

well be extended if it were necessary, and if an order could be made in this Court.

But there should be no need of any appeal or motion in either Division of this Court. The Division Court Judge would, doubtless, upon having his attention called to the fact that the Division Court has jurisdiction, and that the ruling to the contrary has been overruled, try the action, if no right or title to land comes in question in it; and, if it do, will have due regard to the provisions of sec. 69 of the Division Courts Act, R.S.O. 1914, ch. 63.

It will be time enough to make this motion after the Division Court Judge has again refused to try the case—which seems improbable. And, should it be necessary again to make such a motion as this, it had better be made where there is power to grant it—in the High Court Division.

No order can be made here except upon an appeal.

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SECOND DIVISIONAL COURT.

JUNE 22ND, 1917.

\*REX v. JACKSON.

*Appeal—Order of Judge in Chambers Refusing to Discharge Prisoner on Habeas Corpus—Imprisonment under Warrant Founded on Police Magistrate's Conviction—Objections to Jurisdiction—Previous Refusal of Motion to Quash Conviction—Order not Appealed against—Binding Effect of Decision—Vagrancy—Objections to Conviction.*

Appeal by the defendant from the order of MIDDLETON, J., ante 191, refusing a motion, made on the return of a habeas corpus, for the discharge of the defendant from custody under a warrant issued pursuant to a police magistrate's conviction for vagrancy.

A motion to quash the conviction had been dismissed by FALCONBRIDGE, C.J.K.B. (ante 77); a motion for leave to appeal from the order dismissing that motion was refused by MULOCK, C.J.Ex. (ante 161), on the ground that no appeal lay. The Chief Justice of the Exchequer, however, did not agree with the view expressed by the Chief Justice of the King's Bench as to the interpretation of sec. 238(i) of the Criminal Code; and MIDDLETON, J., held that he was bound by the decision of the Chief Justice of the King's Bench.