

contract, though after he had done work up to \$488, the building was destroyed by fire. The defendant had received two sums of \$1,500 on account of his contract, but he denied that any portion of it was for work done by the plaintiff. In an action by the plaintiff to recover the \$488 on a quantum meruit,

Held, that where, as here, the contract is to do work for a specific sum, and this applies, as well to original as to sub-contracts, there can be no recovery until the work is completed, or unless the failure to do so is caused by the defendant's fault, and as the plaintiff admitted the non-completion by suing on a quantum meruit, and there being nothing to shew any fault on defendant's part, there could be no recovery.

Judgment of BOYD, C., reversed. *Appelby v. Meyers*, L.R. 2 C.P. 660 followed.

J. A. Hutchinson and Alison A. Fisher, for plaintiff. *R. G. Code*, for defendants.

From Street, J.]

REX v. MORGAN.

[Dec. 19, 1901.

Criminal law—Summary trial—Police magistrate—Theft—Attempt to commit—Conviction—Warrant of commitment—Necessity for.

A prisoner charged with picking a woman's pocket, and stealing a sum of money from her person, on being brought before a police magistrate, elected to be tried summarily; but was convicted merely of an attempt to pick the pocket.

Held, on appeal from the judgment of STREET, J., 2 O.L.R. 483; 37 C.L.J. 786, that the defendant was properly convicted, for that the charge was one which might have been tried at the Sessions, and therefore under section 785 of the Criminal Code, could with the accused's consent be tried by the said police magistrate, who could sentence him to the same punishment, as if tried at the sessions, while by section 711, where the offence charged is not proved, a conviction can be made for the attempt to commit the offence.

Per MOSS, J.A., the conviction being sustainable under section 785, it was unnecessary to decide whether a person charged with theft in a case under sub-section (a) of section 783, might upon his consenting to be tried on that charge, be properly convicted of having attempted to commit theft under sub-section (b), without the charge therefor being made, or his consent to be tried therefor given.

Quære, as to the necessity for a formal commitment.

J. E. Jones, for prisoner. *J. R. Cartwright*, K.C., for Crown.