

FERGUSON, J., after a careful perusal of the evidence, held that defendants had not done anything which they were not entitled to do under the contract. Action dismissed with costs.

R. M. C. Toothe, London, solicitor for plaintiff.

Meredith, Judd, Dromgole, & Elliott, London, solicitors for defendants.

FEBRUARY 19TH, 1902.

DIVISIONAL COURT.

Re GLENN.

REX v. MEEHAN.

*Justice of the Peace—Refusal to take Information—Order nisi—Forum—Single Judge—Divisional Court—R. S. O. ch. 88, sec. 6—R. S. O. ch. 223, sec. 193 (f).*

Orders *nisi* under R. S. O. ch. 88, sec. 6, to compel any justice of the peace to do an act relating to his duties as such justice, are not final, but appealable, and the application for such orders must be made to a Single Judge sitting as the High Court, and not to a Divisional Court.

Motion by A. D. Turner to make absolute an order *nisi* calling upon James Morrison Glenn, K.C., police magistrate for the city of St. Thomas, to shew cause why a mandamus should not issue commanding him to receive the oath of Turner to a certain complaint in writing, preferred by Turner against Patrick Meehan, not couched in the exact wording of sec. 193 (f) of the Municipal Act, and charging defendant with, after having voted once at the election of mayor and aldermen for the city of St. Thomas in January, 1902, applying at the same election for a ballot paper in his own name, contrary to the said section.

I. F. Hellmuth, for Turner.

J. R. Cartwright, K.C., for Attorney-General for Ontario.

E. E. A. DuVernet, for magistrate, objected that the motion under R. S. O. ch. 88, sec. 6 should be to a single Judge in Court. The motion was heard subject to the objection.

The judgment of the Court (STREET, J., BRITTON, J.) was delivered by—

STREET, J.:—The order *nisi* and the order absolute provided for by R. S. O. ch. 88, sec. 6, are civil, not criminal proceedings, although the act which the justice is ordered to do may be, as here, the taking of an information for a criminal offence, and although the proceedings are taken in the name of the King. It is, therefore, to the Judicature Act and Rules of Court, taken along with the section above quoted, that we must look in order to ascertain the tribunal