

Held, that the plaintiff had not held by that, adverse to possession as enabled him to claim that his possession had ripened into a title.

Keffer v. Keffer, 27 C.P., 257, distinguished.

Fullerton for the plaintiff.

G. H. Watson for the defendant.

Divl Ct.]

[Nov. 28, 1889.

REGINA v. FERRIS.

Canada Temperance Act—Conviction—Costs of conveying to jail.

A conviction for a breach of the second part of the Canada Temperance Act imposed a fine of \$100, and directed distress on non-payment of the fine, and in default of sufficient distress, imprisonment in the common jail for two months, unless the fine and costs, including the costs of commitment and conveying to jail, were sooner paid.

Held, there was no power under the Act to include the costs of commitment and conveying to jail, and the conviction was therefore bad and must be quashed. The reasoning in *Regina v. Tucker*, 16 O.R., 127, and *Regina v. Good*, 17 O.R., 725, followed.

V. Mackenzie, Q.C., for defendant.

T. D. Delamere for the Crown.

Divl Ct.)

[Dec. 12, 1889.

REGINA v. FREEMAN.

Criminal law—Selling property by lot or chance—R.S.C., c. 159, s. 2—Conviction, form of—R.S.C., c. 178, s. 87.

S. 2, of R.S.C., c. 159, prohibits the sale of "any lot, card, or ticket, or other means or device for selling or otherwise disposing of any property, real or personal, by lots, tickets, or any mode of chance whatsoever."

The complainant went to the defendant's place of business, and having been told by defendant that on certain spaces on two shelves there were cans of tea containing a gold watch, a diamond ring, \$20 in money, he paid \$1, and received a can of tea, which, containing an article of small value, he handed the can back, paid an additional fifty cents, and received another can, which also contained an article of small value; he handed this can back also, paid another fifty cents, and received another can, which also contained an article of small value. He then refused to pay any more money, and went away

taking the third can and the article in it with him. On a complaint, laid by him before the police magistrate, the defendant was convicted in that he unlawfully did sell certain packages of tea, being the means of disposing of a gold watch, a diamond ring, \$20 in money, by mode of chance against the form of the statute, etc.

Held, that the defendant came within the terms of said section 2, so as to be liable to conviction thereunder; and that it was unnecessary to consider the form of the conviction, for under s. 87 of R.S.C., c. 178, no conviction is to be invalid for any irregularity, informality, or insufficiency therein, so long as the Court or Judge is satisfied, as they were here, that an offence of the nature described has been committed, over which the justice had jurisdiction, and that the punishment is not in excess of that which can be legally imposed.

Lount, Q.C., and *Bigelow* for the defendant.

G. W. Badgerow and *Curry* for the Crown.

Divl Ct.]

[Dec. 21, 1889.

PAYNE v. MARSHALL.

Gift inter vivos—Sufficiency of.

The defendant, having in her possession a large sum of money which her husband had given her, went with him to the bank to deposit it, and was about to do so when, on a question arising as to the power of withdrawing it in case of the wife's illness, the money, at the bank agent's suggestion, was deposited in both their names, subject to the withdrawal by either of them; and it remained on deposit uninterfered with by the husband at the time of his death, which occurred some months after.

Held, that there was a good gift *inter vivos* to the wife.

G. T. Blackstock for the plaintiff.

Ball, Q.C., for the defendant.

Divl Ct.]

[Dec. 21, 1889.

REGINA v. BOYD.

Justice of the Peace—Conviction—Carts used for hire to be licensed under city by-law.

The defendant was convicted for breach of a by-law, passed under s. 436 of R.S.O., c. 184, which provided that no person should, after the passing thereof, without a license therefor, "keep or use for hire any carriage, truck, cart," etc. The defendant was the owner of wagons