

WEEKLY COURT.

RE DENISON, REX v. CASE.

Mandamus—Police Magistrate—Sentence for Criminal Offence—Personation of Voter—Referendum—Judicial Discretion—Right of Appeal.

Motion by E. J. Ritchie (prosecutor) for a mandamus to compel the police magistrate for the city of Toronto to impose upon Adam S. Case the sentence prescribed by sec. 167 of the Ontario Election Act. On 4th December, 1902, Ritchie was deputy returning officer at polling sub-division No. 45 in ward 6 of the riding of West Toronto, in connection with the Referendum vote, that is to say, the vote taken on the Ontario Liquor Act, 1902. Adam S. Case appeared at that poll and told the poll clerk his name was James Brophy of 142 Dowling Avenue, Toronto. Case refused to take the oath, and was arrested on the warrant of the deputy returning officer for personation. On the 26th December Case was convicted by the police magistrate and fined \$50 and costs or six months in gaol at hard labour. The prosecutor's contention was that the magistrate should have imposed the penalty of \$400 and imprisonment for one year. There was no suggestion of bad faith or improper motive on the part of the magistrate.

A. Mills and W. E. Raney, for the prosecutor.

J. Haverson, K.C., and T. C. Robinette, K.C., for defendant.

J. W. Curry, K.C., for the magistrate.

BRITTON, J., held that if the magistrate had any discretion as to the sentence, it was a judicial discretion, and mandamus should not be granted. Passing sentence by the Court upon an offender properly convicted is judicial, even where there is only a definite and particular penalty prescribed. Short on Informations, pp. 250, 263, Regina v. Eastern Counties R. W. Co., 10 A. & E. 547, Rex v. Hewes, 3 A. & E. 731, High on Extraordinary Legal Remedies, 3rd ed., sec. 148, Regina v. Justices of Middlesex, 9 A. & E. 540, referred to. This is virtually an appeal. The magistrate has not asked for the opinion of the Court; the Crown is not moving in the matter; the accused is not asking to quash the conviction. Whitehead v. The Queen, 7 Q. B. 582, distinguished. It need not occasion surprise if the police magistrate found some difficulty in dealing with the law. He considered the