

Province of Nova Scotia.

SUPREME COURT.

Ritchie, J.]

REX v. BOWERS.

[Feb. 14.]

Criminal law—Theft—Plea of not guilty—Jurisdiction of magistrate to try and convict—Order in nature of habeas corpus—Motion for discharge under, refused.

Defendant was arrested and brought before the Stipendiary Magistrate for the City of Halifax for the purpose of preliminary examination on a charge of stealing one coat, the property of M., valued under \$20, and also on a further charge of stealing two books, the property of D., valued under \$20.

After committal for trial on both charges, but before the actual signing of the warrant of commitment defendant elected to be tried summarily on the charge of stealing the coat, and, on pleading "not guilty," was tried and convicted, and sentenced to be imprisoned in the county jail for nine months with hard labour. On the charge of stealing the books he elected to be tried before a jury and was committed to jail to await trial. On the return of an order in the nature of a habeas corpus the discharge of defendant from custody was moved for on the ground that under secs. 789, 790 of the Criminal Code of 1892 the magistrate could impose the sentence for the offence of which the prisoner was convicted only in the event of the prisoner pleading "guilty," and not after trial on a plea of "not guilty."

Held, 1. Refusing the motion, that the Stipendiary Magistrate had not exceeded his jurisdiction in trying the prisoner for the theft of property over \$10 in value, with his consent, when he pleaded "not guilty."

2. The fact that the prisoner was detained in jail awaiting trial at the next term of the Supreme Court for the theft of the books, in relation to which he declined to be tried summarily, would alone prevent his discharge.

Cluney, for Attorney-General. *O'Hearn*, for prisoner.

Townshend, J.]

FAWSETT v. FAULKNER.

[April 15.]

Bill of sale—Assignment within 60 days—Presumption of insolvency—Evidence to rebut presumption—Application to adduce further evidence refused—Costs.

R. was indebted to the plaintiff F. for an overdue draft which fell due in May, 1901. On August 15, 1901, F. went to R.'s place of business and bought from him a quantity of stoves. A memorandum of the sale was drawn up showing the number of stoves purchased, the prices and the