

Irish Rep.]

THE QUEEN V. THE DIVISIONAL JJ. OF DUBLIN.

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before the expiration of the month, the magistrates ordered payment of the penalties. The Court quashed the latter order by *certiorari*.

[Ir. L. T. Rep. Dec. 21, 1872.]

On the 27th of October, 1871, the Justices made an order that John Rice, the owner of a certain house at Bridgefoot-street, should, immediately on the service of the order, renew a sewer and disinfect the rooms, so that same, at the expiration of one month from the date of the order, may be habitable and free from infection, under penalties of 10s. per day for non-compliance. On the 16th November, 1871, an order was made by the Justices for payment of penalties, under the first order, amounting to £4, and £1 12s. costs, a conditional order for a *certiorari* having been made.

*J. O. Byrne* (with whom was *Purcell, Q. C.*), for the Inspectors of Nuisances, showed cause. The magistrates had jurisdiction to inflict the penalty. But there was merely a technical irregularity, for which the Court will not quash the order of the magistrates, nor will it interfere with the exercise of their jurisdiction; *Tinkler v. The Board of Works for the Wandsworth District*, 1 Gif., 412; *The King v. The Justices of Denbighshire*, 1 B. & Ad., 66.

*C. Molloy* and *J. A. Curran*, in support of the order, cited *Tomlins v. Great Stanmore Nuisance Committee*, 12 L. T. N. S. 118, Q. B.; *The Queen v. Jenkins*, 32 L. J., N. S. M. C., 9.

WHITESIDE, C. J.—We have no doubt about confirming the authority of the magistrates, or enforcing the jurisdiction they possess, nor do we think, though we have heard the case very well argued, that there is any difficulty in carrying the law into effect. It is a beneficial law, and we believe that the more vigorously it is enforced the better will it be, but it must be law that we are to enforce. The magistrates made an order on the 27th October, 1871; their jurisdiction is clear; they entertain the complaint, and it is stated to them that a certain house has been so infected by what has been termed fever poison, as to be unfit for occupation and dangerous to health. I entirely subscribe to the argument of Mr. Purcell, that we are not to inquire into the discretion of the justices. Upon the face of the order the object in view is intelligible and distinct. My construction of the order is that they have ordered some work to be done in this neglected habitation—done within a month—so as to insure its being fit for occupation. I read the order in this way, that the work is to be completed—not to make the house a better habitation—but with the view of exercising the jurisdiction, wisely and judiciously exercising it, to re-

move a nuisance. The house is pronounced by the order to be unfit for habitation, and it is to be closed during one month. I confess, it would appear to me what the justices had to do, after having pronounced the order, was to see that the work was properly done within the time limited, so as to provide for the occupation of it within the month. What is the power of the magistrates? By the 13th sec. of the 18th and 19th Vict., ch. 121, they may require the person to take such steps as will render a house safe and habitable, and to do such "work or acts as are necessary to abate the nuisance complained of, in such manner and within such time as in such order shall be specified," "and on their being satisfied that it has been rendered fit for such purpose, they may determine their previous order by another declaring such house habitable." What occurred in the case was this:—a summons to Thomas Rice was issued on the 16th Nov., 1871, to answer the complaint of the Inspector of Nuisances, in relation to the house being infected with fever poison. It appears to us it is impossible to read the summons and not to perceive that in reality it is a summons issued to and complaining of a person for not having executed all the works for the doing of which he had been given a month's time. It would not be possible for the justices, after they had made the order granting a month to do a thing, to inflict a penalty in a few days. By the 14th section of the statute, it is enacted, that "any person not obeying the said order for abatement shall—if he fail to satisfy the justices that he has used all due diligence to carry out such order—be liable for every such offence to a penalty," &c. Now, what is the offence for which he has been called upon to pay the sum of £5 15s.? I cannot see that the proceedings are for anything but neglecting to do that which the party got one month to do, and he could not be guilty of violating the order within a week. I do not mean to say that the magistrate might not have issued a summons to bring him up; and looking at the 20th section of the Act, I find that "where any costs, expenses, or penalties are due, under or in consequence of any order of justices, made in pursuance of this Act, as aforesaid, any Justice of the Peace, upon application of the nuisance authorities shall issue a summons requiring the persons from whom they are due to appear before two justices," &c. I do not think there has been a compliance with the Act of Parliament. We are of opinion that there should be a fresh summons before the issuing of the warrant. There should be a summons for not having closed the house. Then