the above took place, as to the money, but deposes nothing as to the woman's language.

The magistrate writes on the deposition that, plaintiff and defendant being present, the charge being read, and defendant asked what "she had to say in the matter, the defendant acknowledged and still says plaintiff defrauded her, and now in open court and before me, the justice, makes use of blasphemous and grossly insulting language, by saying that both plaintiff and his witness has sworn false and is perjured."

If it were necessary to decide this part of the case, I should say that the papers returned to us on the *certiorari* disclose no offence to warrant the conviction. The whole charge is, in fact, that she said and swore that Atkinson defrauded her by giving her two five-dollar bills instead of two tens.

Nothing whatever appears to show that she swore in any way that can be called a profane oath, or that any person was present except the complainant, or that the charge of defrauding her was made in any loud or violent manner, &c.

If a person can be convicted on such testimony as this, it must of course follow that simply to say to a person on a public road that he had defrauded the speaker in some matter, is *per se* an offence under this by-law.

As to our looking behind the conviction, to see if there were any evidence to warrant it or to give jurisdiction to the magistrate, I refer to *In re Bailey* (3 E. & B. 618) and *Regina* v. *Bolton* (1 Q. B. 72). The weight of the evidence is left to the magistrate, but if there be no evidence whatever, it seems that the conviction cannot be upheld.

The distinction is clearly pointed out by Lord Campbell in the first cited case.

We cannot refrain from expressing our regret that any person's liberty should have been interfered with on such absurd grounds, or that the administration of justice should be entrusted to persons who, however possibly in other respects respectable, are capable of inflicting such serious injury in the abused name of the law.

*Rule absolute to quash conviction.*

## DIVISION COURT.

In the Sixth Division Court of the Co. of Norfolk.

### In The Matter of Appeal of the Long Point Company and the Township of Walsingham.

*Assessment—Statute Labour.*

[Simcoe, July 9, 1870]

This is an appeal by the Long Point Company from their assessment for the year 1870, upon property owned by them in the Township of Walsingham. The Company appealed from the assessment of the Assessors to the Court of Revision, which upheld the assessment as made by the assessors, and the Company appealed from decision of the Court of Revision to me.

Wilson, C. J.,—Certain technical objections were taken to the proceedings which I overruled on the argument, and I now proceed to consider the matter upon its merits.

The matter of appeal may be substantially divided into two heads:

*First*:—Over-assessment in the value of the property.

*Second*:—The liability of the property of the Company as situated, to be assessed for statute labour.

As to the first point, it appears from the evidence, that the property of the Company was assessed for $5,200 in 1868, that being the first year of their ownership In the following year it was raised to $7,000, when a general increase was made in the assessed value of all the property in the Township. This year (1870), it is again sought to be raised to $8,500, although the evidence shows that no general increase has been made in the assessed value of the property in the municipality, but, if anything, rather a decrease. I find that the property is kept as a shooting and trapping preserve, where game and fur are protected; and that it is unremunerative to the proprietors in a pecuniary point of view, and costing them more yearly than the revenue derived from it. It has been held that lands covered with water, are not assessable at all, and if this decision is sound, then there can be no doubt of an over assessment; but as this view of the matter has not been insisted upon, I have not given it much consideration. See *In re Paxton*, 6 L C. G., 12

From the evidence of value and other matters proved I am satisfied that $7,000 is the full assessable value of the said property, and. I therefore reverse the decision of the Court of Revision upon that point, and decide and direct, that the said property shall be assessed for the sum of $7,000, and no more, and that the assessment roll of the township be amended accordingly.

As to the second point, I find that the property of the Company consists of an island composed of land and marshes, the nearest part of which is three or four miles, and the farthest part twenty-five miles from the road division in which the council have placed it. I find that no roads built on the main land would be of any service, value or benefit to the property of the Company. It does not, therefore, seem reasonable or just that the property should be laid under a burthen which will under no circumstances produce a benefit to them. And upon examining the Assessment Act and the Municipal Institutions Act, while I find that power is given to municipal councils to divide the municipality into road divisions, I also find, "that every resident shall have the right to perform his whole statute labor in the statute labor division in which his residence is situate, unless otherwise ordered by the municipal council, (see sec. 88); and also "in all cases where the statute labor of a non-resident is paid in money, the municipal council shall order the same to be expended in the statute labor division where the property is situate, or where the said statute labor tax is levied;" (see sec. 88). It seems to me, therefore, that the Council, though they have power to regulate and make the road divisions, must exercise such power in a reasonable manner, and that it would be unjust and absurd to contend that they have the power to order a man to come twenty-five miles to perform his statute labor, or that they can so make road divisions that property can be taxed for roads which cannot by any possibility be of any service, value or benefit to the property. Such contention is certainly unreasonable, and it seems to me totally at variance with the spirit and intention of the Assessment Act.