

GENERAL SESSIONS OF THE PEACE.

COUNTY OF YORK.

REG. v. STRONG.

Municipal election—Personation—Penalty—Mode of enforcing.

The penalty imposed under Municipal Act of 1892, s. 210, is recoverable by civil action only, and not by proceedings on summary conviction.

(TORONTO, Oct., 1896. McDougall, Co. J.)

The appellant had been convicted before the Police Magistrate of the city of Toronto, under s. 210, sub-sec. 2, of the Municipal Act of 1892, upon one of the charges of personation therein enumerated; and was required to pay the penalty of \$200 thereby imposed, and in default of payment to be imprisoned for a stated term.

Du Vernet, for the appellant: The theory of any criminal jurisdiction attaching in the premises is excluded, not only upon general principles, but by virtue of s. 8, sub-headings 30 and 31, of the Interpretation Act, R.S.O. c. 1, which, where material, read as follows (s. 30): "Where a pecuniary penalty or a forfeiture is imposed for a contravention of any Act, then, if no other mode is prescribed for the recovery thereof, the penalty or forfeiture shall be recoverable with costs by civil action or proceeding at the suit of," etc. (s. 31). "Where a pecuniary penalty or forfeiture is imposed by an Act of this province, and the amount of the penalty or forfeiture is in any respect in the discretion of the Court or Judge, or in case the Court or Judge has the right to impose imprisonment in addition, or in lieu of the penalty or forfeiture . . . the same may be recovered upon indictment in the High Court of Justice, or General Sessions of the Peace."

Dewart, for the respondent, relied upon s. 420 of the Municipal Act, as prescribing a specific method of recovery for the penalty in this case. This section reads, "Every fine and penalty imposed by or under the authority of this Act may, unless where other provision is specially made therefor, be recovered and enforced with costs, by summary conviction, before any Justice of the Peace," etc.; and in default of payment the offender may be committed, etc., there to be imprisoned for any time, in the discretion of the convicting justice, not exceeding (unless where other provision is specially made) thirty days, and with or without hard labour," etc.

In reply it was contended that by reason of the alternative condition of hard labour created, as well as on other grounds, the application of the medium for the enforcement of the fine there indicated was clearly negated.

The Police Magistrate considered that s. 420 provided the remedy, and made a conviction, from which an appeal was taken to the General Sessions.

MCDUGALL, Co. J., Chairman: It may be useful to notice that s. 210 was, in the interim between the original hearing and the appeal, repealed by the Legislature, and the earlier allied section, 167—prescribing direct imprisonment for violation—which was discussed at large by the Chancellor in *Reg. v. Rose*, 27 O.R. 195, and which might or might not have been wide enough to include the offence charged here, being apparently designed by them to continue in force.