

*Held*, not a good and valid conviction, because it did not come within any of the provisions of s. 185 of the Code.

*Wallace Nesbitt*, for prisoner. *J. R. Cartwright*, Q.C., for the Crown.

Robertson, J.]

REGINA v. PONTON.

[Oct. 7.

*Venue—Change of—Criminal cause—Fair trial—Evidence as to.*

Upon a motion made by the Crown under s. 651 of the Criminal Code to change the venue for the trial of three persons charged with the offence of breaking into a bank in the town of Napanee, and stealing money therefrom, from the town of Napanee to some other place, upon the ground that the sympathy felt for two of the accused in the town, and in the county of Lennox and Addington, of which it is the county town, was such that a fair trial could not be had,

*Held*, that the rule that all causes should be tried in the county where the crime is supposed to have been committed ought never to be infringed unless it plainly appears that a fair and impartial trial cannot be had in that county; and mere apprehension, belief, and opinion, are not to be relied on as evidence. And, under the circumstances appearing upon affidavits filed, the motion was refused.

*L. G. McCarthy*, for Crown. *Wallace Nesbitt*, for defendant Ponton. *C. J. Holman*, for defendant Mackie. *W. E. Middleton*, for defendant Holden.

Boyd, C., Robertson, J.] DAWSON v. LONDON STREET R. W. CO. [Oct. 8.

*Discovery—Examination of officers of street railway company—Conductor and motorman.*

In an action for damages for bodily injuries sustained by a pedestrian, as alleged, by reason of the negligent management and operation of a car of the defendants, an incorporated company:

*Held*, that the conductor and motorman of the car were officers of the company examinable for discovery; but as the plaintiff had already examined the general manager, she should, under Rule 439 (2), not be allowed to examine both the conductor and motorman, but only one of them.

*W. J. Harvey*, for the plaintiff. *Hellmuth*, for the defendants.

Falconbridge, J., Street, J.] LAZIER v. HENDERSON.

[Oct. 8.

*Landlord and tenant—Assignment for benefit of creditors—Future rent—Preferential lien—Distress—R.S.O., c. 170, s. 34.*

By the terms of a lease of shop premises, the rent was payable quarterly in advance. Thirteen days after a quarter's rent in advance had become due, the lessee made an assignment for the benefit of his creditors. There was a proviso in the lease that if the lessee should make any assignment for the benefit of creditors, the then current quarter's rent should immediately become due and payable, and the term forfeited and void, but the next succeeding current quarter's rent should also nevertheless be at once due and payable.

*Semle*, that the latter part of the proviso was in fraud of creditors and void.