exceeding six months unless the fine and costs were sooner paid.

Held, that under sub-sec. 19 of sec. 479, R.S.O., c. 184, there was power to authorize imprisonment for the period mentioned.

A conviction under the by-law directed in default of payment forthwith of the fine and costs and sufficient distress, imprisonment for ten days in the common gaol unless the costs and charges, including the costs of conveying to gaol, were sooner paid.

Held, that the conviction was bad, as there was no power to include the costs of conveying to gaol.

On a trial of an offence under the by-law the magistrate cannot refuse to receive the defendant's evidence.

Mackenzie, Q.C., for the motion.

Aylesworth contra.

ROBERTSON, J.]

McMILLAN *v.* BARTEN.

Trust—Evidence of fraud—Statute of frauds—Costs.

Certain lands were purchased by the defendant G.B., who paid the cash required at time of purchase, taking the deed in the name of his daughter, the defendant F.B., who gave a mortgage for the balance of the purchase money. Parol evidence was admitted to show that the defendants were trustees for the plaintiff. The evidence also showed that the defendants were acting in collusion to defraud plaintiff. The plaintiff was held entitled to redeem on repaying the amount advanced, and on indemnifying F.B. against the mortgage.

When the purchase by plaintiff was at first contemplated, the intention was to repay the amount required for the cash payment out of moneys due for work done by plaintiff's husband on a contract entered into in his wife's name, the husband being insolvent, but this was not carried out and formed no part of the arrangement subsequently made with G.B., whose sole object was, as he said, to assist the plaintiff.

Held, therefore, that an objection taken that the plaintiff had no *locus standi* to maintain the action could not prevail, the purchase of the land being by G.B. as the plaintiff's agent, and in furtherance, as was shown, of an offer therefor in writing by plaintiff, which was verbally accepted.

Held, that the statute of frauds had no application.

Bain, Q.C., and *Greene* for plaintiff.

Moss, Q.C., for defendant, F. Barton.

Millar for defendant, G. Barton.

MACMAHON, J.]

PRITCHARD *v.* PRITCHARD.

Order on solicitor to repay money into court—Disobedience of—Contempt of court—Order for committal—Con. Rule 867.

The plaintiff solicitor in a case had obtained an order for the payment out to him of certain moneys in court together with the accrued interest thereon, and upon such order obtained the moneys. Subsequently an order was obtained rescinding the above order, and directing the solicitor to forthwith repay the said moneys into court and to pay the costs of the application; and that upon such repayment into court, he could have his bills of costs taxed, and out of such moneys the amount thereof should be paid out to him. The order was personally served on the solicitor, and on his non-compliance therewith, a motion was made for his committal.

Held, that the order for committal should go, for what was sought by the motion was the punishment of the solicitor for his contempt in disobeying the order of the court, and that Con. Rule 867 had no application.

F. C. Moffatt for the motion

C. J. Holman contra.

BANK OF COMMERCE *v.* BRITISH AMERICA ASSURANCE CO.

Insurance—Fire—Statutory condition as to terminating risk—Notice of termination—Sufficiency of—Amount of unearned premium—Tender of.

By the 19th statutory condition of fire insurance policies, "The insurance may be terminated by the company by giving notice to that effect, and, if on the cash plan, by tendering therewith a rateable proportion of the premium for the unexpired term, calculated from the termination of the notice, in the case of personal service of the notice five days' notice, excluding Sunday, shall be given. Notice may be given