

the judgment at the trial, is when such judgment is directed to be entered upon special findings of the jury, and it is complained of as being wrong in law upon such findings. Any other appeal raising an objection to the conduct of the proceedings at the trial as to a motion for a non-suit, or the reception or rejection of evidence, or the charge to the jury, must be brought from the decision of the judge upon a subsequent motion for a new trial.

The general language of sec. 42 does not apply when the case is one coming within sec. 41.

*Aylesworth* for the appellants.

*C. J. Holman* for the respondent.

[June 29.

BOND *v.* CONMEE.

*Malicious arrest—Justices of the Peace—Conviction for having liquors for sale near public works—Destruction of liquors—Necessity for quashing conviction before bringing action—Unsealed conviction returned on certiorari—Power to put in sealed conviction after such return—Notice of action—Statement of cause of action—Service of notice—Necessity for order for destruction of liquors—Necessity for quashing such order before bringing action—Venue—R.S.O. (1877), c. 32, secs. 2, 6, and 7, (R.S.O., 1887, c. 35, secs. 2, 6, and 7—R.S.O. (1877), c. 73. (R.S.O., 1888, c. 73).*

The defendant C. and others were contractors employed in constructing a portion of the line of the Canadian Pacific Railway on the north shore of Lake Superior, 50 miles north of the mouth of the Michipicoten River, where there is a post of the Hudson Bay Company and a small collection of houses and stores known by the name of the Village of Michipicoten River. At this place the defendant C. and his co-contractors had their head quarters, and had constructed a supply road to the line of the railway where their operations were being carried on. The plaintiff brought to this village in a small sailing vessel a quantity of intoxicating liquors, intending to sell them at this place. The defendant C. and his co-defendant B., who were Justices of the Peace having jurisdiction in the District of Algoma, caused the liquors to be seized and destroyed, and the plaintiff to be arrested, fined, and imprisoned.

*Held*, that this was a village with n the meaning of R.S.O., c. 35, s. 1, and therefore that the prohibition contained in the Act did not apply, and that the Justices had no jurisdiction.

The plaintiff, after remaining in gaol for some six weeks, was discharged upon a writ of *habeas corpus*, the conviction having been brought up on certiorari, and one signed by the Justices, but not sealed, having been returned by them. The conviction was not quashed.

*Held*, that after the return to the writ of certiorari a new conviction could not be prepared, and that as the conviction as returned was not sealed it was a nullity, and that it was not necessary to quash it before bringing an action.

The notice of action stated that one month after the service of the notice an action would be brought for malicious arrest, etc., and for the malicious, etc., destruction of goods, and for damages for loss of time and injury to business, and for the recovery of costs and expenses, etc., "same having been committed by you against me in the month of May last at said Village of Michipicoten River, and at the Town of Port Arthur."

The notice was served on the defendant B. personally, and was served on the agent of the defendant C. at the head office of the defendant C. at Michipicoten River, and a copy was also left for the defendant C. at his place of residence at Port Arthur, and another copy was served on his solicitors. The defendant C. admitted that he had seen a copy of the notice, but it was not shown at what time or place he had seen it.

*Held*, that the notice and service were sufficient.

The venue in the action was laid at the City of Toronto, and subsequently by consent an order was made striking out the jury notice and directing the trial to take place at Port Arthur.

*Held*, that in view of this order the objection that the venue was improperly laid could not be sustained.

The order for the destruction of the liquors was not produced, but the person who destroyed the liquors stated, without objection, that he had received a written order to destroy the liquors signed by both Justices, and that he had returned the order to them. This order had not been quashed.