

prescribed for use contained words authorizing an absolute term of imprisonment in addition to that provided for in case of default of payment of the amount of fine and costs. The penalties were clearly defined, the jurisdiction complete, and the object of the Act certain.

*Held*, that the magistrate was justified in adopting a form of conviction made applicable to a different section of the Act.

After hearing the evidence and the arguments of counsel the stipendiary magistrate adjourned the case to a future day for the sole purpose of deciding as to the sufficiency of the evidence and giving judgment in the case. On the day fixed, in the absence of the defendant or his solicitor, and without notice to them, he heard a motion to amend the summons by changing the date of the previous conviction, and after making the amendment asked for, convicted the defendant.

*Held*, (MEAGHER, J., dissenting) that the stipendiary magistrate could not make this amendment in the absence of defendant and without notice, and that the appeal should be allowed and the conviction quashed with costs on that ground.

*A. Drysdale*, Q.C., for appellant. *E. C. Gregory*, for respondent.

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Full Court.] *RUDOLF v. BRITISH AND FOREIGN MARINE INS. CO.* [Jan. 11.

*Marine Insurance—Partial loss on cargo—Evidence of stranding of vessel.*

The schooner "Donzella," on a voyage from Porto Rico to Halifax, put into Barrington for shelter. The wind at the time was south-east, with a heavy snow storm prevailing. The vessel was anchored near the light ship, with one anchor out, but as the wind increased a second anchor was put out. Subsequently during a heavy gale that sprang up from the north-west both chains parted. The vessel was then on a lee shore, studded with reefs and shoals, and the tide low. She was abandoned by the master and crew, and the following morning was not visible from the shore. Sometime afterwards she was picked up at sea by salvors, and was brought into port and put upon the slip and repaired. When brought in she had four feet of water in her hold, and the cargo was considerably damaged. On being put upon the slip it appeared that twelve feet of the shoe were off abaft the main chains, and another twelve feet off forward under the main chains. The butts on the bottom were open. The keel was more or less chafed and broken. The rudder was damaged and the rudder braces started off. There was a scar on the bilge on the port side, which looked as if the vessel had dragged or pounded on something. The sides of the keel were bruised more or less, and pieces off of it. The main keel was broomed up. The flying jib boom and main boom were broken, and the fore boom was split.

*Held*, dismissing with costs the motion for a new trial, that there was sufficient evidence to warrant the jury in coming to the conclusion that the vessel had been on shore and beating on the rocks for some time, and on which they could properly find a verdict for plaintiff, and that the trial judge was right under the circumstances in not withdrawing the case from the jury.

*R. E. Harris*, Q.C., and *W. A. Henry*, for appellant. *A. Drysdale*, Q.C., for respondent.