

peached is charged to be based upon fraud. *Williams v. Quebrada Railway, Land and Copper Co.* (1895) 2 Ch. 751, followed.

Where the action was by the mortgagor to set aside as fraudulent a sale under the power in the mortgage and for redemption,

Held, that an admission made by one of the defendants, though sufficient to entitle the plaintiff to redeem, not being of efficacy against some of the other defendants, did not remove the issue of fraud from the record so as to enable the defendant making the admission to escape discovery.

F. A. Anglin, for plaintiff. *W. M. Douglas*, K.C., for defendant Roberts.

CRIMINAL CASES.

ANON.

Criminal Code, s. 785, et seq.—Summary trial before Police Magistrate—Trial for lesser offence after acquittal on greater.

Upon an information under s. 269 of the Criminal Code for carnally knowing a girl under fourteen years, where the accused consents to be tried summarily by the Police Magistrate under s. 785, the magistrate has power under s. 713 to convict of any offence included in that for which the information is laid. The accused having been acquitted by the Police Magistrate, of the charge under s. 269,

Held, that the magistrate had no power to try the accused under a new information under s. 259, charging indecent assault on the same facts, as he might have been convicted of this offence under the first information.

Held, also, that the effect of the certificate of dismissal which the magistrate must deliver to the accused in case of acquittal under s. 797, is to release the accused from all further criminal proceedings on the same state of facts.

[TORONTO, Feb. 13.—MACMAHON, J.]

This was a case submitted by consent of the Police Magistrate, and of counsel for the Crown and for the accused, for the opinion of Mr. Justice MACMAHON, and came on to be argued on the 11th of February, 1901.

J. W. Curry, K.C., for the Crown. *E. F. B. Johnston*, K.C., for the accused.

The facts sufficiently appear in the judgment of

MACMAHON, J. :—

The accused was charged before the Police Magistrate of Toronto under s. 269 of the Code with having carnal knowledge of a girl under the age of fourteen years. He consented to be tried summarily under s. 785, and was so tried and acquitted of the charge. After his acquittal an information was laid against him under s. 259 of the Code, with having on the same occasion indecently assaulted the same female who was the prosecutrix on the charge of having carnal knowledge of her.

Under s. 713, "Every count shall be deemed divisible, and if the commission of the offence charged as described in the enactment creating the offence or as charged in the count, includes the commission of any other offence the person accused may be convicted of any offence so included which is proved, although the whole offence charged is not proved; or he