Parliament had it in mind that an appeal did not before lie in cases where the prosecution was for an offence defined by s.-s. (*a*) or (*f*) of s. 783; and the appeal in such cases lies now only where the case is heard and determined by two justices of the peace sitting together.

However that may be, this prosecution having taken place under s. 783, and not under the part known as the Vagrancy Act, by reason of the provisions of s. 808 an appeal is precluded.

Gibson Arnoldi, for the defendant. *J. W. Curry*, for the magistrate.

Trial of actions, Street, J.] CITY OF KINGSTON *v.* ROGERS. [Sept. 28.

Assessment Act—Seizure for rent—Seizure for taxes—Goods in custodiâ legis—R.S.O. c. 224, s. 135.

Held, that R.S.O. c. 224, s. 135, s-s. 1 (the Assessment Act) which provides that the collector may levy for arrears of taxes "upon the goods and chattels wherever found within the county . . . . belonging to or in the possession of the person who is actually assessed for the premises, etc." does not authorize the collector to levy upon goods which are already in custodiâ legis as goods under seizure by a bailiff for arrears of rent due a landlord.

McIntyre, Q.C., and *D. M. McIntyre*, for the plaintiffs. *W. F. Nickle*, for the defendant.

Ferguson, J.] STEWART *v.* FERGUSON. [Oct. 5.

Appeal—Master's report—Time—Cross-appeal—Rule 769—Mortgage—Redemption—Interest post diem—Excessive payment—Application on principal—Mistake.

According to the true meaning of Rule 769, each party is precluded from appealing against the report or certificate of a Master unless he serves his notice of appeal within the fourteen days mentioned in the Rule; and notice of appeal given in proper time by one party does not prevent the report from becoming absolute as regards another party.

A mortgage having properly borne interest at eight per cent. during its currency, and this having been regularly paid, the parties went on after the mortgage fell due, the one paying and the other receiving the eight per cent. for a long period, in ignorance that the liability was to pay only six per cent. Seven annual payments of interest thus made after maturity at the mortgage rate, and subsequently some payments at a lower rate, the mortgage money not being called in meantime. Both parties were ignorant of the law on the subject, and believed that the mortgage rate would continue until payment of the principal.

Held, that the money could not be recovered back by the mortgagor as money paid under a mistake, nor could the excess of interest be applied in reduction of the principal in a redemption action. *Rogers* v. *Ingham*, 3 Ch. D. 351, followed.

J. Bicknell, for the plaintiff. *A. Millar*, Q.C., for the defendant.