

not depending upon the consent of the person accused. That if the prisoner was tried and convicted under that part of the Code the penalty imposed was within the terms of the Act. That the omission from the conviction returned of the words "being charged before me," used in the form applicable to Part LV. of the Code, could not affect the jurisdiction of the magistrate to try the offence summarily, or make the conviction bad in view of ss. 800, 807.

TOWNSHEND, J., *held*, it being clear from the conviction, which was in the form W W, and the papers returned, that the magistrate proceeded and convicted the defendant under ss. 207 (j) and 208 of the Code, that the penalty inflicted was in excess of the jurisdiction, and that the omission of the words "charged before me" was material.

Also, that defendant having a right of appeal in the one case and not in the other a strict construction was necessary.

The discharge of the prisoner was ordered on condition that no action should be brought against any official.

*Power*, for prisoner. *Cluney*, for Attorney-General.

Meagher, J., and Townshend, J.]

[July 18 and Nov. 12, 1902.

CALDER v. M. & V. B. RAILWAY CO.

*Expropriation—Railway—County charge—Injunction—Costs.*

Action for an injunction to restrain defendants from building a railroad across plaintiff's land and to recover damages for trespass. Plaintiff owned land within the town of Bridgetown, and the defendants entered and began to build their road therein before any steps had been taken to expropriate. It appeared that the town council of Bridgetown in Dec., 1901, called a meeting of ratepayers and voted the defendants a free right of way through the town, and thereupon passed an Act authorizing the town to expropriate the necessary lands and providing for entering thereon upon payment or tender of the compensation awarded by arbitrators. The Provincial Railway Act is similar to the Dominion Railway Act, but the Provincial Act provides that where a charter makes the cost of the right of way a charge upon any municipality it shall not be necessary for the company to expropriate, and the defendants' charter made the costs of the right of way a county charge. The municipality is to expropriate, and there is no provision permitting the company to enter before expropriation. The proposed line was wholly within the county of Annapolis. On October 23, 1900, the county council passed the following resolution: "Ordered that a free right of way and lands necessary for railway purposes from Victoria Beach to Middleton in the County of Annapolis be granted to the Granville and Victoria Beach Railway and Development Company, Limited, said right of way to be paid for on the completion of said line of railway."