

## QUEEN'S BENCH DIVISION.

[Nov. 21.]

## HILLIARD v. ARTHUR.

The decision of Rose, J., 10 P. R. 281, was affirmed.

*Clement*, for the appeal.

*Aylesworth*, contra.

[Nov. 24.]

## FRIENDLY v. MEDLER.

The decision of Rose, J., 10 P. R. 267, was affirmed.

*Walter Read*, for appeal.

*Wallace Nesbitt*, contra.

## COMMON PLEAS DIVISION.

Rose, J.]

[July 23.]

## QUEEN v. NUNN.

*Conviction—Certiorari—Return—Recognizance—Negating exception—By-law—Ultra vires—Evidence.*

Writs of *habeas corpus* and *certiorari* having been issued under R. S. O. c. 70, sec. 8, and returns made, a motion was made to file the returns.

*Held*, that the return to the *certiorari* is made for the assistance of the court, and that it is not necessary to enter into a recognizance. The returns having been filed, a motion was made for the discharge of the prisoner.

The conviction was for, "that the said Nunn, etc., did at London, etc., beat a drum on a public street called Dundas Street in said city, contrary to a by-law of said City of London, No. 179, etc."

The by-law provided (sec. 2) that "no person shall in any of the streets, or in the marketplace of the City of London blow any horn, ring any bell, beat any drum, play any flute, pipe or other musical instrument, or shout, or make, or assist in making any unusual noise, or noise calculated to disturb the inhabitants of the said City."

"*Provided* always that nothing herein contained shall prevent the playing of musical instruments by any military band of Her Majesty's regular army, or any branch thereof, or of any militia corps, lawfully organized under the laws of Canada."

*Held*, that it was not necessary to negative, in the conviction or commitment, the exception contained in the above proviso.

The statutory provision under which the above by-law was passed, (47 Vic. ch. 32, sec. 14, sub-sec. 12 O.), gives power to municipal councils to pass by-laws "for regulating or preventing the ringing of bells, blowing of horns, shouting and other unusual noises, or noises calculated to disturb the inhabitants."

No evidence was given on behalf of the prosecution to shew that the noise made by beating the drum was unusual and evidence on behalf of the prisoner was refused.

*Held*, that, as beating a drum is not mentioned in the statute, the by-law, so far as it seeks to prohibit the beating of drums simply, without evidence of the noise being unusual or calculated to disturb is *ultra vires* and invalid.

*Held*, also, that the evidence should have been received on the prisoner's part.

Prisoner discharged.

*McMichael*, Q.C., and R. M. *Meredith*, for motion.

*Osler*, Q.C., and T. G. *Meredith*, contra.

## PRACTICE.

Boyd, C.]

[Nov. 17.]

## BINGHAM v. MCKENZIE.

*Changing venue—County Court action—Jurisdiction of Master in Chambers.*

On an appeal from the order of the Master in Chambers, his jurisdiction to make an order changing the venue in a County Court action was doubted, and the order of the Master was also reversed on the merits.

*Morson*, for the appeal.

*Shepley*, contra.