

tion upon the charge laid, but he convicted the prisoner of an indecent assault and sentenced him to fifteen months' imprisonment.

On application for a habeas corpus it was contended that the magistrate should have given the prisoner an opportunity to elect whether he would be summarily tried upon the substituted charge, also that the magistrate's extended jurisdiction conferred by section 777 of the Code only covered offences committed in the City of Portage la Prairie, and the evidence left it in doubt whether the offence had been committed in that city or in the rural municipality of Portage la Prairie. It was admitted on the argument that the offence charged necessarily included that of which the prisoner had been convicted.

Held, 1. There being nothing in the Criminal Code of Canada relating to the procedure for obtaining a writ of habeas corpus, a prisoner's right to it in Manitoba depends on the Statute of Charles II. c. 2, s. 2, and the writ cannot be taken out on behalf of a prisoner under sentence of conviction by a police magistrate exercising the extended jurisdiction to try indictable offences summarily conferred by section 777 of the Code, unless an absolute want of jurisdiction is shewn: *Re Sproule*, 12 S.C.R. 141.

2. A police magistrate of a city or incorporated town, who is also a police magistrate in and for the whole Province, when acting under section 777 of the Code, may try offences committed anywhere in the Province.

3. It having been admitted that the offence charged necessarily included that of which the prisoner was convicted, there was no necessity to offer a new election to the prisoner.

Anderson, for the prisoner. *Patterson*, D.A.-G., for the Crown.

Province of British Columbia.

SUPREME COURT.

Clement, J.]

[Jan. 4.

CRANBROOK POWER CO. v. EAST KOOTENAY POWER CO.

*Waters and water rights—Jurisdiction of Gold Commissioner—
Change of point of diversion application for.*

The defendant company, who held a record for 25,000 inches