

On July 4th, 1899, the chairman gave judgment "appeal in this case dismissed with costs to be taxed by the clerk of the peace within 5 days." Taxation of costs began July 8th and was closed July 13th; at the next sittings December 12th, an order was made for a warrant of distress. An order nisi was obtained calling upon the chairman, the clerk of the peace and the informant to shew cause why any and every order issued and direction made by the chairman in connection with the matter of the appeal should not be quashed.

No formal order had been drawn up and made in pursuance of the minute. The Court (Armour, C.J., and Street, J.), held that a formal order should have been drawn up "in compliance with the Criminal Code secs. 880e, 897, and which should have contained the amount of the costs awarded." And accordingly the certificate of the clerk of the amount of the costs and that they had not been paid, and the order of the sessions made in December were quashed: but the Court proceeded to say that while the costs under sec. 884 (now sec. 755), would have to be taxed and included in the order of the Court during the sittings of the Court unless taxed out of sessions by consent, there is no such restriction of the power of the Court under sec. 880 (e), (f) now secs. 750, 751, to the same sittings of the Court for which notice of appeal has been given. The Court of General Sessions being a continuing Court, there is "no reason why at the next sittings of the Court of General Sessions of the Peace for the county of Kent, the formal order should not be drawn up and made in pursuance of the said minute and the costs included therein *nunc pro tunc* if necessary," p. 704.

It will be seen that the decision of Mr. Justice Rose in *R. v. McIntosh* (1897), 28 O. R. 603, is upon the same statute, as that learned Judge considered that the provisions of secs. 879, 880, must be read into the act under which the prosecution was brought: see p. 606 *ad init.* He then says: "it seems clear that the costs to be awarded are to be such as appear right. Such sum might be awarded in gross. The discretion of the Court fixes the amount. No reference is made to any tariff and as none is provided one may be adopted by the Judge to aid his discretion . . . the Judge fixes the amount which seems to him to be reasonable.