

J. A. Hutcheson, K.C., for plaintiff.

W. E. Raney, K.C., for defendant.

HON. MR. JUSTICE LENNOX:—It follows upon the conclusions of fact stated at the trial yesterday that the plaintiff is entitled to recover damages against the defendant. I am satisfied that the plaintiff is sincere in saying that he would rather be free of the contract than to receive \$2,000 by way of damages. He is not, however, the best judge upon this question.

There will be judgment for the plaintiff for \$950 damages and the costs of the action and a stay of execution for 30 days.

HON. R. M. MEREDITH, C.J.C.P.

OCTOBER 3RD, 1913.

RE SCHOFIELD AND CITY OF TORONTO.

5 O. W. N. 109.

Criminal Law — Nuisance — Motion for Leave to Prefer an Indictment against a Municipal Corporation—Application to Judge at Assizes—Jurisdiction of Magistrate—Preliminary Inquiry—Absence of Objection to—Provisions of Criminal Code.

MEREDITH, C.J.C.P., *held*, that a Judge should not grant leave to a private prosecutor to prefer an indictment at the assizes against a corporation until the applicant has failed in his efforts to have a preliminary hearing before a magistrate.

Application by Richard Schofield and others, residents of the city of Toronto in the vicinity of Ashbridge's Bay, for leave to prefer an indictment for a nuisance against the corporation of the city of Toronto.

The application was made before HON. R. M. MEREDITH, C.J.C.P., presiding at the Toronto autumn sittings of the Court for the trial of civil and criminal cases.

W. E. Raney, K.C., for the applicants. Sections 221 to 223 of the Criminal Code deal with common nuisances. Section 222 provides that "every one is guilty of an indictable offence and liable to one year's imprisonment," etc. Sections 916 to 920 provide for "Proceedings in Case of Corporations." The only proceeding indicated in these sections is by indictment. The law is well settled that where an offence is indictable, and in respect of it there could not be