

to the goods by purchase from one Badalamenti in New York, the goods being at the time in Toronto. The trial Judge held that the property in the goods did not pass to plaintiff, but passed under a general assignment to defendant Clarkson.

J. G. O'Donoghue, for plaintiff.

R. McKay, for defendant Clarkson.

THE COURT (MULOCK, C.J., TEETZEL, J., ANGLIN, J.), dismissed the appeal with costs.

FEBRUARY 1ST, 1906.

DIVISIONAL COURT.

REX v. MORNINGSTAR.

Justice of the Peace—Order for Imprisonment for Non-payment of Costs Merely—Absence of Accused—Quashing Order—Power of Court to Impose Terms—Protection from Action.

Motion by defendant to make absolute a rule nisi to quash an order of James Cruickshank, a justice of the peace for the county of York, directing defendant to pay the complainant's costs of certain proceedings before the justice upon a charge that defendant had unlawfully used insulting and abusive language towards the complainant.

After taking some evidence, which went far to prove the offence charged, the magistrate, at the instance of counsel for the complainant, permitted the withdrawal of the charge, apparently moved by compassion for the accused. It was a term of this arrangement, to which all parties appeared to have assented, that defendant should pay the complainant's costs. Upon her failure to carry out this term of the understanding, the magistrate wrote to defendant, warning her that if she did not make payment, he would record a conviction against her, "including penalty and costs of collecting—in default imprisonment for 21 days." Payment not yet being made, the justice, without further notice to defendant, made the order now impeached, whereby, without convicting defendant of any offence, he ordered payment by her of costs amounting to \$5.50, and in default authorized the levy of this amount by distress, and in default of sufficient distress