

The appeal was heard by MULOCK, C.J.Ex., CLUTE, RIDDELL, and LENNOX, J.J.

G. H. Watson, K.C., for the appellants.

C. L. Dunbar, for the executors named in the second codicil, the respondents.

N. Jeffrey, for Mrs. Cassidy.

THE COURT, by consent of counsel, varied the order by appointing an additional trustee and vesting the estate in him and the executors appointed by the second codicil, as trustees. In other respects, the appeal was dismissed. Costs of all parties out of the estate.

HIGH COURT DIVISION.

LENNOX, J., IN CHAMBERS.

OCTOBER 13TH, 1914.

REX v. PEART.

Criminal Law—Police Magistrate—Conviction for “Threatening”—Evidence of Assault—Imprisonment for Excessive Term—Habeas Corpus—Discharge—Condition—Criminal Code, sec. 1120 (7 & 8 Edw. VII. ch. 18, sec. 14)—Amendment—Sec. 1121 of Code—Certiorari—Attorney-General—Protection of Magistrate—Costs.

Motion by the defendant, upon the return of a writ of habeas corpus, for an order discharging the defendant from custody.

F. R. Blewett, K.C., for the defendant.

J. McC. Baird, for the Attorney-General.

LENNOX, J.:—The order will go for the discharge of George Peart from the common gaol of the county of Perth.

It is admitted that the offence, if any, of the prisoner was a common assault, an offence for which the Police Magistrate could at most commit him to gaol for two months. The warrant of commitment is for three months' imprisonment for “threatening,” whatever that may mean. The warrant on its face is clearly illegal. The proceedings have been brought up, by certiorari, at the instance of the Attorney-General. If I am at liberty to make use of them—and the case of Rex v. Nelson (1909), 18 O.L.R. 484, would rather indicate that I am not—