

Province of Ontario.

HIGH COURT OF JUSTICE.

Boyd, C., Ferguson, J., Teetzel, J.]

[Feb. 11.

REX v. JOHNSON.

Criminal law—Wilful destruction of fence—Criminal Code, ss. 481 (2), 507—“Colour of right”—Conviction—Jurisdiction of magistrate—Rejection of evidence—Unregistered plans.

The defendant was convicted under s. 507 of the Criminal Code for unlawfully and wilfully destroying or damaging a certain fence upon the land of the complainant. By s. 481 (2) there is no Criminal offence under s. 507 unless the act of damages is done “without legal justification or excuse and without colour of right.”

Held, that “colour of right” means an honest belief in a state of facts which, if it existed, would be a legal justification or excuse.

Upon the evidence in this case, there was on the part of the defendant such an honest belief, reasonably entertained, in the existence of a right of way over a lane on the complainant's land, as satisfied the terms of the statute, and rendered the conviction bad for want of jurisdiction.

Held, also, that the convicting magistrate erred in disregarding plans of the locus because they were not registered. Where lots are sold in sections pursuant to plan of the whole made by or for the owner of the whole, according to which he sells the parts, the plan is good to establish such a lane among the different sub-owners, whether registered or not.

Tucker, for defendant. *Cartwright*, K.C., for magistrate. *DuVermet*, for complainant.

Boyd, C., Ferguson, J., Meredith, J.]

[Feb. 11.

REX v. JOHNSON.

Criminal law—Conviction—Motion to quash—Recognizance—Insufficiency—Justice of the Peace—Married woman—Separate estate.

The defendant is a necessary party to the recognizance required upon a motion to quash his conviction; and where his recognizance was invalid because entered into before a justice of the peace for a county other than that in which the conviction was made, the recognizance of his surety, though properly taken, was held bad also.

Seemle, that a recognizance by the wife of the defendant might be binding in respect to her separate estate, which she connected by affidavit with her recognizance.

J. E. Jones, for complainant. *H. G. Tucker*, for defendant.