

Full Court.]

PROCTOR v. PARKER.

[June 13.

Promissory note—Consideration for release from imprisonment—Unnecessary recitals in conviction—Adjournments of hearing before justice of the peace made in absence of accused—C.C., s. 857, s.s. 1—Objections not raised at the trial.

One Luke Parker having been charged upon the information of the plaintiff with an offence under the Fires Prevention Act, R.S.M., c. 60, was convicted thereof by a justice of the peace, fined \$125 and ordered to be imprisoned in default of payment. The fine not having been paid, Parker was arrested under a warrant and brought to Winnipeg. The defendant then indorsed the promissory note sued on in this action in order to secure the release of Luke Parker. In making the settlement the Parkers acted under the advice and with the assistance of a solicitor. By the statute plaintiff was entitled to half the fine when collected, and the other half was to go to the Provincial Treasurer of the Province.

Held, that there was a good consideration for defendant's indorsement of the note.

The conviction relied on was dated 13th July, 1896, and was in the form W.W. in the Criminal Code with the addition at the end of recitals to the effect that Luke Parker had been duly served with a summons duly issued on 4th April, 1896, that his solicitor appeared for him on the return of the summons and also when the hearing took place and asked for a further adjournment, which was granted, that accused was subsequently specially summoned to appear before the justice on the first day of taking evidence, when the said solicitor appeared for a short time, but the defendant did not personally appear at the hearing; and it was argued that it should be inferred from these recitals and from the length of time that elapsed from the date of the original summons to the date of the conviction, that there had been one or more adjournments of the hearing for a longer period than the eight days allowed by s. 857, s.s. 1, of the Criminal Code, since at most two adjournments were stated.

Held, that no such inference could be drawn from the recital, also that adjournments of the hearing could be made by the justice in the absence of the accused provided they were made in the presence and hearing of the party or of his solicitor or agent, if present. Parties who do not see fit to appear when summoned must ascertain the dates to which proceedings are adjourned or disregard them at their peril.

On the argument of the appeal a question was raised as to the sufficiency of the proof of presentment of the note, but it appeared that this question had not been raised at the trial.

Held, that it was not now open to the defendant. If it had been raised at the trial, the judge might have given an opportunity to supplement the evidence. Presentment may be very readily waived, and the absence of