character and the purposes for which they were required, the question was asked whether defendants would warrant them, and the answer was made that they would.

Held, that these words would only mean that the engine and boiler were good and sound, and reasonably fit for the purposes of an engine and boiler of the character and power stated, and not that defendants would warrant them to operate a grist mill and a shingle mill that they had never seen.

There was evidence that defendants agreed to let plaintiffs have the engine and boiler for a smaller amount than that at first demanded, and to give a written guarantee for the term of one year.

Held, that in a case where there was a conflict of evidence it was improbable that one undertaking collateral to the contract (the least important) would be reduced to writing and the other not, and that the giving of the written guarantee was a fact of the highest importance.

Held, also, that if the statements relied on by plaintiffs did not amount to a warranty they must be regarded as mere expression of opinion.

R. L. Borden, Q.C., and *H. A. Lovett*, for appellants. *F. A. Laurence*, Q.C., for respondents.

Full Court.] QUEEN *v.* SARAH SMITH. [Jan. 14.

Conviction for using profane language in street quashed because words complained of were not set out—Costs.

Defendant was convicted by the stipendary magistrate of the City of Halifax for that she "in said City of Halifax, . . . being in one of the public streets of the said City of Halifax, did openly use profane language." The words complained of and upon which the conviction was founded were not set out in the summons, information or conviction. The conviction having been brought up by writ of certiorari.

Held, following *Queen* v. *Bradlaugh*, 3 Q.B.D. 607, and other cases, that the conviction was bad and must be quashed, on the ground stated.

The motion for the certiorari was opposed by counsel acting for the stipendiary magistrate of the city, and the informant, one of the police of the city. The motion having been allowed with costs to be paid by the stipendiary magistrate and the informant, on appeal from that part of the order which awarded costs.

Held, dismissing the appeal, that as the stipendiary and the informant could have avoided all liability by not opposing the motion for the writ, and as the question of costs was in the discretion of the judge to whom the application was made, who in this case had followed the usual course by directing them to be paid by the unsuccessful party, there was no reason for reviewing his discretion.

Per MEAGHER, J.—The costs should be confined to the costs occasioned by opposing the motion at Chambers.

W. F. MacCoy, Q.C., for the Crown. *J. J. Power*, for defendant.