and horses which, at the date complained of were employed in hauling coal and gas pipes for the gas company, for which defendant was paid by the hour or day. The defendant also engaged carts and horses which he hired out to haul earth, and which were so being used on the date complained of.

Held, that the defendant came within the terms of the by-law, and was therefore properly convicted thereunder.

W. N. Miller, Q.C., for the defendant.

Mowat for the City of Toronto.

Div'l Ct.] [Dec. 21, 1889.

REGINA *v.* RUNCHY.

Criminal law—Common Pleas Division—Jurisdiction in criminal matters—One or more Judges sitting in absence of others.

The jurisdiction to hear motions for orders in criminal matters vested in the Common Pleas Division of the High Court of Justice for Ontario is the original jurisdiction of the Court of Common Pleas prior to Confederation, and by virtue of s. 5 of C.S.U.C., c. 10, the Court may be holden by any one or more of the Judges thereof in the absence of the others.

On the return of an order *nisi* to quash a conviction, the Court was composed of two of the Judges thereof, the third Judge being absent attending to other pressing judicial work.

Held, that the Court was properly constituted to dispose of the order.

Marsh, Q.C., for the defendant.

Delamere, Q.C., for the Crown.

Div'l Ct.] [Dec. 21, 1889.

DOAN *v.* MICHIGAN CENTRAL RY.

Pleading—Defence of contributory negligence—Not guilty.

In an action against a railway company for damages sustained by the plaintiff, by the death of his father, by reason, as alleged, of the defendant's negligence in omitting to give the necessary warnings of the approach of their train at a railway crossing, the defendants pleaded "not guilty," and referred to the statutes incorporating the company, and to the C.S.C., c. 66, ss. 1 to 83 inclusive, and s. 131.

Held, that the plea was not a compliance with Rule 418; and also, that the defence of contributing negligence could not be set up under it, but must be specially pleaded.

G. T. Blackstock and *Crothers* for the plaintiff.

W. R. Meredith, Q.C., for the defendants.

Div'l Ct.] [Dec. 21, 1889.

REGINA *v.* KING.

Constable—Acting under warrant of commitment—Protection of, when jurisdiction of magistrates over offence, and warrant valid on its face.

A warrant of commitment, issued by two justices of the peace, for non-payment of a fine and costs imposed on J. D., who had been indicted and found guilty of an offence under the Indian Act, directed the constables of the county of B. to take and deliver J. D. to the keeper of the common jail of the county, to be kept there for two months unless the fine and costs imposed, including the costs of conveying to the jail, should be sooner paid.

Held, that the justices having had jurisdiction over the offence, and the warrant being valid on its face, it afforded a complete protection to the constable executing it, notwithstanding that the awarding of the punishment may have been erroneous in directing imprisonment for non-payment of the fine and costs of conveying to jail, as not authorized by the said Act.

V. Mackenzie, Q.C., for the prisoner.

No one appeared for the Crown.

LIPSETT *v.* PERDUE.

Infant—Lease by, for benefit of—Avoidance of—Costs—Order for payment by infant.

An infant cannot, during infancy, avoid a lease made by him, reserving rent for his benefit.

Hartshorn v. *Early*, 19 C.P., 139, and *Stator* v. *Brady*, 14 I.R., C.L.R. 61, 342, followed.

The discretion given by Rule 170, as to costs, authorizes the imposition against the infant of the costs of an action to avoid such lease.

Lash, Q,C., for the plaintiff.

Moss, Q.C., for the defendant.

MACMAHON, J.] [Jan. 2.

WALTON *v.* HENRY.

Injunction—Concealment of fact—Setting aside—Damages—Debt—50 Vict., c. 23, s. 3 (O.)—O.J. Act—Counter-claim.

The defendant having distrained for rent in arrear, the plaintiff claimed that defendant was