

British Columbia.

SUPREME COURT.

Martin, J.]

REG. v. BOWMAN.

[Oct. 28, 1898.

Summary conviction—Appeal from—By-law ultra vires—Estoppel from setting up because objection not taken in Court below—Plea of guilty—No appeal after—Discretion of magistrate—R.S.B.C., c. 176, ss. 70-85.

Appeal from the conviction by the Police Magistrate of the City of Victoria for an infraction of s. 22 of the Street By-law of the City of Victoria, in that the defendant did "while driving a hack along Birdcage Walk towards town keep to his right hand side he then and there not passing another horse and vehicle going in the same direction or standing still." S. 22 of the said By-law is as follows:—"Every person riding or driving along any street shall keep to his left hand side, except when passing another horse and vehicle, which is going in the same direction or standing still." The accused pleaded guilty, and was fined.

On the hearing of the appeal it was contended on behalf of the appellant that the by-law was ultra vires, and it was also sought to call witnesses as to the merits and to shew that the Magistrate acted improperly or irregularly in the way in which he asked questions of the prosecutor and others regarding the existence of malice in the defendant's mind so as to arrive at the extent of the fine he thought fit to impose. R.S.B.C., c. 176, s. 75 provides that no judgment shall be given in favour of the appellant if the appeal is based on any objection for any defect in the proceedings "in substance or in form unless it is proved before the Court hearing the appeal that such objection was made before the Justice before whom the case was tried and by whom such conviction, judgment or decision was given." It was admitted that the objection that the by-law was ultra vires was not taken before the Magistrate.

Held, that the appellant was estopped from contending on appeal that the by-law was ultra vires as the objection was not taken before the Magistrate; he was estopped from appealing on the merits because he had pleaded guilty.

Appeal dismissed with costs.

Bradburn, for appellant *Higgins*, contra.

McColl, C. J.]

MCGREGOR v. MCGREGOR.

[Nov. 18, 1898.

Practice—Replevin—Costs—R.S.B.C., c. 165.

Summons to set aside writ of summons in replevin for want of jurisdiction, the contention being that inasmuch as the present Replevin Act, R.S.