

"Attendu que cette adresse a été approuvée  
 "par l'honorable Juge Wurtele, et qu'il est à  
 "propos d'accéder à la demande susdite ;  
 "Il est ordonné que les dispositions de la  
 "36e section du dit acte, 46 Vict., ch. 16,  
 "soient appliquées au district d'Ottawa."

GUSTAVE GRENIER,  
 Dép. Greffier Conseil Exécutif.

CIRCUIT COURT.

HULL, (Dist. of Ottawa,) Dec. 9, 1886.

Before WURTELE, J.

Ex parte MOFFET, Petitioner, and PAGÉ, Re-  
 spondent, & CHAMPAGNE, J. P.

*Justice of the Peace—Trial—Summary  
 Conviction.*

**HELD:**—*Where a person was charged, under Sect. 59 of the Act respecting malicious injuries to property (32-33 Vict. ch. 22), with having committed an indictable misdemeanor, and the justice of the peace, after the preliminary inquiry had been conducted as in the case of an indictable offence, convicted the defendant, without trial, of an offence punishable on summary conviction, that the conviction was bad.*

See 9 Leg. News, p. 403, for judgment in the same case, granting a writ of certiorari.

**PER CURIAM:**—The petitioner complains that he has been aggrieved by a conviction rendered against him, under section 60 of the act respecting malicious injuries to property (32-33 Vict., ch. 22), condemning him to pay a penalty of \$10, and the further sum of \$15 to the respondent as a compensation for the damage done by him to personal property belonging to the respondent; and the proceedings had before the justice of the peace have been brought before me by means of a writ of certiorari.

The charge made against the petitioner was of having committed an indictable misdemeanor; he was accused, under section 59 of the Act respecting malicious injuries to property, of having committed damage, injury or spoil to certain personal property belonging to the respondent to an amount

exceeding \$20.00. Under this charge, the petitioner was apprehended and brought before the justice of the peace, and the inquiry ordained for the case of indictable offences was made. It appears, by the record, that the witnesses produced by the prosecutor were examined and cross-examined; but it also appears that the petitioner was not admitted to make a defence to the complaint made against him nor to produce and examine witnesses on his behalf.

After the inquiry, which was made under the provisions of the Act concerning the duties of justices of the peace with respect to indictable offences, the justice of the peace neither committed the petitioner for trial nor discharged him, as he should have done in pursuance of that Act; but he convicted the petitioner of an offence punishable on summary conviction, as if he had had a trial.

It is a fundamental rule, known to all, that no person can be condemned otherwise than according to the law of the land; or, in other words, without due process of law.

The law of the land requires that a person accused of any offence should be heard before he is condemned, and that judgment should only be rendered after trial; and due process of law implies regular judicial proceedings, which require a public charge with regular allegations, an opportunity to answer and a judicial trial.

The petitioner was charged with an indictable offence, and, after the preliminary inquiry, he should have been either discharged or committed for trial, at which he would have full opportunity to answer and defend himself. If he had been accused of an offence punishable on summary conviction, he would have had the right to make full answer and defence to the complaint, and he would have had a regular judicial trial.

In the present case, the petitioner has been condemned without having been heard; he has been condemned without due process of law, and a fundamental principle of the law of the land has been violated.

I find that the proceedings contain gross irregularities and that, as the prosecution has not been conducted according to the prescribed forms and solemnities for ascer-