

fact (1) therein, in substance or in form, or for any variance between such Information, Complaint or Summons, and the evidence adduced on the part of the Informant or Complainant at the hearing of such Information or Complaint, as hereinafter mentioned: but if any such variance shall appear to the Justice or Justices present and acting at such hearing to be such as that the party so summoned and appearing has been thereby deceived and misled, it shall be lawful for such Justice or Justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day."

And the 8th section, as regards the immateriality of certain variances, enacts—

"That in all cases of Information for any offences or acts punishable upon summary conviction, any variance between such Information and the Evidence adduced in support thereof, as to the time at which such offence or act shall be alleged to have been committed, shall not be deemed material if it be proved that such Information was in fact laid within the time limited by law for laying the same; and any variance between the said Information and the Evidence adduced in support thereof, as to the place in which the offence or act shall be alleged to have been committed shall not be deemed material, provided the offence or act be proved to have been committed within the jurisdiction of the Justice or Justices by whom Information shall be heard and determined; and if any such variance, or any variance in any other respect between such Information and the Evidence adduced in support thereof, shall appear to the Justice or Justices present and acting at the hearing, to be such, that the party charged by such Information has been thereby deceived or misled, it shall be lawful for such Justice or Justices, upon such terms as he, or they shall think fit, to adjourn the hearing of the case," &c.

In what is subjoined, then, respecting the technical requisites of an Information or Complaint, the operation of these sections is to be borne in mind, for it will be seen they render objections for alleged informalities inoperative, and cure any variance between the Information, Complaint or Summons, and the Evidence adduced; providing for the hearing being adjourned to some future day, should the defect or variance objected to be calculated to mislead or deceive the defendant. In cases not governed by the practice under the Act referred to, substantial defects and variance may be fatal to the proceeding.<sup>[1]</sup>

**STATEMENT OF THE COMPLAINANT'S NAME, &c.—**  
In general, the party injured is the proper person to go before the Magistrate and make the Complaint or lay the Information—but by the late Act, Complaint or Information may be laid or made by the complainant or informant in person, or by his Counsel or Attorney, or other person authorized in

[1] There is an odd blunder here, the word "defect" doubtless should stand in place of the word "fact," and it is not improbable that it would be so read in construction; but the latter part of the proviso, coupled with a subsequent (the 8th) sec., would seem sufficiently ample to embrace and cure every variance that ought properly to be aided.

[2] Hence the necessity in new enactments for summary punishment of making the provisions of the 16 Vic. c. 178 applicable to proceedings under them to convict. There is a section in the English Act declaring that its provisions shall not extend to certain specified complaints, &c., and another repealing certain Statutes and parts of Statutes, naming them, inconsistent with the provisions of that Act. Had our Statute contained corresponding provisions it would have shut out many difficult questions that now are to be determined, as they arise, by judicial construction.

that behalf.<sup>[3]</sup> There are, however, particular Acts which expressly direct the Complaint to be made by the party aggrieved, and it is questionable if the provisions of the late Act over-ride them—but even when so directed under particular circumstances, the complaint may be laid by another party, (take the case of common assault, for example,<sup>[4]</sup>) as, when the offence is committed on a child, an idiot &c., the parent or friend of the party may take the necessary steps to bring the offender to trial; otherwise there would be a failure of justice, and any person who sees the assault may make oath to the fact.

[5] In cases where the Informant is entitled to a portion of the Penalty, where the proceedings are in the nature of a *qui tam* information, the information should not be laid by a person whose evidence is necessary to prove any part of the case, as his having a pecuniary interest therein might place him in a position of disability as a witness, or at all events, would affect the credibility of his testimony.<sup>[6]</sup>

The name of the prosecutor or complainant should be stated at length, together with his place of abode and calling, that the defendant may know with certainty by whom he is prosecuted, and so be enabled the better to prepare for his defence, whether on the ground of a wrong party prosecuting—want of proper parties—or of malice and falsehood in the prosecution—which, having the name of the party pursuing, may give the defendant an opportunity of knowing or facilitate to expose. Regularly, then, the informant's or complainant's name and description should be set out accurately in all cases.

## ON THE DUTIES OF CORONERS.

(CONTINUED FROM PAGE 83.)

### II.—PROCEEDINGS IN RELATION TO INQUESTS.

Upon the Jury being sworn, the Coroner makes entry in his book and proceeds to call over their

[3] 16 Vic. c. 173, sec. 9.

[4] 4th & 5th Vic. c. 27, s. 27, which runs thus: "That whenever any person shall unlawfully assault or beat any other person, it shall be lawful for any J. P., upon complaint of the party aggrieved, praying him to proceed summarily under this Act, to hear and determine such offence," &c., and as a general rule it has been considered, that when the whole penalty is given to the party aggrieved, he is to lay the complaint, or it must appear to have been laid with his sanction.

[5] See ante page 63 Note 4.

[6] See 16 Vic. c. 178, s. 14; see also the Evidence Act, 16 Vic. c. 19.

The Proviso in the 1st section of the last-mentioned Act runs in these words: "Provided that this Act shall not render competent, or authorize or permit any party to any suit or proceeding individually named on the Record, &c., to be called as witnesses on behalf of such party, but such party may in any civil proceeding be called and examined as a witness, in any suit or action, at the instance of the opposite party." It will not therefore be safe to rest a case on the testimony of the informer, for the proceeding would appear to come within the Proviso, and he to stand in the position of "a party to the proceeding individually named on the Record (the information.)"