

17 Vic. cap. 119, sec. 3, making penal the keeping of such.—*Shaw v. Morley*, Law Rep. 3 Exch. 137.

LARCENY.—The prisoner, having paid a florin to the prosecutrix for purchases, asked her afterwards to give him a shilling for change, which he put upon the counter. She put a shilling down, when the prisoner said to her, "You may as well give me the two-shilling piece and take it all." She then put down the florin, and the prisoner took it up. She took up her shilling, and the change for it put down by the prisoner, and was putting them into the drawer, when she saw she had but one shilling of the prisoner's money. But as she was about to speak, the prisoner's confederate drew her attention, and both left the shop. *Held*, that the prisoner was guilty of larceny.—*The Queen v. McKale*, Law Rep. 1 C. C. 125.

The prisoner found a sovereign on a highway; believing it to have been accidentally lost, and with a knowledge that he was doing wrong, he at once determined to keep it, notwithstanding the owner should afterwards become known to him, but not expecting that the owner would. *Held*, on the authority of *Reg. v. Thurborn* (1 Den. C. C. 387; 18 L. J. m.c. 140), that the prisoner was not guilty of larceny.—*The Queen v. Glyde*, Law Rep. 1 C. C. 739.

ONTARIO REPORTS.

QUEEN'S BENCH.

(Reported by C. ROBINSON, Esq., J.C. Reporter to the Court.)

THE QUEEN V. MURRAY.

Conviction—Appeal to Q. S.—Adjournment—Certiorari—Notice.

Under Con. Stat. U. C. ch. 114, the costs of appeal from a conviction, as well as the appeal itself, must be determined at the Sessions appealed to. There is no power to adjourn the question of costs.

Where the application for a *certiorari* to remove a conviction is made by the prosecutor, no notice to the justices is necessary.

[Q. B., M. T., 31 Vic., 1867.]

Osler, counsel for Leonard, the private prosecutor, obtained a rule calling on the chairman and justices of the peace for the county of Huron to show cause why the order of the Court of General Quarter Sessions made in the matter of the appeal herein, holden in the month of June, 1867, and so much of the order of the said Court made in the same matter at the Sessions holden in the month of March, 1867, as assumes to adjourn the hearing of the said appeal or the question of costs until the said June Sessions, should not be quashed, with costs, on the ground that the said court exceeded its jurisdiction in adjourning the matter of the said appeal from the March Sessions until the June Sessions, and that the court had no jurisdiction to adjourn the hearing of the appeal, and adjudicate therein, and award costs at a subsequent hearing.

The rule was drawn up on reading the writ of *certiorari* and return thereto signed by the chairman of the Quarter Sessions and the Clerk of the Peace, and the two orders of the Sessions and other papers returned therewith made in the matter of the appeal.

McMichael showed cause, and objected that it did not appear that notice of the application for the *certiorari* had been served on the justices, citing *Regina v. Peterman*, 23 U. C. R. 516; *Regina v. Ellis*, 25 U. C. R. 324; and he contended that the Sessions had determined the appeal at the March Sessions, the question of costs being a matter which the court might consider at the following sessions.

Osler supported his rule, submitting that notice to the justices was not necessary in the case of the prosecutor applying for a *certiorari*.—*Paley on Convictions*, 357, 358, 365, 368; *Rez v. Farewell*, 1 East. 305; *Rez v. Inhabitants of Bodenham*, Cowp. 78; *Rez v. Berkeley*, 1 Ken. 80; *Rez v. Boulbee*, 4 A. & E. 498; *Regina v. Spencer*, 9 A. & E. 485; and as to the illegality of the rules, he relied on *In re McCumber and Doyle*, 26 U. C. R. 516.

MORRISON, J.—In this case it appeared that *Murray* was convicted, on the 22nd February, 1867, before a justice of the peace, upon the information of Leonard, the applicant, of committing "a spoil by taking away a chisel from Leonard, and refusing to return it when asked therefor," and fined 25c. and \$3 75c. costs: that he appealed from the conviction to the (next) March Sessions: that at such Sessions the appeal was heard, and it was ordered by the court, "that the conviction be quashed, and the question of costs shall remain over until next Sessions, with liberty to file affidavits to prove what occurred before the magistrates as touching the question of costs:" that at the following June Sessions the appeal was again heard, and this order made, "that the appeal be allowed, and the conviction of the appellant by Christopher Crabb, Esq., be quashed, with \$25 costs, to be paid by the respondent to the Clerk of the Peace, &c., within thirty days from the date hereof, to be by him paid over to the appellant, he being the party entitled to the same. Dated 15th June, 1867, and made in open court:" that on the 16th July last, Leonard, the private prosecutor, made application and obtained the *certiorari* removing all the proceedings into this court.

As to the objection of want of notice to the justice of the application for the *certiorari*, it is laid down in *Paley on Convictions*, and clear upon authority, that where the application for the writ is made by the private prosecutor, it issues of course, and without assigning any grounds, nor is any notice, &c., necessary.—*Rez v. Battams*, 1 East. 298, 303. The case of *Reg. v. Peterman*, referred to, was that of a defendant obtaining a *certiorari* with a view of quashing a conviction.

Then as to the merits, this case must be governed by the decision in *McCumber and Doyle* (26 U. C. R. 516).

The words of sec. 1, cap. 114, Con. Stat. U. C., by authority of which the appeal was heard, are, "and such court shall at such Sessions hear and determine the matter of such appeal, and make such order therein, with or without costs to either party, as to the court seems meet."