MAGISTRATES, MUNICIPAL, INSOLVENCY, & SCHOOL LAW

NOTES OF NEW DECISIONS AND LEADING CASES.

TEMPERANCE ACT OF 1864—28 VIC., CH. 22—EFFECT OF—ACTION AGAINST J. P.—QUASHING CONVICTION—C. S. U. C. CH. 126, SECS. 3, 17—PROOF OF CONVICTION.—"The Temperance Act of 1864," and the 28 Vic., ch. 22, for the punishment of persons selling liquor without license, are intended to stand together. The first is limited to municipalities where a Temperance By-law is in force, and suspends the second there during the continuance of such by-law, leaving it to apply elsewhere in U. C.

Therefore where defendant sitting alone as a magistrate convicted the plaintiff for selling liquor without a license in a township where such a by-law was in operation, *Held*, that he was liable in trespass, for the Temperance Act gives jurisdiction only to two justices.

Held, also, however, that the conviction, though void, must be quashed, under Consol. Stat. U. C. ch. 126, sec. 3, before such action would lie.

The warrant of commitment directed the plaintiff to be kept at hard labor which the Temperance Act does not authorize. The turnkey swore that the plaintiff "did no hard work in gaol." *Held*, not sufficient to negative that he was put to some compulsory work, so as to bring defendant within sec. 17 of the last mentioned act.

Semble, that a conviction returned under the statute of the Quarter Sessions and filed by the Clerk of the Peace, becomes a record of the court, and may be proved by a certified copy.—*Graham* v. *McArthur*, 25 U. C. Q. B. 478.

ACTION AGAINST J. P.—NOTICE OF ACTION—PROOF OF QUASHING CONVICTION.—Where a magistrate acts clearly in excess of or without jurisdiction, he is nevertheless entitled to notice of action, unless the *bona fides* of his conduct be disproved, but the plaintiff may require that question to be left to the jury, and if they find that he did not honestly believe he was acting as a magistrate he has no claim to notice.

A notice describing the plaintiff's place of abode as "of the township of Garrafraxa, in the county of Wellington, labourer," without giving the lot and concession, *held*, sufficient.

To prove the quashing of a conviction on appeal to the Quarter Sessions, it is sufficient to prove an order of that court directing that the conviction shall be quashed, the conviction itself being in evidence, and the connection between it and the other shewn. It is not necessary to make up a formal record, for the statute Consol. Stat U. C. ch. 114, enables the Court of Q. S. to dispose of the conviction by order.—*Neill* v. *McMillan*, 25 U. C. Q. B. 485.

RIGHT OF A MAGISTRATE TO ARREST ON VIEW.—B. entered a church during service, and, though offered a seat by the churchwarden, went into another seat allocated to a parishioner, and refused to leave it, whereupon C., who was a justice of the peace, and in the church at the time, took him in custody and kept him in custody until information could be sworn against him by the clergyman and churchwardens, and on B.'s failing to provide sureties committed him to gaol. In an action by B. for assault and false imprisonment, to which defendant pleaded the facts, it was held on demurrer that they did not justify the assault or even the false imprisonment, inasmuch as the defendant had not brought the charge within the provisions of the Act 6 Geo. 1, c. 5. It was left undecided and in doubt whether a magistrate has a right to arrest a person for a misdemeanour committed in his view, where there has been no breach of the peace actual or apprehended.—*King* v. *Poe*, 15 L. T. Rep. N.S. 37, Ir. Ex.

SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

NOTES OF NEW DECISIONS AND LEADING CASES.

PROMISSORY NOTE — MISTAKE IN AMOUNT — EQUITABLE PLEA.—Declaration by administratrix of A., on a promissory note for $140, made by defendant payable to A. or bearer. *Plea*, that at the time of making the note defendant owed A. $150, and said note was by mistake made for $140: that to correct the error defendant immediately made a second note for $150 at A's request, who received it in full satisfaction of defendant's indebtedness and of the note sued on, which was inadvertently left by defendant with A., and after his death came into the plaintiff's hands: that the plaintiff also became possessed of the note for $150, which she transferred to one F., who brought an action on it against defendant in the Division Court, which is still pending.

Held, on demurrer (reversing the judgment of the County Court), a good plea, notwithstanding that the $150 note was not averred to be negotiable.—*McHenry and Wife* v. *Crysdale*, 25 U.C. Q.B. 460.

ADMINISTRATION BOND — SURROGATE COURTS ACT—C. S. U. C. CH. 16.—The Surrogate Courts