

# The Ontario Weekly Notes

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## COURT OF APPEAL.

JANUARY 17TH, 1910.

\**REX v. MACDONALD.*

*Criminal Law—Conviction for Theft—Police Magistrate—Warrant of Commitment—Defect—Habeas Corpus—Substituted Warrant—Powers of Judge—Criminal Code, secs. 1120-1132—Summary Trial—Election—Right of Re-election—Code, sec. 828—Certiorari in Aid—Right of Crown—Refusal of Postponement of Trial—"With Hard Labour"—Words Stricken out of Conviction—Prison Regulations—Jurisdiction of Magistrate—Code, secs. 778, 782, 783.*

Appeal by the prisoner from an order of CLUTE, J., upon the return of a habeas corpus, refusing to discharge the prisoner from custody under a warrant of commitment issued by a police magistrate upon a conviction for theft.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, and MEREDITH, J.J.A.

J. B. Mackenzie, for the prisoner.

J. R. Cartwright, K.C., and E. Bayly, K.C., for the Crown.

The judgment of the Court was delivered by MEREDITH, J.A.:  
— . . . It is said that the original warrant of commitment was defective, but another was substituted for it and the learned Judge against whose ruling the appeal is made, without considering the objections to the first warrant, remanded the prisoner to custody under the substituted warrant. That that was quite within his power has long been established. It was indeed a common practice. The case of *The Queen v. Richards*, 5 Q. B. 926, affords

\* This case will be reported in the *Ontario Law Reports*. The written opinion was not given to the editor until the 27th April, 1910.