

Quare, whether bail could be granted in the case of a commitment in execution.

Tremear, for the prisoner. *Dymond*, K.C., for the Crown.

Idington, J.]

KING v. WYNN.

[August 14.

Habeas corpus—Crim. Code s. 785 & 786—Election to be tried by police magistrate—Option of trial by jury—Necessity of informing prisoner of date of earliest sittings—Further detention—Crim. Code s. 752.

The prisoner was charged before the Police Magistrate for the City of Hamilton with theft, and, on coming before him, and being asked, how and where he wished to be tried, replied: "Now, before your Worship."

He was not informed of his right of being tried by a jury or told when the sittings of the Court, at which he might earliest be tried would occur. On objection taken by counsel after the trial, but on the day to which it had been adjourned for giving sentence, that his consent had not been validly obtained, the Magistrate declined to withhold sentence, and he was ordered to be imprisoned for two months.

On application by way of habeas corpus for his discharge from custody, it was held, (1) following *Rex v. Walsh & Lamont*, 7 O.L.R., that a mistrial had taken place; (2) that further detention under s. 752 of the Code was proper, but that prisoner should, within 48 hours of the service of the order, be brought before the Police Magistrate in order that he should be committed for trial for the offence at the next court of competent jurisdiction, and, in the meantime, be admitted to bail, his own bail, in the opinion of the Judge, to suffice.

Farmer, for the prisoner. *Dymond*, K.C., for the Crown.

Province of Manitoba.

KING'S BENCH.

Richards, J.]

CURLE v. BRANDON.

[June 2.

Municipal corporation—Non-repair of bridge—Use of bridge by heavy traction engine—Notice of action—Meaning of "happening of the alleged negligence"—Misfeasance in not stopping up holes in timbers—Expectation of pecuniary benefit from continuance of life.

Plaintiff was the widow and administratrix of William Curle, who was killed in consequence of a traction engine, on which he was riding, breaking through the approach to the bridge over the Assiniboine River, in the defendant municipality. She brought her action on behalf of herself, a son old enough to earn his own living, a grandson at an age to require educa-