

ficio a justice of the peace for the district for which he has been appointed, and has full power to do alone whatever is authorised by any statute in force in Ontario relating to matters within the legislative authority of the province to be done by two or more justices of the peace. The police magistrate, therefore, had jurisdiction under sec. 11 of ch. 157, and the provision in sec. 18 of that chapter for appeals manifestly contemplates an appeal lying from the order of the police magistrate made by him within his jurisdiction as a justice or justices under that Act.

I also think it is perfectly clear that under sec. 11 it was the duty of the magistrate to hear any legal defence which might be set up by the master, and to give effect to the same if established.

It was the duty of the magistrate under that section to direct payment to the servant of any "wages found to be due," and in ascertaining the amount found to be due it must certainly be his duty to adjudicate upon any legal defence to the claim. If there is a legal defence to the whole claim, it would follow that nothing could be found to be due.

Now, the defence set up on the material before me is that in the course of the employment of the servant in respect to which he was claiming the wages, he negligently destroyed material of the defendants to the value of \$60, and for that reason the master refused to pay his claim for wages, amounting to \$25; and it is alleged in the affidavit of Mr. Henderson that by reason of the servant's negligence there was a total failure of consideration, and that the master received no benefit whatever from the servant's services; and in the same affidavit it also appears that upon the hearing before the magistrate he refused to allow the servant to be cross-examined as to the negligence in performing the work, and refused to permit the master to give any evidence touching the defence set up, expressing the view that over such a matter he had no jurisdiction.

In *Irving v. Morrison*, 27 C. P. 242, which was an action by an architect for his fees for services in planning and superintending the erection of the defendant's house, it was held that the defendant was entitled to deduct from the amount which the plaintiff could otherwise claim any loss which defendant had sustained by plaintiff's negligence in certifying for too much for contractors who afterwards failed, in consequence of which defendant was compelled