that the vessel, being a British ship, was seized for wages due to the crew, and sold at Detroit, in the United States, solely through defendant's default: that by the law of the United States the wages formed a lien prior to the mortgage, and the plaintiff, wholly to protect himself, and not to gain any advantage over defendant, became the purchaser: that he offered and was always willing to reconvey and deliver her to defendants on being paid the mortgage money and the sum paid by him at such sale, which defendant refused to pay: that the plaintiff, having possession of the vessel, insured her, and on her loss by the perils of the sea received the insurance money, which the plaintiff is and always has been ready to apply on the purchase money.

Held, on demurrer, affirming the judgment of Gwynne, J., a good replication, for that the plaintiff, under the circumstances stated, was not precluded from recovering on the covenant.

Ferguson, Q.C., for plaintiff.

H. J. Scott, for defendant.

Regina v. Cooper.

Indictment for obstructing highway—Costs—5-6 W. & M. cap. 11—Fine.

A township municipality prosecuting an indictment for obstructing a highway in the township, which indictment had been removed on defendant's application into this Court, and the defendant convicted thereon: *Held*, to be "the party aggrieved" within the 5-6 W. & M. cap. 11, sec. 3, and the defendant, having to pay their costs and his own, amounting to over $400, was fined only $1.

Badgerow for Crown.

No one appeared for defendant.

[Jan. 2, 1877.

Hallett v. Wilmot and Brown.

Action against Magistrates—Pleading—Damages.

A count alleging that defendants were justices of the peace, &c., and assuming to act as such justices, but without any jurisdiction or authority in that behalf, caused a distress warrant to be issued against the plaintiff's goods for $56, which they had adjudged the plaintiff to pay under and by virtue of a certain conviction made by them without any jurisdiction, and caused the plaintiff's goods to be sold thereunder, which conviction was afterwards duly quashed on application of the plaintiff to this Court, whereby the plaintiff lost the use and value of his goods, and was put to costs in getting the conviction quashed:

Held, a count in trespass; and that the plaintiff was properly non-suited, the cause of action being the seizure of the plaintiff's goods under three warrants, given upon conviction of the plaintiff, for alleged offences under the Act relating to the sale of spirituous liquors, two only of which had been quashed, and a conviction for assault; and therefore an act done by defendants in the execution of their duty, as justices, with respect to matters within their jurisdiction.

Quære, if the plaintiff had been entitled to succeed in trespass, whether he could have recovered the costs of quashing the convictions as damages.

H. Cameron, Q.C., for plaintiff.

Armour, Q.C., for defendants.

Beltz v. Molson's Bank.

Cheque—Alterations in date—Payment by Bank—Negligence.

The plaintiff, a merchant and customer of defendants' bank, having a note payable there on the 28th January, 1873, made a cheque payable to himself or bearer, and left it with defendants to meet the note. The cheque however was not used for that purpose nor returned to the plaintiff, but the note was paid by defendants charging it to the plaintiff's account. The cheque was afterwards, on the 31st January, 1874, presented to the defendants by some one unknown, the year having been changed from 1873 to 1874, and it was paid by defendants without noticing the alteration, and charged to the plaintiff's account. How it got out of defendants' bank was not ascertained.

Held, that the alteration avoided the cheque that defendants therefore were not warranted in paying it; and that the plaintiff was entitled to recover back the money.

Quære, whether if the check had not been void, the defendants on the ground of negligence, would in the facts more fully stated in the case, have been liable to the plaintiff for paying it.

Per Wilson, J., the cheque must be considered to have been paid when the note for which it was given, was handed over by defendants to plaintiff, and on that ground defendants could not have been made liable upon it.

Robinson, Q.C., and *Rock*, Q.C., for plaintiff.

Magee for defendants.