

charged with an indictable offence has taken proceedings before a court or judge by way of certiorari, habeas corpus, or otherwise, to have the legality of his imprisonment inquired into, such judge or court may, with or without determining the question, make an order for the further detention of the person accused, and direct the judge or justice under whose warrant he is in custody, or any other judge or justice, to take any proceedings, hear such evidence, or do such further act as, in the opinion of the court or judge, may best further the ends of justice.

The defendant appealed from the order.

MAGEE, J.A. :—The tendency of legislation is to prevent the ends of justice being interfered with by reasons of mistakes, and to ensure the substantial carrying out of the law; and, indeed, the furtherance of these ends is the express object of sec. 1120. There is no reason why a mistake in or after conviction for a crime should not be remedied as well as one before—indeed, rather the contrary. If there is nothing in principle against it, are the words of this section wide enough to cover cases of conviction, or is there anything to indicate that they were not so intended? We gain little or no assistance from any of the words in the section other than the words “charged” and “accused,” which are here challenged, although one’s attention is drawn by the words “legality of his imprisonment” and “further detention of the person accused.” But is a person any the less “charged with” an offence or “accused” of it because the charge or accusation has been established? . . .

The proceedings of certiorari and habeas corpus, in which the power is given, may arise at either stage, and the legislature has given no indication of an intention to limit the words of a beneficial provision. I see no reason so to limit it. If, then, the section applies after a valid conviction, is it, as here argued, less applicable after a wholly void conviction, made without jurisdiction, and when the prisoner is not absolved from being tried for his offence, and there is nothing in which the charge could be said to merge? The argument appears to be stronger against such a conclusion. The section uses the words “further detention,” but that does not necessarily mean detention in the same place, but detention in the custody of the law. . . .

Appeal dismissed.

Hassard, for defendant. *Cartwright*, K.C., for the Crown.