

the charge, etc. The police magistrate, as defendant stated, was not in F. nor did he hold any court there on that day.

Held, that there being no court held for the trial of the offence, and defendant not being present thereat in person or by attorney so as to make admission of guilt, and under the circumstances there should be no conviction for the offence charged, and the conviction was therefore quashed.

Aylesworth, for the applicant.

De' mere, contra.

Divisional Court.]

REGINA v. READ.

Quarter sessions—Appeal to, against conviction—Adjournment to following sessions—Endorsing on conviction—Necessity for.

An appeal from a conviction for malicious injury to property came on for hearing at the general sessions of the peace, when an adjournment was ordered to the next sessions. No order of adjournment was endorsed on the conviction, the clerk merely entering a minute of the order in his book. At the following session the appeal was heard and the conviction ordered to be quashed. *Held*, that the provisions in s. 7 of R. S. C., c. 178, as to endorsing the order of adjournment on the conviction were not imperative, but directory merely, and therefore the omission to make the indorsement did not affect the validity of the order to quash.

Mackenzie, Q.C., for applicant.

No one contra.

Divisional Court.]

BYRNE v. CORPORATION OF ROCHESTER.

Municipal corporations—Drainage—Compensation—s. s. 591-2.

B. was the owner of certain lands in the defendant's township, and was a petitioner with others for the construction of a drain. After the drain had been made B. claimed that he had sustained damages thereby, and an arbitration was had under the Municipal Act, and B. was awarded damages, the arbitrators holding that it would be necessary for B. to construct a bridge so as to cross from one part of his farm to another, to put in and maintain

flood gates; and also that he had been deprived of the use of about three and a half acres of his land.

Held, that the case came within s.s. 591, 592 of the Municipal Act, and that B. was entitled to the damages awarded him, which must be assessed on the lands liable to assessment for the drainage work.

Douglas, Q.C., for the plaintiff.

Meredith, Q.C., contra.

Divisional Court.]

REGINA v. MAYBEL.

Canada Temperance Act—Absence of defendant—Service on wife—Evidence of lapse of reasonable time between service and hearing.

A summons was issued for selling liquor under the Canada Temperance Act, which was served by leaving it with the defendant's wife at the defendant's hotel. The defendant not appearing at the time and place mentioned in the summons for the hearing, and on the constable proving on oath the manner in which the summons had been served, the police magistrate proceeded *ex parte* to hear and determine the case, and convicted defendant of the offence charged, and imposed a fine. It appeared that the defendant was absent in the States as a witness in a trial there. There was no evidence that the wife was informed by the constable of the purport of the summons, and the defendant stated he knew nothing of the matter until four or five days after the conviction had been made, when he received a letter from his wife stating that some magistrates' papers had been left for him at the hotel.

Held, that under s. 39 of R.S.C. c. 178, in such case there must be evidence before the magistrate that a reasonable time has elapsed between the service of the summons and the day appointed for the hearing, and there being no such evidence here, the magistrate acted without jurisdiction and the conviction must be quashed.

Barber, for the applicant.

Langton, contra.

Divisional Court.]

COLVIN v. MCKAY.

Libel—Privilege—Excess of—Evidence of malice.

The plaintiff had been defendant's treasurer