

and it also failed as against the company. The company were authorised to construct their line upon and along Yonge street in the manner in which they did construct it. In the maintenance of the line, it was necessary from time to time to remove depressions caused by erosive agencies and the constant passing of heavy cars. The slight elevation of the tracks in 1911, and again after they were lowered in 1913 at the plaintiff's instance, was no more than was requisite to keep up the metals, and caused no appreciable damage to the plaintiff. The depression of about four inches between the rails was too slight seriously to interfere with a driveway not used for vehicular traffic.

*Action dismissed with costs.*

CLUTE, J., IN CHAMBERS.

JUNE 15TH, 1916.

REX v. GAGE.

*Criminal Law—Magistrate's Conviction—Imposition of Unauthorised Costs—Motion to Quash Conviction—Amendment—Criminal Code, secs. 754, 1124—Ontario Summary Convictions Act, R.S.O. 1914 ch. 90, sec. 4.*

Motion by the defendant to quash a conviction made against him on the 10th August, 1914, by a magistrate, for an offence against the Liquor License Act.

The defendant was imprisoned in pursuance of the conviction, and a motion, upon habeas corpus, for his discharge, had previously been dismissed: see ante 13, 19. On the 23rd February, 1916, the conviction was brought before the Court by the Crown in the habeas corpus proceedings; and the defendant's motion then made.

J. B. Mackenzie, for the defendant.

J. R. Cartwright, K.C., for the Crown, objected that the motion was not made within 20 days from the date of the conviction, as required by sec. 95 of the Liquor License Act, R.S.O. 1914 ch. 215.

CLUTE, J., said that the only point argued by counsel for the defendant was that unauthorised costs had been charged by the magistrate in the conviction, contrary to sec. 770 of the Code. This section of the Code was made applicable to offences over