

Full Court.]

REX v. TOWN OF GLACE BAY.

[March 3.

*Arbitration—Arbitrator being interested as ratepayer—No disqualification—Certiorari.*

By the Acts of 1902, c. 80, the town of Glace Bay was empowered for the purpose of obtaining a water supply to enter upon any lands in the County of Cape Breton, and it was provided that the damages, if any, payable to the owner of such land, should be determined by arbitration. Objection was taken to the award of damages on the ground that C. F., one of the arbitrators appointed under the Act, was not a disinterested party, he having been assessed as a ratepayer in the town.

*Held*, dismissing with costs the appeal from the decision of TOWN-SHEND, J., refusing a writ of certiorari.

1. That if the arbitrators were acting in a judicial capacity, c. 39 R.S. applied, and the fact of the arbitrator being a ratepayer afforded no valid objection to the award made by him.

2. That if the arbitrators were not acting in a judicial capacity a writ of certiorari would not lie to remove into this Court any award made by them.

*H. McInnes, K.C.*, for appellant. *W. B. A. Ritchie, K.C.*, and *T. R. Robertson*, for respondent.

Full Court.]

REX v. COOLEN.

[March 8.

*Criminal Code, ss. 262, 265, 713, 787—Information charging assault causing bodily harm—Conviction for common assault—Held good—Words "indictment" and "count."*

Defendant was tried before the Stipendiary Magistrate of the City of Halifax on an information charging him with committing an assault upon J. F., causing bodily harm. The accused having consented to be tried summarily in accordance with s. 787 of the Code was tried and convicted of a common assault only.

*Held*, 1. Sec. 713 of the Code enabled the magistrate to convict of the common assault under s. 265, notwithstanding that the information was for an indictable offence under s. 262 as the latter section includes common assault.

2. The contention that s. 713 only applies to indictments, "counts" being the only word used, was disposed of by s. 3 sub-sec. (b) of the Code where it is provided that the expressions "indictment" and "count" respectively include information and presentment as well as indictment and also any plea, replication or other pleading and any record.

3. Independently of the statute the conviction was good.

See *Queen v. Oliver*, 30 L.J.M.C. 12, and *The Queen v. Taylor*, L.R. 1 C.C.R. 194.

*Leahy*, for appellant. *O'Hearn*, contra.