

Co. Ct.]

CLEMENS QUI TAM V. BEMER.

[Co. Ct.]

4 Prac. Rep. 138, is founded on two cases which, it is submitted, do not warrant the conclusion arrived at, and the leaning of the learned judge there is against the practice. The principal reason given is that a defendant who claims no interest becomes liable for costs; but here the applicant is a dowress, and claims a certain interest. If no judgment is obtained against her the plaintiff can not get possession. See *Peebles v. Lottridge*, 19 U. C. Q. B. 628; *Jones v. Seaton*, 26 U. C. Q. B. 166; *D'Arcy v. White*, 24 U. C. Q. B. 570; *Hall v. Yuill*, 2 Prac. Rep. 242; *Kerr v. Waldie*, 4 Prac. Rep. 138; 3 U. C. L. J. N. S. 292. *John Paterson, contra*, relied on *Kerr v. Waldie, ante*.

MR. DALTON.—I shall follow *Kerr v. Waldie*. I can see no difference in the position of a dowress and a tenant. But I can only make the order upon this defendant undertaking to be bound by the final judgment in the case, so far as possession is concerned, as though her name had not been struck out, and the order as to costs will be the same as in *Kerr v. Waldie*.

COUNTY COURT OF NORFOLK.

(Reported by HENRY ELLIS, ESQ., Barrister-at-Law.)

CLEMENS QUI TAM V. BEMER.

Returns of convictions—C. S. U. C. cap. 124.—How affected by the Law Reform Act of 1868, and by 32-53 Vic. caps. 31 & 36.

Returns of convictions and fines for criminal offences being governed by the Dominion statute 32-33 Vic. cap. 31, sec. 76, and not by the Law Reform Act of 1868, are only required to be made semi-annually to the General Sessions of the Peace.

Semble, that the right to legislate upon this subject belongs to the Dominion Parliament, and is not conferred upon the Provincial Legislatures by the B. N. A. Act, 1867.

[St. Thomas—Hughes, Co. J.]

This was a penal action, brought against a magistrate for not returning a conviction.

The declaration alleged that, before and at the time of the trial and conviction thereafter mentioned, and from thence hitherto, the defendant was a justice of the peace in and for the said county of Elgin; and that theretofore, and subsequently to the 1st day of January, 1870, to wit, on the 5th day of February, 1870, the hearing of a certain charge and complaint against the now plaintiff, for unlawfully assaulting and beating one Mary McLoud, and the trial of the now plaintiff upon the said charge and complaint, were duly had and took place within the said county of Elgin, before the now defendant, as and being such justice of the peace as aforesaid; and which trial and hearing were so had and took place under a certain law in force in this Province giving jurisdiction in the premises to the defendant as such justice; and at and upon such hearing and trial, and within the said county of Elgin, the now defendant, as and being such justice as aforesaid, duly and in due form of law convicted the now plaintiff of the said offence so charged as aforesaid; and upon and by such conviction, and within the said county, imposed upon the now plaintiff a certain fine and penalty of, to wit, twelve dollars, for the said offence; which said conviction took place before the second Tuesday in March, 1870:

yet the defendant, so being such justice as aforesaid, did not, on or before the second Tuesday in the month of March, in the year last aforesaid, make to the clerk of the peace of the said county of Elgin a return of such conviction, or of such fine or penalty, in writing under his hand in the form or to the effect prescribed by the statutes in that behalf, or any return thereof whatsoever, on or before the said second Tuesday in the month of March, in the year aforesaid; but wholly refused and neglected so to do, although a reasonable time after such conviction, for making any and every such return as aforesaid, had elapsed before the said second Tuesday in the month of March, in the year last aforesaid; contrary to the form of the statutes in such case made and provided: whereby, and by force of the said statutes, the now defendant forfeited for his said offence the sum of eighty dollars: and thereby, and by force of the said statutes, an action hath accrued to the plaintiff, who sues as aforesaid, to demand and have of and from the now defendant the said sum of eighty dollars; yet the defendant hath not paid the said sum of eighty dollars, or any part thereof. And the plaintiff claims, as well for himself as for our lady the Queen, eighty dollars.

The defendant pleaded not guilty by statute (21 James I. cap. 4, sec. 4), on which the plaintiff joined issue.

A verdict was found for the plaintiff.

McDougall for the defendant, moved in arrest of judgment, on the ground that the declaration shewed no cause of action under C. S. U. C. cap. 124, and there was no proof of defendant having incurred a penalty under that or any other statute.

Kains showed cause.

HUGHES, Co. J.—At the time of the trial of this cause, and at the argument of the rule nisi, I was strongly inclined to the view that the plaintiff had the right to maintain this action against the defendant, on the grounds that it was not in the province of the Dominion Parliament to repeal Con. Stat. U. C. cap. 124, that being a statute not affecting the criminal law or criminal procedure; and that it was exclusively within the jurisdiction of the Provincial Parliament to alter, amend or repeal that statute, or substitute another in its place; because the fines referred to therein might affect the revenue of the Province, or of the municipalities therein, and it was merely passed to protect the Provincial revenue, by compelling minor magistrates, such as justices of the peace, who are appointed by the Provincial Government, to account for and pay over fines received by them under summary convictions. (*Vide* subsec. 15 of sec. 92, British North America Act, 1867.)

After a more attentive perusal of the British North America Act of 1867, I am induced to come to the opposite conclusion, and to view the matter differently. The intention of the Ontario Legislature, when passing the 4th subsection of the 9th section of the Law Reform Act of 1868 (in the absence of direct expression), may fairly be presumed to have been merely to so amend Con. Stat. U. C. cap. 124, as to relate to cases not criminal, or for enforcing any law of the Province made or to be made in relation to mat-