

detail. I may, however, cite a short extract from the judgment of Burns, J., in *Municipal Council of Nissouri v. Horseman*, 16 U.C.R., at p. 388: 'The members or councillors comprise the council and not the corporation—they are agents of the corporation for the management of the affairs and funds of the corporation. When these agents have been proved so to misappropriate the funds or to put money into their own pockets, I think an action will lie against them to recover it back.'

*Townshend, Q.C., and Borden, Q.C., for plaintiff.*

*Dickey, Q.C., for defendant.*

Full Court.]

THE QUEEN v. HORTON.

[Dec. 13, 1897.

*Criminal Code, ss. 501, 872 (b)—Wilfully killing a dog—Conviction—Adjudging payment of a money penalty, and in default, imprisonment with hard labor—Condition not to prosecute.*

The defendant H. was found guilty under s. 501 of the Criminal Code of the offence of wilfully killing a dog, and was adjudged to pay a penalty of \$10 and \$30 compensation and costs, and in default of payment, forthwith to be imprisoned for the period of three months with hard labor. Under the provisions of section 501 a person found guilty under it is liable (1) to a penalty not exceeding \$100 over and above injury done, or (2) to three months' imprisonment absolute, with or without hard labour.

*Held*, that the conviction was bad for imposing imprisonment with hard labour under the Code, s. 872, sub-sec. b., in default of payment of the fine, and that defendant was entitled to a writ of habeas corpus for his discharge on giving an undertaking that no action should be brought against anyone on account of the proceedings taken. See *R. v. Turnbull*, 16 Cox C.C. 110.

*Held*, that when the justice came to make the conviction and to provide for the enforcement of the money penalty he should have had recourse to s. 872, sub-sec. b., which deals with this matter, and supplies the limits and manner of imprisonment which may be imposed in default of payment of a money penalty, and could not award hard labor.

*J. J. Power, for prisoner. J. F. Frame, for complainant.*

Meagher, J.]

IN RE BAILLIE.

*Insolvent estate—Remuneration to trustees—Leave to creditors to come in and sign deed after expiry of time fixed for that purpose—Costs.*

On application by trustees for creditors, under assignment dated January 20th, 1897, to have their remuneration fixed, it appeared that the assets realized \$14,680 04, that the amount paid creditors was \$13,058, and that the balance remaining on hand was \$1,621.61.

*Held*, that the sum of \$700 was a reasonable allowance to the trustees.

The deed provided that after payment of preferred creditors the balance should be distributed among such other persons being creditors as should become parties to the deed by executing it within ninety days from date.

*Held*, notwithstanding the expiry of the time, that leave should be given