

Held, that under R.S.O., c. 72, ss. 8, 11, 12, H.'s appointment was legal, and therefore the conviction made by him, good.

Regina v. Atkinson, 15 O.R., 110, commented on.

DuVernet for the motion.

Delamere, Q.C., contra.

REGINA v. LYNCH.

Justices of the Peace—Absence of police magistrate—Trial of offence under R.S.C., c. 157—Alternative punishment—Imprisonment for more than three months—R.S.C., c. 178.

By s-s. 2 of s. 8 of the R.S.C., c. 157, any loose, idle, or disorderly person or vagrant shall, upon summary conviction before two justices of the peace, be deemed guilty of a misdemeanour, and liable to a fine not exceeding \$50, or to imprisonment not exceeding six months, or both. By s. 62, of R.S.C., c. 178, the justices of the peace are authorized to issue a distress warrant for enforcing payment of a fine, and if issued to detain the defendant in custody, under s. 62, until its return; and if the return is no sufficient distress, then, under s. 67, to imprison for three months.

B. and R.J.F., two justices of the peace for the city of Toronto, in the absence of the police magistrate for the said city, convicted the defendant for an offence under said Act, and imposed a fine of \$50, and in default of payment forthwith directed imprisonment for six months unless the fine was sooner paid.

Held, that under the said sub-section the justices had jurisdiction to adjudicate in the matter; and that it was not necessary to consider the effect of an agreement entered into between the police magistrate and B., to assist him in the trial of offences.

Held, also, that the conviction was bad, for under c. 157, there was no power to award imprisonment as an alternative remedy for non-payment of the fine, while under R.S.C., c. 178, imprisonment in the alternative can only be awarded after a distress has been directed and default therein; and, furthermore, the imprisonment in such case can only be for three months.

DuVernet for the applicant.

Dymond for the Attorney-General.

Curry for the magistrates.

LAWSON v. CORPORATION OF ALLISTON.

Municipal corporations—Obstruction on highway by derrick—Digging well under sec. 489—Negligence—Contributory negligence.

The defendants, for the purpose of sinking a well in one of the public streets of the village to procure water for public purposes, under the power conferred by section 489 of the Municipal Act, had erected a derrick in the said street. The plaintiff had driven into the village past the said derrick without its appearing to affect the horse, the derrick not then being at work, but on attempting to pass it on her way home, while the derrick was at work, the horse took fright, ran away, and threw the plaintiff out of the carriage, causing her to sustain a severe injury. It was found that the derrick was of a nature to frighten horses, and that the defendant had not taken proper precautions to guard against accidents, and that there was no contributory negligence on the plaintiff's part.

Held, that the defendants were liable for the injury sustained by the plaintiff; but as the court considered the damages excessive, a new trial was directed unless the plaintiff consented to a reduction of same.

J. A. McCarthy for the plaintiff.

Lount, Q.C., for the defendants.

ATTORNEY-GENERAL EX REL HOBBS v. NIAGARA FALLS WESLEY PARK CO.

Street railway—Operating on Sunday—Right to restrain.

The defendants, by letter patents issued under the Street Railway Act, R.S.O. c. 171, were authorized to build and operate (on all days except Sundays) a street railway in the town of Niagara Falls, and on an information to restrain the defendants operating the railway on Sunday,

Held, ROSE, J., dissenting, that the information would not lie, for no private right or right of property was involved, nor any injury of a public nature done, and the interference of the court would not be exercised merely to enforce performance of a moral duty.

W. M. Douglas for the plaintiffs.

Hill, contra.