

The endorsement on the notice of action herein was that it was given by V. M. of Queen Street in the City of Brantford, in the County of Brant, solicitor for the within named James Jones. Within was the notice, namely: "I do hereby, as solicitor for and on behalf of James Jones, of the village of Jarvis, in the County of Haldimand, farmer," etc.

Held, that the notice, taken in connection with the Interpretation Act, 31 Vict., c. 1, s. 29, was sufficient, etc. *Morgan v. Palmer*, 13 C.P. 528 not followed, as decided prior to said Act; but *quære*, whether any notice of action was necessary.

Form of order as to costs of N. given.

McCarthy, Q.C., for plaintiff.

Delamere and Brewster (of Brantford) for the defendant G.

Aylesworth for defendant B.

S. A. Jones for defendant N.

Div'l Ct.]

BROWN v. MCCRAE.

Damages—Fire caused by defendant's negligence—Right to set off amount received from Insurance Co.

In an action by plaintiff to recover damages for the destruction of his dwelling house and a quantity of chattel property, caused by sparks emitted from the defendant's steam tug through defendant's negligence,

Held, that the defendant was not entitled to deduct from the amount of damages found to have been sustained by the plaintiff an amount paid to the plaintiff by an insurance company under an insurance on the property.

Meredith, Q.C., for plaintiff.

Osler, Q.C., and *M. Wilson* for defendant.

Div'l Ct.]

REGINA v. FIFE.

Justice of the peace—Malicious Injuries to Property Act, R.S.C. 168—Warrant of commitment—Omission of "unlawfully"—Effect of—Omission of amount of damage.

Under s. 58 of the Malicious Injuries to Property Act, R.S.C., c. 168, the offence must be unlawfully and maliciously committed, and the damage must exceed \$20. In this case the warrant of commitment charged the offence as having been wilfully and maliciously committed, omitting the word "unlawfully."

Held, that this was fatal to the commitment, and it was directed to be quashed.

Held, also, that the commitment should have alleged that the damage exceeded \$20.

W. M. Douglas for defendant.

Moore contra.

Div'l Ct.]

SINDEN v. BROWN.

Justice of the peace—Action against—Summary Convictions Act—Imprisonment for non-payment of fine after payment of costs.

A conviction under the Summary Convictions Act required the defendant to pay fine and costs, in default of payment distress, and in default of sufficient distress, imprisonment. The plaintiff paid the costs, and was subsequently arrested and imprisoned for non-payment of the fine; the conviction and commitment remained in force unquashed.

Held, that the conviction could be enforced by imprisonment for non-payment of the fine, notwithstanding the payment of the costs; and therefore, with the conviction remaining in force, the action was not maintainable.

The law laid down in *Frigerson v. Board of Police, of Cobourg*, 6 O.S. 405, not followed in this respect.

Mackenzie, Q.C., for plaintiff.

E. Martin, Q.C., contra.

Div'l Ct.]

BALZER v. GOSFIELD.

Municipal corporation—Assumption of township road by county—Liability of county—Remedy over against township—Municipal Act, s. 531, s.s. 1, 4, s. 533, 566, s.s. 5.

Action by plaintiff for damages for the loss of his horse, which was killed by falling into a ditch dug by the township, in a road therein, under a drainage by-law. The Township Council had passed a by-law for opening and establishing this road and shortly after the County Council had passed a by-law assuming the road as a county road of the said county, for the purpose of expending thereon the county appropriation, and for such purpose only. The money of the county was expended from year to year on the said road. The county by-law was proposed and seconded by the township reeve, and its validity, although never assented to by by-law, was never disputed by the township.