

FIRST DIVISIONAL COURT.

APRIL 3RD, 1917.

*REX v. CHAPPUS.

Criminal Law—Magistrate's Conviction—Motion to Quash—Adequate Remedy by Appeal to Division Court—Certiorari Taken away—Ontario Summary Convictions Act, R.S.O. 1914 ch. 90, sec. 10 (1), (3)—Refusal of Motion.

Appeal by the three defendants from the order of SUTHERLAND, J., in Chambers, 11 O.W.N. 388, dismissing their motion to quash a conviction under the Petty Trespass Act, R.S.O. 1914 ch. 111, by two Justices of the Peace, for trespassing upon "the wholly enclosed lawn land" of the Bar Point Land Company.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, JJ.A.

M. K. Cowan, K.C., for the appellants.

W. E. Raney, K.C., for the private prosecutors, respondents.

MACLAREN, J.A., reading the judgment of the Court, after stating the facts and referring to the provisions of the Ontario Summary Convictions Act, sec. 10 (1), (3), said that it was not contended that an appeal to a Division Court would not afford the appellants an adequate remedy. The appellants urged that there was no evidence whatever to shew that the alleged offence had been committed and that there were fatal irregularities in the proceedings. But these grounds were not open to them. Certiorari being taken away (sec. 10 (3)) where there is an adequate remedy by appeal, the proceedings could be questioned only upon the ground of want or excess of jurisdiction. The charge in the information being one that came within the scope of the Petty Trespass Act, the Justices had the right to enter upon the inquiry; and, the conviction being good upon its face, the Court could not look at the evidence or at any affidavits to ascertain whether or not they came to a proper conclusion. It was for them to decide, and not for the Court, even although the Court might be of opinion that they were mistaken.

Reference to *Regina v. Bolton* (1841), 1 Q.B. 66; *Rex v. Morn Hill Camp Commanding Officer*, [1917] 1 K.B. 176; *Bank of Australasia v. Willan* (1874), L.R. 5 P.C. 417; *Rex v. Cantin* and *Rex v. Weber* (1917), 11 O.W.N. 435.

Appeal dismissed with costs.