

trate issued a warrant with the facts stated in the information substantially set out and these words added "consequently obtaining money under false pretences," and the boy was arrested. The magistrate amended the information by adding "as per section 14 (5a) Master and Servant Act, Ontario Statutes 1901," but the information as amended was not resworn. The amended information was read over to the prisoner and he was informed he was to be tried under it as amended. He made no objection, the prosecutor gave evidence and the prisoner was sworn and gave evidence on his own behalf, and the magistrate adjudged that he should be fined \$5 and \$4.88 costs, and if the amounts were not paid forthwith he was to be committed to goal. A note of the conviction was made and a formal conviction drawn up. After an hour in custody the prisoner gave security and was released. The conviction form was headed "Conviction for a penalty to be levied by distress," but no such term was mentioned in the body of it. On a motion to quash the conviction it was:

Held, 1. The nature of the offence intended to be charged against the boy was sufficiently clear in the original information and any doubt was removed by the addition to it of the reference to the Act.

2. The information having been read over to and the trial proceeding without objection by the prisoner and the magistrate having the prisoner before him even if brought there improperly, might try him on the amended information not resworn, although the Act under which he was tried required an information on oath provided he did not protest.

3. The Court being satisfied that an offence of the nature described in the conviction had been committed and that the magistrate had jurisdiction and that the punishment imposed was not excessive it should not hold the conviction invalid because the date and place of offence were not stated and which it had power to amend by stating.

4. The heading formed no part of the conviction which was correctly drawn under the statute.

5. The costs of conveying the accused to gaol being omitted was a matter which could be amended if necessary, but here there were no such costs as the prisoner never went to gaol.

6. There was special power under the section (14 5a) under which the prisoner was convicted to award imprisonment in default of payment and that by R.S.O. 1897, c. 90 s. 4, that power covered costs as well as the fine.

S. B. Woods, for prisoner. *Jas. Bicknell*, K.C., for prosecutor. *Scanlan*, for magistrate.

Divisional Court.]

[April 8.

COBBAN MANUFACTURING CO. v. EARL SIMCOE HOTEL CO.

Mechanics' Lien -- Costs -- "Actual disbursements."

The "actual disbursements," which by s. 42 of the Mechanics' Lien Act, R.S.O. 1897, c. 153, may be allowed as against an unsuccessful