

Divisional Court.]

KAVANAUGH v. CASSIDY.

[April 7.

Costs—Security for costs—Residence out of Ontario—Con. Rule 1198b.

A man of about thirty-six years of age who had since childhood lived in the United States came to Toronto in October, 1902, to inspect for his employers, brokers in New York, a branch office in Toronto. He was then instructed by his employers to act as telegraph operator in the Toronto office. These brokers gave up business in a few weeks and he then was employed as a telegraph operator by their successors. The business of the successors also came to an end within a few weeks and in connection with that business the plaintiff was accused by the defendant of fraud and arrested, this action for damages being brought in consequence thereof. He was an unmarried man and had been in the habit of living with his mother in Kansas City when out of employment, and he stated on cross-examination that he would return to the United States if he could find employment there:—

Held, that under these circumstances the defendant was entitled to security for costs of the action.

J. E. Cook, for defendant. *S. B. Woods*, for plaintiff.

Street, J.]

REX v. FOSTER.

[April 8.

Criminal law—Conviction under Ontario Liquor Act, 1902—Removal by certiorari—Subsequent issue of commitment—Invalidity—Amendment—Application of statute relating to Justices of the Peace—Irregularities—Name of informant—Name of defendant—Sentence—Adjudication—Fine.

The defendant was convicted on the 3rd February, 1903, before a judge designated under s. 91 of the Ontario Liquor Act, 1902, of an illegal act within the meaning of that section, and was sentenced to be imprisoned for one year and to pay a penalty of \$400. On the same day a warrant was issued by the judge, committing the defendant to gaol in pursuance of the conviction, and under this warrant he was arrested and lodged in gaol. On the 30th January, 1903, a writ of certiorari was issued to the judge and a County Crown Attorney, commanding them to send to the High Court of Justice all summonses, proceedings, etc., had before the judge against the defendant and two others. This was served on the judge on the 2nd February before the date of the conviction and before the issue of the warrant.

Held, that the proceedings against the defendant were removed from the court below by the issue and service of the certiorari, and that the subsequent proceedings were void.

By 2 Edw. VII, c. 12, s. 15 (O.), the provisions of the Criminal Code respecting amendment of proceedings before justices of the peace are made applicable to all cases of prosecutions under Provincial Acts.