are for the protection of the beneficiary, and can be waived either impliedly or by express act.

I am informed that this is a test case, and I have been asked to give a considered judgment. I find for the plaintiffs for \$3.40 and costs.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

COURT OF APPEAL.

[March 4.

REGINA *v.* WATSON.

Constitutional law—Criminal law—Criminal procedure—B.N.A. Act, s. 91, s-s. 27—51 Vict., c. 32 (O.)—52 Vict., c. 15 (O.)

The "Act to provide against frauds in the supplying of milk to cheese or butter manufactories," 51 Vict., c. 32 (O.), does not deal with criminal law within the meaning of s. 91, s-s. 27, of the B.N.A. Act, but merely protects private rights, and is *intra vires*.

So also the "Act respecting appeals on prosecutions to enforce penalties and punish offences under Provincial Acts," 52 Vict., c. 15 (O.), is not legislation dealing with criminal procedure within the meaning of that subsection, and is *intra vires*.

Judgment of the Queen's Bench Division, 17 O.R., 58, reversed.

E. Blake, Q.C., and Irving, Q.C., for the appellant.

E. B. Edwards for the respondent.

[March 4

SINDEN *v.* BROWN.

Justice of the Peace—Summary conviction—Fine—Distress—Part payment—Imprisonment—Notice of action—R.S.C., c. 178, ss. 60, 61, 62, 63, 64, 65, 66, 67—R.S.O. (1887), c. 73, s. 14.

The defendant was convicted under the Canada Temperance Act and was adjudged to pay a fine and costs, to be levied by distress if not paid forthwith, and in default of sufficient distress to be imprisoned, etc. The defendant paid the costs but not the fine, and a distress warrant was issued against him, and nothing being made under this warrant he was committed.

Held, that the commitment was illegal.

Trigerson v. Board of Police of Cobourg, 6 O.S., 405, approved and followed.

If a portion of the penalty is paid before commitment, the amount paid must be restored before the alternative punishment is resorted to.

Held, also, that the magistrate having, in the honest belief that he was acting in the execution of his duty as such, issued the warrant of commitment after part payment of the penalty, he was, though acting without jurisdiction, entitled to notice of action, and that, no notice having been given, the action failed.

Judgment of the Common Pleas Division, 17 O.R., affirmed on other grounds.

McCarthy, Q.C., and DuVernet for the appellant.

Aylesworth for the respondent.

[March 4

MARSHALL *v.* MCRAE.

Master and servant—Wrongful dismissal—Right to dismiss—Grounds of dismissal—Exercise of right—Forfeiture of property.

The plaintiff, who was the inventor of a certain machine, and had assigned certain patents therefor to the defendant, agreed to obtain patents for certain improvements made by him upon the machine, and to assign them to the