

NOTES OF CASES.

IN THE ONTARIO COURTS, PUBLISHED
IN ADVANCE, BY ORDER OF THE
LAW SOCIETY.

QUEEN'S BENCH.

[Dec. 29, 1876.]

REGINA V. JACKSON.

Indictment for obstructing highway—Previous conviction—Estoppel—Costs—Fine.

Where a defendant had been convicted of nuisance in obstructing a certain highway by a fence, and after removal of such fence by the thing under process, replaced it upon the same highway, though not precisely in the same line as before—*Held*, that the former conviction was conclusive against the defendant as to the existence of the alleged highway, and that he could not again raise the question on this.

Where the indictment was removed into this Court by the prosecutors: *Held*, that the defendant was not liable to costs; but the Court ordered that one-third of the fine imposed should go to the prosecutors, and suggested that the Government might on application order the remaining two-thirds to be paid to them, the whole fine being less than the costs incurred.

Ferguson, Q.C., for Crown.

M. C. Cameron, Q.C., for defendant.

REGINA V. PORTIS AND GILBERT.

Forgery—Evidence.

On an indictment for feloniously offering, &c., a forged note commonly called a Provincial note, issued under the authority of 29 & 30 Vict. cap. 10, D., for the payment of \$5. It appeared that the prisoners had passed off a note purporting to be a Provincial note under the statute, knowing that the figure 5 had been pasted over the figure 1, and the word five over the word one. No evidence was given that the note so altered was a note issued by the Government of Canada, but it was shewn further, that when the attention of the prisoners was called to the alteration they said "give it back if it is not good," and that on its being placed on the counter one of them took it up and refused to return it, or substitute good money for it. *Held*, that looking at the particular character of the forgery—i. e., an alteration—and the conduct of the prisoners, the onus was on them to dispute the validity of the writing; and the conviction was sustained.

J. K. Kerr, Q.C., for Crown.

Glass, Q.C., for prisoners.

REGINA V. STARR.

Larceny—Recent possession—Evidence.

On an indictment for stealing cooper's tools on the 5th of November, 1874, it appeared that the prisoner was not arrested for nearly two years afterwards. During that time—it was not shewn precisely when—he was proved to have sold several of the tools at much less than their value, representing that he was a cooper by trade, and was going to quit it, which was proved to be untrue: that he was in the shop from which the tools were stolen the night before they were taken, and frequently; and that when arrested he offered the prosecutor \$35 to settle and buy new tools, and offered the constable \$100 if he could get clear.

Held, that though the mere fact of the possession by the prisoner, after such a lapse of time, might not alone suffice, yet that all the facts taken together were enough to support a conviction for larceny.

J. K. Kerr, Q.C., for Crown.

No one appeared for the prisoner.

IN RE BATES.

Conviction—Certiorari—38 Vict. cap. 4, O.—By-law.

In the case of a conviction for an offence not being a crime, affirmed on appeal to the Sessions, the writ of *certiorari* is not taken away by the 38 Vict. cap. 4, O.

Where the conviction purported to be for an offence against a by-law, but shewed no such offence, it was quashed; and it was held, that it could not be supported as warranted by the general law.

Osler for the applicant.

M. C. Cameron, Q.C., for the convicting magistrate.

PARKINSON V. HIGGINS.

Mortgage of vessel—Purchase by mortgagee—Loss of vessel—Right to sue for mortgage money.

Declaration on defendant's covenant by deed to pay money. Plea: that the deed mentioned was a mortgage and re-conveyance of a vessel sold by plaintiff to defendant, to secure the purchase money therefor; and that while the plaintiff was mortgagee the said vessel and all defendant's interest therein was sold, and the plaintiff became the absolute owner of said vessel, whereby the mortgage became merged and satisfied. Replication, on equitable grounds,