

for the defendant's costs. The defendant in one action was a magistrate and in the other a constable.

J. B. Mackenzie, for the plaintiff.

W. E. Middleton, K.C., for the defendant McConnell.

W. H. McFadden, K.C., for the defendant Graham.

BOYD, C.:—The magistrate had jurisdiction over the subject matter of the offence complained of, yet he omitted to set down, in writing, and on the face of the conviction and warrant of arrest, statements and allegations which would have made them unimpeachable; his failure caused the conviction to be quashed. The warrant to arrest was left, but it is defective on its face. Still he was throughout acting within his jurisdiction, and is *prima facie* entitled, by virtue of sec. 9 of R. S. O. 1897 ch. 88, to the benefit and protection of the Act. If so entitled, then he is also entitled, under R. S. O. 1897 ch. 89, to apply for security for costs. He has complied with the requirements of sec. 2 of that Act to the satisfaction of the Master in Chambers, and the whole point of this appeal is that the Master erroneously thought there was a defence upon the merits—whereas, it is contended, the facts disclose no possible defence. It is a defence to shew that the proper notice has not been given alleging that the magistrate acted maliciously and without reasonable and probable cause under secs. 1 and 14, apart from all other matters which may arise upon the evidence. It is not the course of the Court to try the validity of the defence upon contested facts or disputed law prior to the trial. Therefore, I find no good ground for disturbing the order as to security being given. The constable is entitled also to maintain the order.

The appeal is dismissed with costs to the defendants in the cause.

MEREDITH, C.J.C.P.

SEPTEMBER 23RD, 1909.

WARREN v. BANK OF MONTREAL.

Contract—Pledge of Shares of Company Stock—Right of Pledgee to Transfer of Shares and Issue of Certificate—Form of Transfer and Certificate—Reference to Terms of Contract.

The only question upon which judgment was reserved at the trial was as to 1,100,000 shares in the Otis Mining Co., which, under the terms of the agreement set out in the pleadings, were to be a security to the defendant Currie for the payment of the unpaid