

HIGH COURT OF JUSTICE.

Queen's Bench Division.

ARMOUR, C.J.,
FALCONBRIDGE, J. }

[Nov. 19]

REGINA v. HEWIT.

Malicious prosecution—Record of acquittal—Mandamus to Attorney-General.

Motion by the defendant for an order of mandamus to the Attorney-General for Ontario commanding him to issue his fiat for the entry of a judgment of acquittal upon the indictment of the defendant for theft of saw logs, or directing the officer of the court having charge of the indictment to enter up judgment of acquittal and furnish the defendant with a copy; and appeal by the defendant from the refusal of BOYD, C., who tried the prisoner upon the indictment, to order the entry up of judgment of acquittal.

An action for the malicious prosecution of the defendant upon the indictment had been brought and had failed at the trial because of the absence of a record of the acquittal.

Regina v. Ivy, 24 C.P. 78, was not followed in *O'Hara v. Dougherty*, 25 O.R. 347.

Steers for the defendant.

J. R. Cartwright, Q.C., for the Attorney-General, and *A. H. Marsh*, Q.C., for the private prosecutor, not called on.

Per curiam: Motion and appeal dismissed with costs, following *Regina v. Ivy*, 24 C.P. 78.

ARMOUR, C.J.,
FALCONBRIDGE, J. }

[Nov. 19]

REGINA v. GIBBONS.

Summary conviction—Uncertainty—Offence not disclosed—Amendment—Criminal Code, s. 179—Exposing obscene book—Public morals—Quashing conviction—Costs.

Motion to make absolute a rule *nisi* to quash a summary conviction of the defendant by the police magistrate for the town of Peterborough, "for that he (the defendant) did at the town of Peterborough on the tenth day of February, 1894, without lawful excuse or justification, expose to public view an obscene book tending to corrupt public morals, contrary to the Criminal Code."

The evidence taken by the magistrate showed that the book in question was one describing certain diseases, and that it was distributed gratis among the citizens of Peterborough by the defendant, with the object of assisting the sale by him of certain medicines.

A. G. Murray, for the defendant, contended that the conviction was bad on its face because it did not disclose the offence which the defendant had committed, but simply followed the language of s. 179 of the Criminal Code, citing *Regina v. Spain*, 18 O.R. 385; *Regina v. Coulson*, 24 O.R. 246; and that it