

HIGH COURT DIVISION.

MIDDLETON, J., IN CHAMBERS.

FEBRUARY 17TH, 1913.

REX v. LAPHAM.

Criminal Law—Extortion—Accusing or Threatening to Accuse of Crime—Criminal Code, sec. 454—Constable Armed with Warrant to Arrest—Magistrate's Conviction—Motion to Quash..

Motion by the defendant, on the return of a habeas corpus and a certiorari in aid, to quash his conviction and for his discharge.

J. P. MacGregor, for the defendant.

E. Bayly, K.C., for the Crown.

MIDDLETON, J.:—The defendant was found guilty of an offence against sec. 454 of the Criminal Code, in extorting \$45 from one Susan McCoppin, by accusing and threatening to accuse one William McCoppin, her husband, of stealing a fox terrier. The defendant, a county constable of Simcoe county, had placed in his hands a warrant for the arrest of McCoppin on the charge of stealing the dog in question from one Hastings. He also received from Hastings written authority to settle with McCoppin. Armed with these documents, he saw Mrs. McCoppin and extorted \$45—said to be \$35, the value of the dog, and \$10 for expenses.

His counsel argues, among other things, that what was done was only a threat to execute the warrant in his hands, and not an accusation of the offence. This question would be difficult if the facts required its determination. It may be that a constable, armed with a warrant, who extorts money from any person by the mere threat to arrest upon a warrant in his possession, for an offence of which the informant accuses that person, is not within the statute. If so, the statute should be amended so as to make it plain that no peace officer can use his office and his duty to arrest under process, as a means of extortion.

In this case the facts quite warrant the finding that the constable did accuse and threaten to accuse McCoppin of the theft.

Notwithstanding Mr. MacGregor's strong plea based upon