

4. That the fence-viewers had no right to permit Cameron to do what the award sanctions, and declare that he should not be considered a trespasser.

5. That Menzies, one of the fence-viewers, was, by reason of his interest in the subject matter of the award, disqualified.

The award was produced under the hands of the three fence-viewers, dated 22nd May, 1866. It recited that they had been called upon to examine and determine upon a certain ditch or water-course running across the east half of No. 18 and west half of No. 19, in the sixth concession of Bathurst, owned respectively by John Cameron and Thomas Kerr, and that they had examined the ditch in the presence of the parties; and awarded, that Cameron should be allowed to put a three-inch pipe into the open drain sunk by Kerr, and that Cameron should be allowed to open the drain on Kerr's premises, without doing any unnecessary damage, and that he should not be deemed guilty of trespass for so doing. It stated that the fence-viewers in making the award had had due regard to the interest each of the parties had in the opening of the drain, and further awarded that Kerr should pay three dollars "in costs of attendance."

An affidavit of Kerr's was filed to sustain the objections taken in the rule, and to shew the unfairness of the award.

*Cur. Ad. Vult*

DRAPEL, C. J., delivered the judgment of the court.

Before we consider whether on the merits set out we should grant a rule, we must decide whether we have any jurisdiction.

Under the Consol. Stat. U. C. ch. 57, sec. 8, three fence-viewers of any municipality, or a majority of them, may decide all disputes (among other things) respecting the opening, making or paying for ditches and water-courses under the act.

Sec. 11 gives them authority to divide or apportion the ditch or water-course among the several parties, "having due regard to the interests of each in the opening thereof, and shall fully determine the matter in dispute;" and by

Sec. 9, "Every determination or award of fence-viewers shall be in writing, \* \* \* and such determination or award shall be binding on the parties thereto."

Sec. 13 provides for a new award when by reason of a material change of circumstances in respect to the improvement and occupation of adjacent lots, an award previously made ceases, in the opinion of either of the parties, to be equitable between them.

Sec. 16 points out what proceedings shall be taken to ascertain the amount payable by any person who under the authority of the act makes, opens, or keeps open any ditch or water-course which another person should have done, and to enforce payment. It is to be done by three fence-viewers; and sub-sec. 9 says such determination shall be final, and it is to be reported to the justice who required the fence-viewers to settle such questions; and that justice (sub-sec. 10) is to return the determination so reported to him to the clerk of the Division Court having jurisdiction over that part of the municipality; and (sub-sec. 11) after forty days from the

determination the clerk of the Division Court shall issue execution against the goods of the defendant, in the same manner as if the party in whose favor the determination was made had recovered judgment in the Division Court for the sum awarded by the fence-viewers, and costs.

The whole frame of this act convinces us that the legislature intended to provide for the summary and final determination of the matters comprised within its scope, and erected a jurisdiction whose award and determination made within and pursuant to the provisions thereof was intended to be conclusive. We do not consider that the use of the term "award" introduces the law in respect to arbitrations as applicable to the proceedings of the fence-viewers. There award is, as the act generally expresses it, their determination on the subject matter, and has its effect as a determination by the words of the act, making it binding on the parties (sec. 9), or by being declared final (sec. 16, sub-sec. 9); and there is only one provision which interferes with the finality of any award or determination, which is to be found in sec. 13.

It is unnecessary to enquire how far the finality of the determination is subject to impeachment or denial, either in proceedings to enforce it, or where it is set up as a justification for acts which otherwise would be an interference with the rights of another. This application is for the summary interference of the court. The act itself gives us no jurisdiction. There is no submission which can be made a rule of court, nor any agreement out of court which would give us jurisdiction under the statute of William III., and the motion is made on the assumption that this court has, without any such previous proceeding, authority over the subject matter. We are of opinion that we have no such authority, and that the rule should be refused.

Rule refused.

#### NEILL v. McMILLAN.

*Action against J. P.—Notice of action—Proof of quashing conviction.*

Where a magistrate acts clearly in excess of or without jurisdiction, he is nevertheless entitled to notice of action, unless the *bona fides* of his conduct be disproved, but the plaintiff may require that question to be left to the jury, and if they find that he did not honestly believe he was acting as a magistrate he has no claim to notice.

A notice describing the plaintiff's place of abode as "of the township of Garafraxa, in the county of Wellington, laborer," without giving the lot or concession, *Held*, sufficient.

To prove the quashing of a conviction on appeal to the Quarter Sessions, it is sufficient to prove an order of that court directing that the conviction shall be quashed, the conviction itself being in evidence, and the connection between it and the order shewn. It is not necessary to make up a formal record, for the Statute Consol. Stat. U. C. ch. 114, enables the Court of Q. S. to dispose of the conviction by order.

[Q. B., T. T., 1866.]

The declaration contained three counts.

1. For assault and false imprisonment

2. That defendant being a J. P., falsely and maliciously, and without reasonable and probable cause, issued a warrant, by virtue of which he caused the plaintiff to be arrested and imprisoned.

3. That defendant being a J. P.; having caused the plaintiff to be brought in custody before him, as mentioned in the last count, did as such justice falsely and maliciously, and without reasonable or probable cause, convict the plaintiff of a charge