

to be of cardinal importance. *Rex v. Tupper*, 11 Can. Crim. Cas. 199, and *Ex p. O'Shaughnessy*, 8 Can. Crim. Cas. 136, may also be looked at.

The conviction followed the information, as did the warrant of commitment. Unless the conviction can be amended, the motion must succeed.

The conviction, before return to the certiorari, was amended by inserting the word "knowingly;" but the information and the warrant returned do not contain this word. It is quite clear that the police magistrate might amend the conviction at any time before the return: *Regina v. McCarthy*, 11 O. R. 657. And it is equally clear that the fact that the information is defective is immaterial: *S. C.*, at p. 658; *Regina v. Emily Munro*, 24 U. C. R. 44.

7. But the warrant which has been returned by the gaoler has not been amended, nor has a new warrant been substituted therefor. Even if the case came within *R. S. C.* 1906 ch. 146, sec. 1124, the omission of the word "knowingly" is not an "irregularity, informality, or insufficiency," within the meaning of that section: *Rex v. Hayes*, 5 O. L. R. 198, especially at p. 201.

The warrant is clearly bad: *Rex v. Kelson*, 12 O. W. R. 1063, and cases cited at p. 1065.

In a case of this kind my brother MacMahon held that the proper course is to enlarge the motion so as to enable the magistrate to file a fresh warrant of commitment in conformity with the conviction returned: *Regina v. Lavin*, 12 P. R. 642. There may be some doubt as to the power to act thus without the authority of the statute. I think, however, sec. 1120 is broad enough to cover this case. It is argued that this section applies to cases before conviction only; but my brother Latchford recently acted upon it in the case of two persons under sentence; and Mr. Justice Ferguson does not seem to doubt that the power exists, though he declined to exercise it in *Regina v. Randolph*, 32 O. R. 212; see p. 215.

Without making any final determination, I direct the further detention of the prisoner Graf, alias Munroe, and direct the police magistrate to lodge with the warden of the central prison of the province of Ontario a warrant in accordance with the conviction.

The case will be adjourned for further hearing until Friday 23rd April at 10 a.m., at which time the delivery of the amended warrant is to be proved by affidavit; and I shall finally dispose of the matter.