

district, on the 7th day of December, A.D. 1910, was drunk and disorderly by destroying property belonging to E. Nadon, valued at \$75." For that alleged offence the defendant was adjudged to forfeit and pay the sum of \$80, to be paid and applied according to law, and also to pay the complainant (not named in the conviction) \$4.70 for his costs.

J. B. Mackenzie, for the defendant.

J. R. Cartwright, K.C., for the Crown.

BRITTON, J.:—Fifteen objections, formidable and otherwise, were taken in the notice of motion to quash.

I dispose of the matter upon one objection, viz., that the Police Magistrate, in any possible view of the case, as presented by the evidence, and to whatever offence that evidence may be applied, entirely exceeded his jurisdiction.

If the magistrate proceeded under sec. 539 of the Criminal Code, there was no evidence of the value of the window broken being \$75, and, even if there had been, the penalty, on summary conviction, is only \$20, as the maximum, and a further sum, not exceeding \$20, as reasonable compensation for the damage. Here the amount is fixed at \$80, exclusive of costs.

If the magistrate proceeded under sec. 238 of the Code, the vagrancy clause, then, on summary conviction, the fine could not exceed \$50: sec. 239. Here the fine imposed was \$80. There is no provision in sec. 238 or sec. 239 for compensation for breaking windows. Breaking windows is one of the things constituting a person a vagrant: see sub-sec. (h) of sec. 238.

This is not a case for amendment—even if the power to amend is wide enough to allow a valid conviction to be made.

The conviction will be quashed. There will be no order as to costs.

DIVISIONAL COURT.

JANUARY 27TH, 1911.

McLACHLAN v. SCHLIEVERT.

Way—Private Way—Easement—Prescription—User—Evidence—Trespass.

Appeal by the plaintiffs from a judgment of the Judge of the County Court of Renfrew, adjudging that the plaintiffs should recover \$1 damages without costs for trespasses other than the use of a right of way over reserve L., in the town of Arnprior,