

off the mortgage, and this quite irrespective of the frame of the contract between the parties.

When, therefore, lands were conveyed by the plaintiff to the defendant, which were subject to certain mortgages, the defendant was held bound to pay them off, and to protect the plaintiff from liability thereon.

Walter Cassels, Q.C., and A. Skinner, for the plaintiff.

Pepler, Q.C., for the defendant.

STREET, J.] [June 23.
ONTARIO NATURAL GAS CO. v. SMART ET AL.

Municipal corporations—Mineral gas—Municipal Act, s. 565—Indemnity—By-law, form of.

Mineral gas is a "mineral" within s. 565 of the Municipal Act, R.S.O., c. 184.

The lease under said section should be of the right to take minerals, and not of any portion of the highway itself. The lease here was of a portion of the highway, "for the purpose of boring for and taking therefrom oil, gas, or other minerals." The quantity of land was no more than was necessary for the company's purposes, and the rights of the public were fully protected.

Held, that the practical difference in this case was so small as not to constitute a ground for quashing the by-law.

The Council, before passing the by-law, insisted on an indemnity from the gas company against any costs and damages that might be incurred by reason of the passing thereof.

Held, that, under the circumstances, this could not be deemed to be evidence that the by-law was not passed in the public interest.

The plaintiffs, by first sinking a well on their land near the defendants' well, did not thereby acquire the right to restrain the defendants from using the natural reservoir of gas lying under the land.

Robinson, Q.C., and H. S. Osler, for plaintiff.
Aylesworth, Q.C., for defendants other than Walker.

W. H. Blake for defendant Walker.

MACMAHON, J.] [June 23.
REGINA v. CLARKE.

Taverns and shops—Selling liquor without license.

The defendant being present in Court on a charge, which was disposed of, was, without any

fresh summons having been issued against him, arraigned on another charge, namely, of selling liquor without a license, and the information read over to him, to which he pleaded not guilty. Evidence for the prosecution was given, when defendant obtained an enlargement until the next day, and on his not then appearing, was convicted in his absence and fined \$50 and costs, and in default of payment forthwith, imprisonment.

Held, that under the circumstances the issuing of a summons was waived.

Held, also, that the conviction was properly drawn, that distress should not have been awarded as an alternative remedy for non-payment of the fine, for s. 70 of R.S.O., c. 194, under which the conviction was made, gives no authority to award distress.

Jones for the applicant.

Curry, contra.

ROSE, J.] [June 26.

THE TORONTO BELT LINE RAILWAY CO.
v. LAUDER.

Railways and railway companies—Warrant for possession of land.

The application for a warrant for possession of land required by a railway company under s-s. 23 of s. 20 of R.S.O., c. 170, should be made to the County Court judge, and not to a judge of the High Court.

Part I. of R.S.C., c. 109, only applies to railways constructed or to be constructed under the authority of a Dominion Act, and does not apply to a railway company incorporated by a local Act, as the applicants here are by 52 Vict., c. 82 (O.), though held to be under Dominion control as being a railway for the general advantage of Canada.

Edgar, Q.C., for the railway company.

Delamere, Q.C., for the defendant.

ROSE, J.] [June 24.

RE PARKER.

Extradition—Junior judge of County Court—R.S.C., c. 142, s. 5—Justices, proof as to—State officer's depositions taken in absence of accused—Identity of forged note.

The expression, "all judges, etc., of the County Court," contained in s. 5 of the Extradition Act, R.S.C., c. 142, embraces the junior judge of said court.