

pointed out; but previously to the passing of the act 16 Vic. c. 178, there was no general provision regulating the practice, and it was left in a great measure to the discretion of the Magistrate whether a summons or warrant should issue in the first instance.

The following Act conferring summary jurisdiction on Magistrates, viz., the 4 & 5 Vic. c. 27, (*injuries to the person*) the 4 & 5 Vic. c. 25, (*malicious injuries to property*) may be cited as instances where express authority is given, in the Magistrate's discretion, to issue a warrant without previous summons upon oath of the offence; and the 7 Vic. c. 12, (for preservation of game) as an instance requiring a summons to issue in the first instance.

Where the proceeding is not regulated by the recent Act, the rule of practice may be thus laid down. In case information is laid under a Penal Statute (the informer entitled to half the penalty) and in every case *not* involving a breach of the peace, by *summons* is the proper mode of procuring the defendant's appearance: if the summons be disobeyed there is generally a provision for a warrant on proof of service of summons, or for the case being decided *ex parte*. If the offence is not deposed to on oath, a summons is the *only* proper process, and so also where the Statute acted under is silent on the point whether a summons or warrant should issue in the first instance.

There are many cases where different Statutes authorize Justices to issue a warrant in the first instance, without any previous summons, but even in such cases when the direction is not *imperative*, but left as a matter of *discretion* to the Justice *whether to issue a summons or a warrant*; the discretionary power to arrest without previous summons, should be cautiously and sparingly exercised, for it will be often found that the accusation is of a frivolous nature, or grounded for the most part on some bad feeling between the parties; so that, unless it be made appear *on oath* by the complainant, or a third party, that the objects of the prosecution may be defeated by the defendant's absconding, or the like, the Magistrate ought not to issue a warrant in the first instance. [\*]

Where no mode of process is pointed out, the recent Statute (16 Vic., c. 178) will regulate the proceeding. A general rule is prescribed by that Act; *sec. 1st* enacts that in all cases where a Justice has jurisdiction it shall be lawful for such Justice or Justices—

“To issue his or their summons, directed to such person, stating shortly the matter of such information or complaint, and

[\*] This statement, if contained in the information, may be as follows, “and the said ——— further swith that he has good reason to believe, and doth truly believe that she ——— will abscond, or unlawfully absent himself from and out of the said county in order to avoid conviction and punishment for his said offence.”—See observations of Lord Tenterden in Reg. vs. Hume, 1 Mood and M. 160-5 Car & P. 300 s. c. See also, Hanway vs. Eames, 5 Mees & M. 18.—A. vs. Sargey, 12 East 55.

requiring him to appear at a certain time and place, before the same Justice, or before such other Justice or Justices for the same Territorial Division as shall then be there to answer to the said information or complaint, and to be further dealt with according to law.”

But it is also made lawful to issue a warrant in the first instance, in preference to a summons; *sec. 2* enacts that it shall be lawful for the Justice—

“Upon oath or affirmation being made before him or them substantiating the matter of such information or complaint to his or their satisfaction, to issue his or their warrant to apprehend the party so summoned, and to bring him before the same Justice or Justices, or before some other Justice or Justices of the Peace, in and for the same Territorial Division, to answer to the said information or complaint, and to be further dealt with according to law; or upon such information being laid as aforesaid for any offence punishable on conviction, the Justice or Justices before whom such information shall have been laid, may, *if he or they shall think fit*, upon oath or affirmation being made before him or them, substantiating the matter of such information, to his or their satisfaction, instead of issuing such summons as aforesaid, issue, *in the first instance*, his or their warrant for apprehending the person, against whom such information shall have been so laid, and bringing him before the same Justice or Justices, or before some other Justice or Justices of the Peace in and for the same Territorial Division to answer to the said information, and to be further dealt with according to law.”

Of the processes to secure the deft's. appearance, which may be made available under the Act—*Summons and Warrant*—the Magistrate must exercise a sound discretion as to which he will employ. In our judgment the safer and fairer practice that is most in accordance with natural justice, is by *summons*, to commence with.

## ON THE DUTIES OF CORONERS.

(CONTINUED FROM PAGE 145.)

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

*Form of Inquisition.*—The Stat. 13 & 14 Vic. c. 56, declares that Inquisitions shall not, on mere technical grounds, be liable to be set aside; but that, if moved against, it shall be competent for any Judge of Assize, or any Judge of the Superior Courts at Common Law, to order the same to be amended. The 4th section provides:—

IV. That no Inquisition found upon or by any Coroner's Inquest, nor any judgment recorded upon or by virtue of any such Inquisition, shall be quashed, stayed, or reserved, for want of the averment therein of any matter unnecessary to be proved, nor for the omission of any technical word or words of mere form or surplusage; and in all such cases, and all others of technical defect, it shall be lawful for either of the Superior Courts of Common Law, or any Judge thereof, or any Judge of Assize or Gaol Delivery, if he shall think fit, upon the occasion of any such inquisition being called in question before them or him, to order the same to be amended, and the same shall be amended accordingly.

The following form of caption and attestation of Inquisition is in general use:—