in the Township of North Orillia, was called to see a sick child of Mr. Wilson in North Orillia. He found the child ill with scarlet fever, and on his return home tried to notify the Medical health officer for the township, of the case, through the telephone, but failing to do so, he wrote, as he stated, that officer a post card, telling him there was a case of scarlet fever in Mr. Wilson's house. The Medical health officer stated that he did not receive the card or telephone message, and had no notice of the case from Dr. McLean. An information was subsequently laid against Dr. McLean under the Public Health Act, R.S.O., c. 205, sec. 80, for neglecting to report the case. The information was taken by Geo. J. Booth, Esq., J.P., and on the 27th day of August last, Mr. Booth, sitting alone, partly heard the case and then adjourned it for a further hearing until September 3rd. On that date Mr. Booth was ill, and Mr. Calverley, another Justice of the Peace, further adjourned the case until September 9th, when Mr. Booth again adjourned it until September 17th. On that date Mr. Arch'd Thomson, J.P., and Mr. Booth, J.P., opened the Court and the informant asked for a further adjournment. The defendant objected to an adjournment and also to the jurisdiction of the Court, and stated he attended there under protest and was not to be considered a consenting party to anything, and attended without prejudice to his rights. According to the notes of the magistrates, the Court decided to proceed with the case, and made a decision that it be dismissed with $10.60 costs against the informant, but according to the evidence before the judge, an adjournment was first declared and the defendant and his witnesses withdrew, and after that the case was gone on with and the decision mentioned arrived at.

From this decision the informant appealed to the General Sessions of the Peace.

H. H. Strathy, Q.C., for appellant.

R. D. Gunn for respondent.

BOYS, J. J.—Under the 112th sec. of the Health Act no appeal can be had to the General Sessions upon any *conviction* under the Act. Here I consider the judgment is an order, and not a conviction, and there is a distinction between the two, a distinction preserved in this same section of the Act. I conclude therefore an appeal to this court will lie. (See *The Queen* v. *Coursey* 26 Ont., R. 685.)

Section 107 of the Act requires complaints of this kind to be tried before two magistrates or a police magistrate. Here all the evidence taken was heard by one magistrate alone, and the decision was arrived at by two magistrates; this I consider was not in accordance with the statute, since an authority given to two magistrates cannot be exercised partly by one and partly by two; this must render the order bad in law.

The questions then arise: (1) Can there be an appeal in a proceeding which, under the magistrates' court as constituted, could under no circumstances lead to a valid decision?

(2) Can an appeal be made by the informant against an order of this kind in a matter wholly within the jurisdiction of the Province of Ontario, and arising under an act of that province?