

upon the condition of the plaintiff having fully executed the contract to the satisfaction of the manager. The plaintiff expressly covenanted with Taylor to that effect; and the defendants, in their letter to the plaintiff, say they were willing to pay the plaintiff on the express condition that the plaintiff's portion of the works with Taylor should be done to the satisfaction of the manager, on whose certificate alone should any money be paid.

Neither of these questions seems to have engaged the attention of the learned judge, though urged upon him by the defendants' counsel. There should be a new trial, without costs. The judgment of the court below must therefore be reversed, and the cause remitted back with such direction.

THE CHIEF JUSTICE, having been absent during the argument, gave no judgment.

Appeal allowed.

REGINA V. POWELL.

The proper proceeding to reverse a judgment of the Court of Quarter Sessions, is by writ of error, not by certiorari and habeas corpus.

(M. T., 23 Vic.)

The defendant was tried at the quarter sessions for the county of Middlesex, upon an indictment under Con. Stat. U. C. cap 91, sec. 8, and being convicted was sentenced to be imprisoned for two years in the common gaol.

By statute, cap 99, Con. Stat. U. C. sec. 100, it is enacted that "whenever any offender is punishable by imprisonment, if it be for life, or for two years, or any longer term, shall be in the Provincial Penitentiary."

The defendant, meaning to contend that the sentence passed upon him by the quarter sessions was illegal, moved for and obtained a writ of habeas corpus and a certiorari to remove the record; and upon their return M. C. Cameron moved for his discharge. He cited *Rez v. Ellis*, 5 B. & C. 835; *Leonard Watson's case*, 9 A. & E. 731; *Ex parte Lees*, 1 E. B. & E. 828.

R. A. Harrison showed cause, and cited *Rez v. Bourne*, 7 A. & E. 68; *Ex parte Newton*, 4 E. & B. 869; *In re Newton*, 16 C. D. 97; *In re Smith*, 3 H. & N. 227.

ROBINSON, C. J., delivered the judgment of the court.

The proper proceeding to reverse a judgment of the Court of Quarter Sessions is by writ of error, not by summary interference of this Court upon a return to a certiorari, as in cases of summary convictions, in which no writ of error will lie.

And if the prisoner shall bring error in this case, then, under the Con. Stat. U. C. cap 113, a proper sentence may be passed.

We must remand the prisoner to the proper custody in the meantime.

COMMON PLEAS.

Reported by E. C. JONES, Esq., Barrister-at-Law.

IN THE MATTER OF GEORGE MICHIE AND THE CORPORATION OF THE CITY OF TORONTO

Held—1st, That an ordinary lease, containing the words "and to pay taxes," covers a special rate created by a corporation by-law, as well as all other taxes. 2nd, A by-law should state a day on its face when it shall take effect, and should not require extrinsic evidence to be looked for to ascertain that fact. 3rd, The Municipal Institutions Act authorizes the clerk of the Council to "examine and finally determine" whether petitions are in conformity with the provisions of that Act; and a certificate being given by the clerk, the court has no power, except in a case of fraud or mala fides, to interfere.

In Easter term, R. A. Harrison obtained a rule calling on the Corporation of the City of Toronto to show cause why their by-law No. 292 should not be quashed, on the grounds: 1st, That the by-law does not name a day, in the financial year in which the same was passed, when it is to take effect. 2nd, That the debt created by the by-law is not made payable in twenty years at furthest from the day on which the by-law took effect. 3rd, That the debentures issued, or to be issued, under the by-law, are not made payable in twenty years at furthest from the day on which the by-law took effect. 4th, That the by-law is based on a petition of less than two-thirds in number, and one-third in value of real property directly benefited thereby, of the owners of such real property. 5th, That instead of being a petition of two-thirds in number, and one-half in value, of owners, it purports to be a peti-

tion of owners and occupiers, some of the latter not being owners, and many of the owners not being occupiers. 6th, That the by-law was passed without any previous notice having been, according to the by-law No. 292 of Corporation, left at the place of abode of the applicant, and other parties intended to be assessed for the contemplated improvements.

The by-law was produced. It was passed on the 8th August, 1859, and entitled "To provide for the construction of a stone side-walk on Yonge-street, and to levy a rate to defray the cost thereof." It recited a petition of certain persons and firms for the purpose, and that it had been ascertained as determined that the property comprised within certain fixed limits would be immediately benefited by the construction of the stone side-walk, and that the petitioners are two-thirds in number and one-half in value of the owners of real property to be directly benefitted, and that the value of the whole of the real property ratable under the by-law is \$520,182; that the cost will be \$6925.50, and amount required to be raised annually by separate rates to pay debt and interest is \$761,894. It further recites the rate to be imposed per lineal foot frontage on the real property directly benefited, and enacts—1. That the side-walk be constructed. 2. Imposes the special rate. 3. Authorizes raising the money by loan on debentures. 4. Directs that the debentures be made payable on the 1st of January, 1860, and the interest thereon half-yearly on the 1st of January and 1st of July. 5. Regulates the debentures as to place of payment, and directs expenditure of money raised, in constructing the side-walk. 6. Has no bearing on the points raised. 7. Ditto ditto. 8. That the by-law shall come into operation on the day it bears date.

Affidavits in support of the application were filed—1st, Of the relator, sworn 21st May, 1861, stating that to the best of his knowledge, recollection and belief, no notice was left at his place of abode or elsewhere for him, of the assessment made or proposed to be made by the by-law No. 292, or the amount thereof, or that such by-law would be passed; that he is one of the parties assessed under the by-law: that he was not aware of the by-law until some time after it was passed, and first became aware of the particulars of it, and of the proceedings on which it was based, when called on to pay taxes for last year (1860), which was the first year in which an assessment was made under the by-law; and that this was, to the best of his recollection, in February last, 1861; that he consulted counsel, and was advised it was illegal, but as it was too late to move against it last Hilary term, he was advised, in order to avoid a distress, to pay under protest, and to apply in the following term to quash the by-law; that he accordingly did pay under protest, and with the avowed intention of moving to quash the by-law.

Another affidavit of the relator stated, that the total number of assessed owners of real estate affected by the by-law were, as he believes, as ascertained by the city clerk, twenty-three; that to the petition on which the by-law is passed, there were subjoined the names of sixteen persons, setting them out; that out of the sixteen, eight persons were owners of real property affected; that the Bank of British North America and the Bank of Montreal were also owners, but neither their corporate name nor seal were set and subscribed to the petition, but their respective cashiers or managers signed in their own names; that the other six persons did not own the real property they occupied, which was affected by the by-law.

Another affidavit showed that by a by-law of the city, No. 12, passed on the 30th May, 1859, it is provided that the clerk should cause a notice to be left at the place of abode of each of the parties to be assessed; that such assessment had been made, and the amount thereof, and that a by-law in accordance therewith would be passed by the Council, unless appealed from, as provided by act of Parliament; that to the best of the deponent's recollection, no such notice was left at his residence or place of abode, or elsewhere, for him, though he was an occupant of property affected by the by-law, and was assessed thereunder.

Copies of two by-laws were also put in, providing for the assessment of property benefited by the local improvement, by which all petitions for such improvements, when received by the Council and referred to the city Board of Works, are to be examined by the clerk of the Council, who is to "examine and finally determine" whether such petitions are signed by