

By R. S. O. 1897 ch. 87, sec. 22, it is provided that "no justices of the peace . . . shall adjudicate upon or otherwise act until after judgment in any case prosecuted under the authority of any statute of Ontario, where the initiatory proceedings were taken by or before a police magistrate, except at the general sessions of the peace or in the case of illness or absence or at the request of the police magistrate," &c.

In the present case no request in writing was made to the magistrates who convicted Ackers. The police magistrate did, however, request by telephone the magistrates who heard the case to act, and it may be inferred from the summons and what took place that he so desired them to act. Nor does it appear that the magistrate was ill or absent, unless that be implied from the fact that it does not appear that he took part in the trial and the conviction of the accused.

The first conviction drawn up did not give the name of the accused, shewing who was convicted of the offence. The second corrected this error, and adjudged that the said James Ackers for his said offence forfeit and pay the sum of \$100, to be paid and applied according to law, and also to pay to the said Hugh Walker the sum of \$7.90 for his costs in this behalf, and, if the said several sums are not paid forthwith, then we adjudge the said James Ackers to be imprisoned in the common gaol for the southern part of the county of Hastings, in Belleville, in the said county, and there to be kept for the space of three months, unless the said sums and the costs and charges of conveying the said James Ackers to the said common gaol shall be sooner paid.

These costs are not mentioned in the conviction, but are mentioned in the warrant of commitment. It would appear that the first form of conviction drawn up and signed by the magistrates, called an order for the payment of money, and in default of payment imprisonment, stated the fact that the complaint was made before the police magistrate for the city of Belleville and the southern part of the county of Hastings. This reference to the police magistrate is not made in the other amended convictions which were drawn up. It nowhere appears upon the face of the proceedings that the magistrate acted at the request of the police magistrate or in his absence or owing to his illness. . . .

[Reference to *The Queen v. Lyons*, 2 Can. Crim. Cas. 218; *Rex v. Duerling*, 2 O. L. R. 593; *The Queen v. Inhabitants of the Parish of St. George's, Bloomsbury*, 4 E. & B. 520; *Paley on Summary Convictions*, 8th ed., p. 32; *In re Peerless*, 1 Q. B. 143; and *The Queen v. McKenzie*, 23 N. S. R. 6.]