

4. No objection that the costs of conveying the defendants to gaol, in the event of imprisonment in default of distress, were specified.

As to the other objections suggested, it was held a sufficient answer that the conviction followed the form prescribed by the Act, Consol. Stat. C. chap. 103, which were intended as a guide to magistrates and to prevent failure of justice from trivial objections.

As to the form of the warrant, *held* unnecessary to allege that it was under seal, or that it was directed to any one, it being averred to have been duly issued and delivered for execution to defendant M., the constable.

Held, also, that the avowry, set out below, sufficiently shewed that defendant M. was a constable, and that it was delivered to him for execution.

Held, also, that the mention in the warrant of the \$1 for costs of conveying defendants to gaol could not vitiate, for it authorized a distress only for the penalty and costs of conviction.

Appeal from the County Court of Oxford.

Replevin. Avowry and cognizance, that the goods in the declaration mentioned were taken and detained under a warrant of distress duly issued by the said defendant John McWhinnie, as and being a justice of the peace in and for the County of Oxford, for non-payment of penalty and costs adjudged to be paid by the said plaintiff under the terms and provisions of a certain conviction duly made on, to wit, the 30th day of April now last past, and in the words and figures ing:

Province of Canada, county of Oxford. Be it remembered that on the thirtieth day of April, in the year of our Lord one thousand eight hundred and sixty-seven, in the town of Woodstock, in the said county of Oxford, William A. Reid is convicted before the undersigned, two of Her Majesty's Justices of the Peace for the county of Oxford, for that he, the said William A. Reid, at the said town of Woodstock, on the twelfth day of April, in the year of our Lord one thousand eight hundred and sixty-seven, did sell to one Henry Chapman a certain quantity, to wit, one pint, of a certain spirituous liquor called whisky, he, the said William A. Reid, not then being licensed by any competent authority in that behalf to sell any spirituous liquor; against the form of the statutes in such case made and provided. And we adjudge the said William A. Reid, for his said offence, to forfeit and pay the sum of twenty dollars, to be paid and applied according to law, and also to pay to the informant, John Brian, the sum of four dollars and twenty cents for his costs in this behalf. And if the said several sums be not paid forthwith on or before the tenth day of May next, we order that the same be levied by distress and sale of the goods and chattels of the said William A. Reid, and in default of sufficient distress we adjudge the said William A. Reid to be imprisoned in the common gaol of the said county of Oxford, at Woodstock, in the said county of Oxford, for the space of fifteen days, unless the said several sums, and all costs and charges of the said distress, and the costs and charges of conveying the said William A. Reid to the said common gaol, to wit, the sum of one dollar, shall be sooner paid.

Given under our hands and seals the day and year first above mentioned, at the town of Woodstock, in the county of Oxford aforesaid.

(Signed),

WILLIAM GREY, J. P. (Seal)

JOHN McWHINNIE, J. P. (Seal.)

And of which said offence the plaintiff was convicted by the said John McWhinnie and

William Grey, Esquires, two of Her Majesty's justices of the peace in and for the said county of Oxford, and which said conviction yet remains in full force and effect. And because the said plaintiff made default in paying the said penalty and costs so adjudged to be paid; and the same were unpaid at the time when, &c., the said warrant of distress was issued as aforesaid, and was delivered for execution to the said defendant Richard Martin. And the defendant John McWhinnie well avows, and the said defendant Richard Martin, as and being a constable of and in the said county of Oxford, and as being the bailiff of the said John McWhinnie, well acknowledges, the taking and detention of the said goods under the said warrant and conviction, and justly, &c., as a distress for the penalty and costs so adjudged to be paid by the said plaintiff, which still remain unpaid, wherefore the defendants pray judgment, and a return of the said goods and chattels.

The plaintiff demurred to this avowry, and judgment having been given in his favor on such demurrer in the court below, the defendants appealed. The grounds of demurrer are sufficiently stated in the judgment of this court.

J. A. Boyd, for the appellants, cited *Wray v. Toke*, 12 Q. B. 492; *Hawk*, P. C. Vol. II., ch. 37, sec. 27; *Rex v. Symonds*, 1 East 189; *Re George Bailey*, 3 E. & B. 697; *Skingley v. Surridge*, 11 M. & W. 503; *Rex v. Chandler*, 1 Salk. 378; *Regina v. Faulkner*, 26 U. C. R. 529; *Clarke v. Carrall*, 17 C. P. 538.

Harrison, Q. C., contra, cited *Fletcher v. Calthrope*, 6 Q. B. 880; *Howard v. Gossett*, 10 Q. B. 359; *Lindsay v. Leigh*, 11 Q. B. 455; *Re Turner*, 9 Q. B. 90; *Attorney General v. Bailey*, 1 Ex. 281, 292; *Paley on Convictions*, 193, 195; *Rex v. Ferguson*, 3 O. S. 220; *Chaddock v. Wilbraham*, 5 C. B. 645; *Moore v. Jarron*, 9 U. C. R. 233; *Phillips v. Whittsed*, 2 E. & E. 804; *Rex v. Dove*, 3 B. & Al. 596; *Kerford v. Mondel*, 28 L. J. Ex. 303.

MORRISON, J., delivered the judgment of the court.

The two material points which arise on the pleadings are whether the conviction set out is a valid one, and whether the warrant and delivery, &c., of it to defendant Martin, is properly pleaded, and justifies the taking of the goods.

Various objections were taken to the conviction; among others, that it did not shew any offence committed by the plaintiff: that the statute under which the plaintiff was convicted, 29-30 Vic. ch. 51, sec. 254, only authorizes a conviction for selling intoxicating liquors of any kind, while this conviction is for selling a certain spirituous liquor called whisky. Now the statute itself, in various sections referring to licensing and sale of liquors, uses the expression spirituous liquors, and in the very section creating the offence we find these words in reference to the notice to be exhibited by persons licensed; and the 256th section, which provides that all prosecutions for penalties incurred by persons vending wines, rum, &c., or other spirituous liquors, without license, shall be recoverable, &c., evidently including as one of the penalties that of selling intoxicating liquors; and by the 261st section the word "liquors" shall be understood to mean and comprehend all spirituous and malt