

Q. B.]

NOTES OF CASES.

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## QUEEN'S BENCH.

## IN BANCO.

## REGINA V. HART.

*Private prosecution at suit of Crown—Costs.*

There is no power to impose costs in the case of an unsuccessful private prosecution, at the suit of the Crown.

*Aylesworth* for prosecutor.

*McCarthy*, Q. C., contra.

## LA VASSAIRE V. HERON.

*Distress clause in mortgage—Seizure of goods of a stranger on premises—Abandonment of distress.*

Under a mortgage in fee, from V. to M., on certain lands, the interest was payable yearly on January 30. The mortgage contained a power to the mortgagee to distrain for arrears of interest in the usual form contained in the short form in R.S.O. c. 104. Two years' arrears of interest had accrued, and were in arrear on 30th January, 1879. On 23rd May, 1879, the defendants under power of attorney from the mortgagee, and as his agents, entered upon the mortgaged lands and seized the goods of the defendant under a distress warrant for the arrears of interest. The plaintiff was tenant of the mortgagor, and entered after the making of the mortgage. Defendants served a notice on the plaintiff that they had distrained; they did not remove the goods, but left them in possession of the plaintiff on the premises. On the 18th August, 1879, defendants served another notice on plaintiff as subtenant of the mortgagor, that they had on that day distrained plaintiff's goods for \$8.75 and costs, in addition to the seizure and demand on the 23rd May; the \$8.75 being for half a year's arrears of interest ending 30th July, 1879. At this time defendants again seized and removed the goods, which were afterwards sold under the distress warrant.

*Held*, that the defendants had abandoned the first seizure, and could not seize a second time for the same demand. *Held* also, that the half-year's interest demanded

by the second seizure was not due by the terms of the mortgage, and that the distress was for that reason illegal.

*Quære*—Whether the goods of a stranger on the mortgaged premises are liable to distress under a mortgage containing the usual distress clause under the Short Form Act.

*McMichael*, Q. C., for plaintiff.

*Spencer*, contra.

## IN RE CHAMBERLAIN AND STORMONT, DUNDAS &amp; GLENGARRY.

*High School districts—Power of County Councils—Leave to rehear after lapse of time.*

Since the repeal of 37 Vict., c. 27, sec. 38, by 40 Vict. c. 16, sec. 18, subs. 2, a County Council has no power to determine the limits of high school districts.

Leave was granted, notwithstanding the lapse of two terms, to rehear a rule made absolute, to set aside a by-law on no cause being shewn, and the Court refused to rescind the rule granting the leave to rehear.

*Richards*, Q. C., and *Rose*, for applicant.

*Bethune*, Q. C., contra.

## VACATION COURT.

Osler, J.

## REGINA V. CUTHBERT.

*Transient trader—Summary conviction.*

Where goods are consigned to be sold on commission, and they are so sold in the shop or premises of the consignee, and by him or on his behalf, the owner of the goods is not a transient trader (within the Municipal Act, R.S.O. c. 174, sec. 466, sub-s. 53, as amended by 42 Vict. c. 31, s. 22), and a conviction of the manager or owner of the goods sold under such circumstances, partly by the consignee and partly by the manager, for infraction of a by-law passed under the said Act, was therefore quashed.

In this case, also, the conviction was *held bad*, because it imposed imprisonment *with hard labour* in default of sufficient distress; sec. 400 of the above Act authorizing imprisonment. *Held*, also, that there