

Boyd, C.]

REX v. HAYWARD.

[Dec. 12, 1902.]

*Criminal law—Theft—Offender over 17 years of age—Commitment for two years to reformatory—Transfer to central prison on two years' sentence—Petty offence—Six months' sentence—Crim. Code, ss. 752, 783, 785, 787, 955—R.S.C. 1886, c. 183, ss. 19, 25.*

The defendant, a youth of over 17 years of age, was charged before a magistrate with stealing a small sum of money out of the contribution box of a church. The magistrate's return shewed that he pleaded guilty, and was committed for two years to the Provincial Reformatory. He was taken to the Reformatory and sent on to the Central Prison and kept there in custody under the warrant of commitment to the Reformatory. On a motion for his discharge on the return of a habeas corpus, it was

*Held*, 1. There had been a miscarriage of legal directions in sending a lad of over 17 years of age to the Reformatory, and in sending him on sentence of two years to the Central Prison.

2. Sec. 785 of the Code is intended to comprehend summary trial "in certain other cases" than those enumerated in s. 783, and that when the offence is charged and in reality falls under s. 783 (a) it is to be treated as a comparatively petty offence, with the extreme limit of incarceration fixed at six months under s. 787.

3. Under the circumstances that this was not a case for further detention, or the direction of further proceedings under s. 752, and an order for the defendant's discharge was granted.

*Du Vernet*, and *G. J. Smith*, for the action. *Ford*, for the Attorney-General, contra.

Divisional Court.] HOLMES v. TOWN OF GODERICH. [Dec. 15, 1902.]

*Municipal corporations—Borrowing powers—"Ordinary expenditure"—School purposes—Costs.*

The power conferred upon a municipality by the Municipal Act, R.S.O. 1897, c. 223, s. 435, of borrowing money to meet current expenditure is distinct from the power conferred by that section of borrowing money for school purposes, and the amount borrowed for the former purpose must not exceed eighty per cent. of the amount collected in the preceding municipal year for the current expenditure of the municipality apart from the expenditure for school purposes.

Where this limit had been exceeded, but before the action was tried, the money had been repaid, the plaintiff who sued on behalf of himself and all other ratepayers, was held entitled to have the merits of the case disposed of, and, in the result, his costs awarded to him, and this although the borrowing had taken place to enable the municipality to carry on prior litigation pending between the plaintiff and the municipality.

Judgment of ROBERTSON, J., reversed.

*Proudfoot*, K.C., for appellant. *E. L. Dickenson*, for respondents.