

adjudged the imprisonment of defendant for 21 days, &c. The defendant paid the \$5.50 and instituted proceedings to quash the order.

J. B. Mackenzie, for defendant.

A. G. Slaght, for the magistrate.

J. W. St. John, for complainant.

The judgment of the Court (MULOCK, C.J., TEETZEL, J., ANGLIN, J.), was delivered by

ANGLIN, J.:—Upon the argument we expressed our opinion that this order could not be maintained, for several reasons, of which it is sufficient to state that it was made in the absence of the accused, and that it awards imprisonment for non-payment of costs merely, in contravention of R. S. O. 1897 ch. 90, sec. 5, sub-sec. 4.

But, in view of the circumstances surrounding this case, the understanding as to payment of costs by defendant, upon which the proceedings against her were discontinued, the fact that the more objectionable part of the magistrate's order has never been in any way acted upon, the fact that the costs paid by defendant were tendered back to her before this motion was launched, the pettiness of the entire matter, and the obvious purpose of defendant to institute an action against the magistrate, and perhaps also against the officer charged with enforcing his order—an action of which the most conspicuous feature, it would seem, would probably be its entire lack of merit—the Court is of opinion that the exercise of any power it may have to protect the magistrate and his officer against such an action is urgently called for. If, as defendant contends, she is entitled to have the order in question granted *ex debito justitiæ*, the Court probably cannot, by virtue of any inherent power, impose terms which it might prescribe were its action discretionary: *Downey's Case*, 7 Q. B. 281, 283. We therefore look for statutory authority.

We find that by 1 Edw. VII., ch. 13, sec. 1 (O.), the provisions of secs. 889 to 896, both inclusive, of the Criminal Code, are made applicable to any conviction or order made by a justice of the peace under the authority of any statute of the province of Ontario, and to any warrant for enforcing the same.