

Robertson, J.]

REGINA v. PONTON.

[April 15.

*Venue—Change of—Criminal cause—Fair trial—Riot at former trial—Affidavits of jurors.*

Under s. 631 of the Criminal Code, the venue for the trial of a person charged with an indictable offence may be changed to some place other than the county in which the offence is supposed to have been committed, if it appears to the satisfaction of the court or judge that it is expedient to the ends of justice by reason of anything which may interfere with a fair trial in that county; it is not a question as to the jury altogether.

And where at a trial of the defendant, at which the jury disagreed, a crowd of persons congregated round the court house while the jury were deliberating, and endeavoured to intimidate the jurors and influence them in favour of the defendant, and afterwards made riotous demonstrations towards the judge who presided at the trial, the venue was changed before the second trial.

Where affidavits were filed by the Crown to show that the conduct of the crowd must have influenced the jurors, affidavits of jurors denying that they were intimidated were received in answer.

*L. G. McCarthy*, for the Crown. *Wallace Nesbitt*, for the defendant.

Boyd, C., Robertson, J.] JONES v. MASON.

[April 19.

*Summary judgment—Rule 603—Defence—Validity—Information and belief—Married woman—Separate estate—Foreign law.*

In an action upon a promissory note made in the State of New York, the defendants, who were husband and wife, in answer to an application for summary judgment under Rule 603, swore that the note was given upon a certain condition which had not been fulfilled by the payees; that the defendants were informed and believed that the plaintiffs, the indorsees of the note, were suing for the benefit of the payees, and were not holders for value or took it after maturity. The source of the information was not given. The plaintiffs positively denied that there was any notice of any condition. There was no proof that the wife had separate estate in Ontario; but the plaintiffs filed an affidavit made by a counsellor-at-law in the State of New York, who stated that by the laws there in force it was not necessary that a married woman should be possessed of any property, either real or personal, to enable her to contract or to make her contracts binding in law, her right to contract being the same as if she were unmarried. This affidavit was not contradicted.

*Held*, that no valid defence was shown, and the plaintiffs were entitled to summary judgment against both defendants. *Bank of Toronto v. Keltz*, 17 P.R. 250, followed. *Munro v. Orr*, 17 P.R. 53, distinguished.

*Masten*, for plaintiffs. *W. H. Blake*, for defendants.