

1897, c. 88, s. 14, and he consented, in writing, to have the action tried at the ensuing sittings of said court to be held at Morrisburg, on 21st June, last. At the hearing the particulars required to be proved by R.S.O. 1897, c. 88, s. 19, were all admitted. The above statement of facts was also admitted.

*R. F. Lyle*, for plaintiff. *C. F. Bradfield*, for defendant.

O'REILLY, Co. J., held that the defendant had no right to the \$9.50 or to any part of it. The defendant could only justify charging fees for himself or the constable in either of these proceedings, under the tariff given in R.S.O. 1897, c. 95 or under the tariff in s. 871 of the Criminal Code, 1892, as amended. These tariffs apply strictly to offences coming within the summary jurisdiction of justices. There is in neither tariff any provision for fees in connection with the issuing or executing of search warrants. Petit larceny was a felony and simple larceny was a felony (after the distinction between grand and petit larceny was abolished) and it so remained until the distinction between felony and misdemeanor was abolished. The offence under s. 101 of the Code was a felony prior to the passing of the Criminal Code (see R.S.C. c. 105, s. 5). In England the expenses in connection with prosecutions for felony were made payable out of county rates by 25 Geo. II., c. 36. In this province the costs of the prosecution in cases of felony, when not otherwise provided by law, are to be paid out of the county funds: R.S.O. 1897, c. 102, s. 2, and the fees for serving and executing search warrants are given in the tariff for constables in the schedule to R.S.O. c. 101 as amended. [The learned judge concluded his judgment as follows:] It can hardly be argued that a man who swears to an information to lead a search warrant for the recovery of stolen property, is securing services in the nature of a civil remedy for his own benefit. He is taking a necessary step, if he is acting in a bona fide manner (as we must presume he is) to convict a man whom he believes to have committed a crime, which until recently was a felony. I am not aware of any decision to the effect that the prosecution of a felon or any necessary step or proceeding in the prosecution of a felon, has been held to be a service in the nature of a civil remedy for the benefit of a private individual, and I cannot here so find. By the ancient common law of England, it was an offence for justices of the peace to accept anything "for their office of justice of the peace to be done, but of the king, and fees accustomed, and costs limited by statute." I cannot find that the \$3.00 taken by the defendant for his own use, were fees accustomed, i.e. sanctioned by ancient usage, or costs limited by statute, and I am afraid that if the ancient common law in this regard were still in force in Canada, that the taking of the \$3.00 in this case, might bring defendant within its provisions. The amount taken for the constable is said to have been paid over to him, and I have no doubt has been, but I consider that the defendant was acting unlawfully in taking the \$9.50, and I consider that it would be highly improper for me, by joining the constable as a defendant, to recognize in any way the alleged bargain between the