

could not by deciding that question wrongfully thereby give himself jurisdiction, when in truth he had no jurisdiction. The equities of the case are with Duffy, who for the sake of a settlement gave up a strip of his land.

HAGARTY, J.—I am of opinion that I should not order a prohibition in this case, or interfere with the decision of the learned judge. I am not dissatisfied with his view of the facts; and with the powers vested in him by the statute. I cannot say he has decided erroneously. When the fence-viewers awarded that Duffy should maintain a specified portion of the boundary fence, and to do that he took away the rails formerly furnished by Bradshaw, to maintain what used to be a division fence on land now discovered to be Duffy's, I cannot say it was beyond the learned judge's power to decide that such rails so removed from the freehold to which they were perhaps in a manner annexed, should not be paid for by Duffy when used by him to erect the new fence, which he was bound by the award to maintain. They were originally Bradshaw's property, and put there for a special purpose, not to become part of Duffy's freehold in any view of the parties. By the new survey and agreement, that fence ceased to answer the intended purpose, and a new fence is to be erected instead. Duffy is bound to maintain part of the new fence, and he takes up these rails and uses them to fulfil his obligation.

I think Duffy must pay the costs of the parties whom he has unnecessarily brought here.

THE QUEEN V. MOSIER.

Habeas Corpus—29, 30, Vic. cap. 45—*Revisory powers of Judges of Superior Courts over decisions of magistrates—Jurisdiction of Police Magistrates.*

The 29 & 30 Vic., cap. 45, had in view and recognized the right of every man committed on a criminal charge to have the opinion of a judge of Superior Court upon the cause of his commitment by an inferior jurisdiction. The judges of the Superior Courts are bound, when a prisoner is brought before them under that statute, to examine the proceedings and evidence anterior to the warrant of commitment, and to discharge him if there does not appear sufficient cause for his detention.

The evidence in this case warranted the magistrate in requiring bail.

Police Magistrates have jurisdiction both in cities and counties.

[Chambers, March 4, 1867.]

D. B. Read, Q. C., obtained a writ of *habeas corpus* to bring up the body of one John Mosier, who was a prisoner in the common jail of the county of York, charged with an assault on Dr. Hunter, of Newmarket, with intent to do him grievous bodily harm; and on the same day he obtained a writ of *certiorari*, directed to Alexander McNabb, police magistrate for the city of Toronto, to send up the proceedings had before him, upon which the warrant to commit the prisoner had been founded.

On the return of these writs, the evidence taken before the police magistrate at Newmarket was produced and read, from which it appeared—

That the municipal election for the village of Newmarket was to be held on Monday, the 7th January, 1867, and that Dr. Hunter was one of the candidates; that he had made arrangements to go with a Mr. Atkinson to Queensville to see a man by the name of Stiles, but on Sunday night, the 6th of January, it was arranged in the presence of Mr. Campbell, Mr. Hodge and

Mr. McMaster, at Dr. Hunter's own suggestion, that he should take Mr. McMaster's horse and cutter and drive himself to Queensville, instead of going with Mr. Atkinson, as had been arranged the evening before. Although Dr. Hunter does not remember Mosier's name being then mentioned, he said it was tacitly understood that Mosier, who was Mr. McMaster's agent, was to call him early, and although no hour was named, he seems to think it was to have been at 5 o'clock. At 5 o'clock there was a noise heard at Dr. Hunter's door, which awakened him. He got up and found it was Mosier, who came in and said he came to awaken him—that he was afraid he would oversleep himself. Dr. Hunter asked him to stop and get some breakfast, but he said that he would go and get the horse and cutter ready. He remained some time—five or ten minutes. The arrangement was that he was not to return, and Dr. Hunter was to go down to Mr. McMaster's; it was five or six hundred yards from his house. Dr. Hunter got breakfast and asked the girl what time it was, and he was told it was half-past five. He then got up and put on his overcoat and overshoes and muffler. About 25 minutes to six o'clock Dr. Hunter left his house on Timothy street to go to Mr. McMaster's house on Main street, and took the direct road to it. Timothy street goes into Main street at right angles. As Dr. Hunter left his house he saw some one to his right on Timothy street, two or three rods from him, but who was behind him. When he went towards Main street he heard his steps on the snow behind him, and partially turned round and saw the man, and he heard him following him. When about half-way down to Main street he heard as if some one was walking behind him, and he got a violent blow as if a sudden concussion, and this is all he remembers. He was deprived of consciousness. He had been walking slowly, expecting the person to come up. It flashed through his mind it was perhaps Mosier waiting for him, but he did not form this opinion from his form or appearance. When the person following him did not overtake him, he thought that it was Mosier, but he did not turn far enough round to see who struck him, but before he was struck, and just as he was turning round to see who was following him, the thought occurred to him that it was Mosier. As far as he can tell he was struck one blow. The blow was on the upper part of the spine. He could not say how long it was till he became conscious. His first recollection was hearing the 6 o'clock bell ring. He was lying on his face and side; no one near. He could not rise, and his tongue was partially paralyzed from the effect of the blow. He called as loud as he could, and one Dennis came up, and then went and brought Mr. Landy, who took him home, where he was confined to bed for five or six days, but his neck and spine were painful for fourteen days. No one, he says, knew that he was to be out at that particular time but his servant girl and Mosier. On his cross-examination he said he did not say it was Mosier who struck him, or that he had any motive for assaulting him. All his knowledge of him would lead him to believe that he was his friend, but he says he accused Mosier of apathy at the election in January last. He thought he ought to have influenced his brothers-in-law, one of whom was strong against him, and he says dis-