

if the purchase money realized should be sufficient to satisfy the claim of the plaintiff for principal, interests and costs, the forty acres need not be sold at all, but in the event of their being a deficiency, such forty acres, or a competent part thereof, might be sold to satisfy such deficiency.

*Barker v. Eccles*, 17 Gr. 277, 281, Fisher on mortgages, 5th ed., s. 1350, and *In re Jones, Farrington v. Forrester*, (1893) 2 Ch. 461, referred to.

*W. H. Blake* for the defendants John Connolly and Catherine Anastasia Hanley. *DuVernet*, for the defendant, Francis Connolly.

Ferguson, J.]

REGINA v. NIXON.

[Sept. 25.]

*Criminal law—Procedure—Conviction for being an inmate of a house of ill-fame—Appeal to Quarter Sessions.*

Motion for a mandamus requiring the police magistrate for the city of Toronto, to admit to bail the defendant, Mary Nixon, now serving a sentence of sixty days in gaol under a conviction by the said magistrate for being an inmate of a house of ill-fame, as required by s. 880 of the Criminal Code, 1892, pending her appeal against her conviction to the Court of General Sessions of the Peace for the County of York.

The magistrate was of the opinion that an appeal was not open to the defendant, and the only question upon the motion was whether or not the right of appeal existed. The defendant contended that the prosecution and conviction took place under the provisions of ss. 207 and 208 of the Code, which are in part XV. commonly spoken of as the Vagrancy Act.

*Held*, that the prosecution was under the provisions of s. 783, and the conviction under s. 788, which are in part LV. of the Code. In such a case as this, s. 784 provides that the jurisdiction of the magistrate is absolute and does not depend upon the consent of the person charged to be tried by the magistrate, and that such person shall not be asked whether he or she consents to be so tried.

The right of appeal is given by s. 879, which as well as the sections following it, which point out the manner of conducting the appeal, is in part LVIII. Section 808, which is in part LV., provides that the provisions of part LVIII. shall not apply to any proceedings under part LV.

By 58 & 59 Vict., c. 40, s. 782 of the Code, which shews what the expression "magistrate" in part LV. means and includes, is amended by adding a sub-section providing that when the defendant is charged with any of the offences mentioned in paragraphs (a) and (f) of s. 783—(f) being the one defining the charge in this case—any two justices of the peace sitting together be added to the list of persons falling within the meaning of the expression "magistrate" as used in part LV.; and the amendment also provides that when any offence is tried by virtue of the sub-paragraph an appeal shall be from the conviction in the same manner as from summary convictions under part LVIII. This affords an indication that