

Full Bench.]

EX PARTE GALE.

[June 7.]

C. T. Act—Attorney pleading guilty—Certiorari.

An attorney, who appeared for the defendant in a Scott Act case and pleaded guilty, afterwards made affidavit that the defendant had given him no authority to plead guilty, but had instructed him to fight the case out. Several contradictory affidavits were read tending to show that the defendant had authorized the attorney to plead guilty.

Held—1. The magistrate could not receive a plea of guilty from any person but the defendant himself.

2. Per Landry and Van Wart, JJ. If the defendant had authorized his attorney to plead guilty the court ought not to exercise its discretion and grant certiorari. Rule absolute for certiorari.

L. A. Currey, Q.C., in support of rule. *J. W. McCready*, contra.

Full Bench.]

ANDERSON v. SHAW.

[June 8.]

Notice of defence—Sufficiency of—All right if not calculated to mislead.

In an action for false imprisonment in the York County Court defendant pleaded the general issue and gave two notices of defence by way of justification. The first notice set forth that, "the plaintiff being indebted to the defendant in the sum of \$36.07, the defendant applied to —, a Parish Court Commissioner —, said commissioner having jurisdiction in the matter, and the defendant having filed the particulars of such claim with said commissioner, and an affidavit of such indebtedness having first been made, the said commissioner, having jurisdiction in the matter, then issued a writ of *capias* out of the said parish court against the plaintiff at the suit of the defendant for said debt, directed to any constable of the County of York to arrest said plaintiff on said *capias*, and the said plaintiff being arrested on said *capias* and not giving bail or making deposit as provided by law, was by — warrant committed to the common gaol of the County of York as by law required, and detained there by virtue of such committal until the return day of such *capias* when the defendant recovered a judgment against said plaintiff for the said sum, and on such judgment being entered up for the defendant on that day the said plaintiff was released from such custody." The second notice was that "said judgment still remains in full force and effect, not having been paid, reversed or vacated." The County Court Judge on application struck out (with leave to amend) the notices as being no answer to the action, the words "an affidavit of such indebtedness having first been made" not meeting the requirement of the Justice's Civil Court Act—that the plaintiff or his agent make affidavit of his cause of action and there being no allegation as to the defendant being of the full age of twenty one years, and that there was no danger of losing the debt if the defendant were not arrested or held to bail, and the second notice not being in any view of the case a justification for arrest.