

provided for by law, no person shall be a Justice of the Peace, or act as such within any District or County of this Province, who has not in his actual possession, to and for his own proper use and benefit, a real estate, &c. (as mentioned in the section); "or who before he takes upon himself to act as a Justice of the Peace, does not take and subscribe the oath following, before some Justice of the Peace for the District or County for which he intends to act, that is to say:—I. A. B. swear," &c., (as set out in the section).

The fourth section requires that a certificate of such oath having been so taken and subscribed as aforesaid, shall be forthwith deposited by the Justice of the Peace who has taken the same at the office of the Clerk of the Peace for the said County, and shall by the said clerk be filed among the records of the sessions. And the sixth section enacts, that when not otherwise provided, any person who acts as Justice of the Peace in and for any District or County in this Province, without having taken and subscribed the aforesaid oath, or without being qualified according to the true intent and meaning of the act, shall for every such offence forfeit the sum of \$100, &c., to be recovered, &c.

We are of opinion that the rule ought to be absolute to enter a verdict for the plaintiff on the first count of the declaration. We are bound by the plain language of the statute, which expressly requires the oath of qualification to be taken before some Justice of the Peace for the County for which the defendant intended to act, which in the present case would have been before one of the Justices of the Peace for the United Counties of Lanark and Renfrew. Instead of which the defendant took the oath before the Clerk of the Peace for the United Counties, who, supposing he had authority to do so, administered it under a writ of *Dedimus Potestatem*.

The rule must be absolute to set aside the nonsuit and enter a verdict on the first count for the plaintiff and \$100 damages, and for defendant on the second and third counts.

COMMON LAW CHAMBERS.

(Reported by ROBT. A. HARRISON, Esq., Barrister-at-law.)

IN RE BRIGHT.

Canadian Foreign Enlistment Act, 28 Vic., cap. 2, sec. 1.—*Sufficiency of warrant of commitment—Statement of offence—Adjudication—Costs.*

Held 1. That a commitment under Stat. 28 Vic., cap. 2, sec. 1, stating the offence as follows, "for that he on &c., at &c., did attempt to procure A. B. to serve in a warlike or military operation in the service of the Government of the United States of America," omitting the words "as an officer, soldier, sailor, &c.," was bad.

Held 2. That a judgment for too little is as bad as a judgment for too much, and so a condemnation to pay \$100 and costs, when the statute creating the offence imposes a penalty of \$200 and costs, is bad.

Held 3. That a commitment, on a judgment for a penalty and costs, not stating in the body of the commitment or a recital in it, the amount of costs, is bad.

Quære, is the jurisdiction of the officers named in 28 Vic., cap. 2, a general or local one?

[Chambers, April 21, 1865.]

This case came before the presiding judge in Chambers, on a return to a writ of *habeas corpus*. The prisoner's presence having been dispensed with at his own request.

The return showed that the prisoner was in custody on four warrants. The first was dated the 28th day of March, 1865, "at Chatham in the county of Kent," and recited that the prisoner was on that day charged before T. M., Esq., "Police Magistrate and one of the Justices of the Peace in and for the said county of Kent," for that he on the 22nd March last, at Chatham, did attempt to procure Thomas Livingood to serve in a warlike or military operation in the service of the Government of the United States of America, for which offence he was on the 28th March convicted "before me the said Police Magistrate, and condemned to pay a penalty of \$100, and in default of payment forthwith to be committed to the Common Gaol of the county, until paid," and "that the prisoner has not paid, &c.," and directed him to be taken and conveyed to the gaol—there to be kept until he should pay the said penalty together with the costs of this "comment," or be thence delivered by due course of law.

The second was dated 30th March, 1865, at Chatham in the county of Kent aforesaid. The magistrate was described as in terms of the first warrant, and the offence was set out in terms precisely similar, except that the name John F. Russell is introduced in place of Thomas Livingood. The adjudication was that the prisoner pay a penalty of \$100 and costs forthwith, and be imprisoned at hard labor in the Common Gaol for a period of six months, and in default of payment of the penalty and costs, forthwith for such further time as the same remain unpaid—and the commitment was at hard labor for a period of six months and for such further time as the said penalty and costs remain unpaid, also the charges of the commitment and conveyance to gaol.

The third was dated the 28th March, 1865, and was like the first, correcting the word "comment" by substituting "commitment," but it ordered the prisoner to be kept "until said fine and costs together with costs of commitment and conveying the said James Bright to the said Common Gaol"—not finishing the sentence but at once proceeding with "Given under my hand &c." In the margin of this warrant is the following memorandum or entry:

Fine	\$100 00
Information and warrant.....	0 50
Hearing case.....	0 50
Return of conviction	1 00
Arrest and attendance by constable	2 00
1 Witness.....	0 50
Commitment	0 25
Conveying to gaol	1 00

\$105 75

The fourth was dated 30th March, 1865, and was like the second, but contained a marginal entry or memorandum like that on the third warrant.

James Paterson, for the crown.

John B. Read, for the prisoner.

DRAPER, C.J.—The statute 28 Vic., ch. 2, sec. 1, enacts that if any person whatever in this Province shall hire, retain, engage or procure, or shall attempt or endeavour to hire, engage or procure any natural born subject of Her Majesty, person or persons whatever, to enlist or to enter or engage to enlist or to serve or to be employed