

val by certiorari of a conviction of the defendant into the High Court, the magistrate, who had made the conviction, moved to have an affidavit filed by the defendant, removed from the files of the court, which was refused with costs payable by the magistrate to the defendant; but subsequently under the belief that ss. 897, 898 of the Code applied, the defendant obtained an ex parte order, varying the previous order by making the costs payable to the clerk of the peace, and then to the defendant. An appeal to the Judge of the High Court sitting in Weekly Court, was dismissed; but an appeal therefrom, and also by leave, direct from the amended order, was allowed, and the order set aside. The Judge of the High Court sitting in Weekly Court has no power to entertain an appeal of this kind.

DuVernet and *Woods* for the police magistrate. *Murphy*, Q.C., contra.

MacMahon, J.]

DAVIS v. TAEGER.

[March 4.

Security for costs—Plaintiffs out of the jurisdiction—Judgment by default—Defendant allowed in to defend on terms.

The plaintiffs, in an action to recover \$4,500 upon a bond, resided out of the jurisdiction, and the writ of summons was so endorsed. The defendant appeared, but failed to deliver a statement of defence, and judgment for the plaintiffs was entered upon default, which the defendant moved to set aside, and an order was made allowing the defendant in to defend on terms of paying costs, paying \$100 into Court to answer plaintiff's future costs, and providing further that the judgment and execution issued thereon should stand as security for the plaintiffs' claim. The defendant paid the costs and paid the \$100 into Court, and then delivered a statement of defence, and issued and served a præcipe order upon the plaintiffs for security for costs, which the plaintiffs moved to set aside.

Wylde, for the motion, contended that the defendant, being allowed in on terms, was now the actor, and was not entitled to security, citing *Doer v. Rand*, 10 P.R. 165; *Exchange Bank v. Barnes*, 11 P.R. 11; *Thibaudeau v. Herbert*, 16 P.R. 420; *Walters v. Duggan*, 17 P.R. 359.

R. V. Sinclair, for the defendant.

Præcipe order set aside with costs.

Armour, C.J., Falconbridge, J., Street, J.]

[March 7.

REGINA v. HOLMES.

Criminal law—Criminal Code, s. 210—Neglect to support wife—Former marriage—Proof of death of first husband—Conviction.

The defendant on the complaint of his wife was convicted under sub-sec. 2 of s. 210 of the Code of refusing to provide necessaries for her. The evidence showed that the parties were married in 1890, but that the complainant had been married to one W. in 1886, though she had never lived with him; that in 1888 she had received a letter stating he was dying in the United States, and that that was the last she heard of him, save that about a year after her marriage to H. she again heard that he was dead.