

THE
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TEETZEL, J.

FEBRUARY 10TH, 1909.

CHAMBERS.

RE O'NEILL AND DUNCAN LITHOGRAPHING CO.

Master and Servant Act—Order of Police Magistrate for Payment of Wages—Right of Appeal to County Court Judge—Jurisdiction of Magistrate to Consider Defence of Failure of Consideration for Wages by Reason of Negligence of Servant—Jurisdiction of Judge on Appeal to Consider same Defence—Prohibition.

Motion by O'Neill to prohibit the junior Judge of the County Court of Wentworth from taking any further proceedings on an appeal from an order of the police magistrate at Hamilton directing the Duncan Lithographing Company to pay O'Neill \$25, being two weeks' wages, made under sec. 11 of the Act respecting Master and Servant, R. S. O. 1897 ch. 157.

A. M. Lewis, Hamilton, for applicant

E. H. Ambrose, Hamilton, for the company.

TEETZEL, J.:—The objections relied upon are: (1) that sec. 18 of ch. 157, R. S. O. 1897, does not apply to police magistrates, but to one or more justices of the peace, and that consequently an appeal does not lie thereunder from the order of the police magistrate; (2) that the magistrate had no jurisdiction to hear the defence urged by the master, viz., that in consequence of the servant's negligence there was a total failure of consideration, and the master derived no benefit from such services.

Under secs. 27 and 30 of the Act respecting police magistrates, R. S. O. 1897 ch. 87, a police magistrate is ex of-