

Attorney-General applied for, and obtained leave to appeal under s. 744 of the Criminal Code.

*Held*, that the evidence did not raise more than a mere suspicion against the prisoner, and was not sufficient in law to warrant a conviction; and that the prisoner should be discharged.

*Patterson*, for the Crown. *Bonnar*, for the prisoner.

Full Court.]

IN RE DUPAS.

[Dec. 13, 1899.

*Practice—Certiorari—Full Court—Master and Servant's Act, R.S.M., c. 96—Criminal matter—Procedure.*

This was a motion to the Full Court, upon notice to a Justice of the Peace for a writ of certiorari to remove a conviction of the applicant under the Master and Servant's Act, R.S.M., c. 96, for non-payment of wages, and the applicant contended that, under *Regina v. Beale*, 11 M.R. 448, such a motion could only be brought before the Full Court. Counsel for the justice contended that the Queen's Bench Act, 1895, and its rules, apply to such a case, as it was in no sense a criminal or quasi-criminal matter or proceeding, and that the application might be heard by a single judge.

The Court, without deciding this point, ordered that the motion should be adjourned into chambers, to be heard by a single judge if the parties consented, otherwise that it should be dismissed without prejudice to a motion in chambers.

*Haney*, for applicant. *Patterson*, for the Justice.

Full Court.]

KENNEDY v. PORTAGE LA PRAIRIE.

[Dec. 22, 1899.

*Municipality—Highway—Liability for non-repair—Negligence—Pitch-holes in winter roads—Objections not raised at trial—Municipal Act, R.S.M., c. 100, s. 618.*

Appeal from a judgment of the County Court of Portage la Prairie, against the rural municipality of Portage la Prairie, giving damages to the plaintiff for injury to a horse caused by non-repair of a highway by reason of the continued existence of a series of deep pitch-holes produced by traffic in the snow covered surface of a travelled road. There were ten or twelve of these pitch-holes in almost uninterrupted succession at intervals of only a few feet, varying in depth from one to three and a-half or four feet below the level of the travelled snow road, and the descent into them was very steep. The evidence also shewed that the depth of the snow outside the one beaten trail was so great that it was impossible for a loaded sleigh such as the plaintiff was driving to turn out so as to avoid the pitch-holes, and that the defects in the road had existed for a considerable time and could have been remedied by a small expenditure of money.

*Held*, that, under s. 618 of the "Municipal Act," R.S.M., c. 100, the