

Ont. Rep.]

JONES v. HOLDEN.

[County Court.]

ent plaintiff appeared before the defendant when evidence was offered before the latter and two other magistrates, who also attending the hearing. The defendant was told by his brother magistrates, as well as by the counsel who appeared for the accused, that the charge was one of larceny, and that the magistrate must either dismiss the case, or commit the prisoner. The defendant's reply was that he knew the law (not stating that he differed from this view). His brother magistrates came to the conclusion that the matter was one of disputed ownership, in which a magistrate could have no jurisdiction, and expressed an opinion, and desired to record the same, that the complaint should be dismissed; but the defendant refused to recognize their authority to act, and made an order in the following words: "I find that the sheep and fleece in question belongs to R. Ward, and I authorize him to take the same, and I adjudge the said Jones to pay the costs *in the suit*."

Thereupon Jones, in order to obtain his discharge, permitted the constable to take away the ewe; the defendant himself having already taken charge of the fleece.

Subsequently the defendant drew up and filed with the Clerk of the Peace a document purporting to be a conviction, the crime set out being that he Jones "unlawfully took a certain ewe from R. W.'s flock on the 4th June last, at Pickering, and having heard the matter of the said complaint, I do adjudge that the said ewe and fleece is the property of the said W. and I order and adjudge the said Jones be discharged therefrom upon giving up the said ewe and fleece to the said W. and paying the costs of this suit." The costs were fixed at \$20, and the paper contained the usual distress clause, but the warrant to commit in case of default was struck out.

This alleged conviction had not been quashed. Evidence was adduced to shew that the defendant refused to take down material evidence, when requested to do so by the counsel for the accused and by his brother magistrates.

At the trial before Dartnell, J. J.

G. Y. Smith for the defendant moved for a non-suit.

Farewell contra.

DARTNELL, J.J. (after taking time to consider).

On considering the evidence, I must and do find that the defendant did not act *bona fide* in this matter. The presumption in law is that a magistrate acts in good faith, but I think the arbitrary and high handed proceedings of this defendant, in spite of direct advice and warning

as to his duty, justify me in finding as I do that he acted *mala fide*. I am strengthened in this by the circumstance that he himself is silent and not offered as a witness to rebut the very strong case made by the plaintiff. Having found that the defendant acted *mala fide*, I think under the authority of *Cummins v. Moore*, 37 U.C. Q.B. 130, that a notice of action is not necessary, though a sufficient notice, I have already held, has been proved. But in any case I do not think the paper filed with the Clerk of the Peace can, in any sense, be called a "conviction," although it purports to be one. Suppose the crime had been one of rape, and the magistrate had awarded that the accused should marry the complainant. Would this be a conviction? I think not, and this document is almost as absurd. It is, in effect, on the face of it a decree or adjudication in a civil matter, and the magistrate has usurped the functions of a civil court. It was alleged that the defendant thought he had jurisdiction under sections 117, 118 and 119 of the Larceny Act. But this view, as well as that of his *bona fides*, he has not ventured to substantiate under oath. I cannot believe that any man of ordinary sense could have honestly believed this. Notwithstanding my opinion that the defendant has totally exceeded his jurisdiction and not acted in good faith, I think I must hold under the authority of *Graham v. McArthur*, 25 U. C. Q. B., 478, that the conviction existed *de facto*, however unsustainable, and that it is necessary that such *quasi* conviction should be quashed before this action be brought.

Though I hold the strong opinion that I do as to the high handed, and I may say, outrageous conduct of this defendant, nevertheless I feel I am compelled under the authority of the above case, which was not cited at the trial, to enter a non-suit.

As the plaintiff has the right to move in term for an entry of a verdict in his favor, should I be wrong in the above judgment, I think I should now fix the damages in case such entry should be made. There is no special damage laid in the declaration. It is probable plaintiff might have been entitled thereto if claimed (See *Brewer v. Dew*, 11 M. & W. 625). As it is I find the value of the ewe to be \$9 and of the fleece \$1. So that the damages will be assessed at \$10.

The *Law Times* objects to a solicitor advertising his removal from one office to another; and sneeringly remarks that such intimations are commonly found in American newspapers. Not only common, but so far as we can see, quite unobjectionable. There is such a thing as being too particular.