

Police Magistrate imposed a penalty in excess of what is authorised by the Criminal Code, and that, after service upon him of the notice of motion to set aside the conviction, which called upon him to make a return of the conviction, information, etc., he amended the conviction by substituting a penalty provided by the Code.

In *Regina v. St. Clair*, 27 A.R. 308, 310, a case very much resembling the present one, Mr. Justice Osler, in delivering the judgment of the Court of Appeal, said: "If there was evidence upon which the magistrate might have convicted, he was the judge of the weight to be attached to it." In that case, as in this, there was no evidence of disorderly conduct except on one single occasion; but there was, as there is in the present case, evidence of the bad reputation of the house. The Court was of opinion that, in the face of such facts, it could not be said that there was no evidence to support the charge.

I think that in the present case there was evidence from which the magistrate might draw the conclusion of guilt, and on which he might have convicted. On that ground, the conviction must be sustained.

Then as to the other ground, that of excessive penalty and the magistrate's amendment of the conviction, the amendment was made so as to bring the penalty within what is authorised by the Criminal Code, namely, the payment of \$100 (which includes costs), and, in default of payment, imprisonment for six months.

If the magistrate had the power to make the amendment, the defendant's objection is not well taken; but, assuming that he had not that power, the liberal powers of amendment given by the Code enable the Court to amend in cases such as this; and I, therefore (if it be necessary), now amend the conviction of the accused, Georgina Marcinko, made on the 10th April, 1912, by substituting for the words "two hundred dollars besides costs" the words "one hundred dollars." This \$100 includes costs.

The conviction being so amended, I dismiss the defendant's application, but without costs.