

Div. Ct.]

HANNON V. CHERRY,

[Div. Ct.]

sequences. The informer sues on behalf of himself, and the Crown for the recovery of the penalty, and one-half thereof, when recovered, belongs to the Crown, and is applied to the public uses of the Province. The difference between a fine imposed for an offence punishable by summary conviction, or by indictment, where the whole fine is appropriated by the Crown, and the case of the recovery of a penalty for not making a return of a conviction where one-half goes to the Crown, consists chiefly in the mode in which the penalty or fine is proceeded for. The penalty is recovered by civil action, and the fine proceeded for by information, and summons followed in both cases by a judgment of the court.

Upon the law as above summarised, and upon the facts stated, I am therefore clearly of the opinion that the plaintiff is not entitled to succeed, and I must direct the entry of a nonsuit.

EIGHTH DIVISION COURT OF THE COUNTY OF YORK.

HANNON V. CHERRY.

*Lien of innkeeper—Sale of chattels left by
guest—Waiver of lien.*

A man left a stolen horse with C., an innkeeper, as security for a night's lodging for himself and horse. He never came back to redeem the animal. C., after advertising and getting no claimant for horse, at expiration of four months sold horse to pay for its keep. Five years afterwards, through conviction of thief, the true owner learned that the horse was left with C. He demanded the animal; but C. having sold it was unable to comply with demand.

Held, that before 45 Vict. cap. 16, an innkeeper had no power to sell goods of guest to realize his lien without consent of owner of goods.

Held also, that the unauthorized sale in this case was a waiver of the lien, and rendered innkeeper liable for damages for the conversion to extent of full value of the horse, and that claim for keep could not be deducted from damages.

[Toronto, Nov. 16.

The facts of the case fully appear in the judgment of

MCDougall, J.J.—The plaintiff in this case is a livery stable keeper in Hamilton. The defendant an hotel keeper in the County of York. In 1877 the plaintiff had a mare stolen from him at Hamilton. He subsequently, in 1881 or 1882, secured the arrest of the thief, and procured his conviction. From the thief he learned

that he (the thief) had left the stolen horse with an hotel keeper in the township of York. From the evidence it appears that the defendant was the hotel keeper in question. The thief came to the defendant's hotel in 1877, the next day after the alleged theft, and stopping over night at his hotel left in the morning without paying his bill, but leaving the horse as security therefor, promising to return in a few days to settle the claim and redeem his horse. He never came back again. After waiting a couple of weeks the defendant advertized for an owner of the horse in the *Globe* newspaper. Getting no reply to the advertizement the defendant, at the end of about four months, advertized a public sale of the horse, and at the sale bought it in himself, after some competition, for \$42. He kept the animal about a month or six weeks longer and sold it for \$50. There is no doubt from the evidence, and the defendant himself does not seriously dispute the fact, that the horse in question was the horse stolen from the plaintiff in 1877, and that it was left with him by the thief.

The plaintiff in this action claims the right to recover the value of the horse from the defendant on the ground that the sale by the defendant was an act of conversion which waived the lien, and renders him liable for the value of the animal. The defendant claims a set off for the keep of the horse for four months.

There is no doubt that at common law an innkeeper was not bound to enquire whether the guest who might come to his inn was the true owner or not of the goods he brought with him. The sole question of importance as affecting the rights of the true owner would be whether the person leaving the goods with the inn-keeper was in fact a guest; for if he came as a guest the inn-keeper was bound to receive him and his goods whatever their nature: *Johnson v. Hill*, 3 Stark 172; *Threfall v. Barwick*, L. R. 10 Q. B. 210; *Kent v. Shuckard*, 2 B. & A. 805. He was bound to receive him if he had accommodation, and having received him as a guest, would have a lien upon any goods brought by him, which lien could not be defeated even by the true owner: *Johnson v. Hill*, *supra*. The owner would have his remedy against the guest. But although the landlord is not bound to enquire who is the owner of the goods, still if it can be shown that he knew the