

statute: *Re Besset*, 6 Q.B. 481, 14 L.J.M.C. 17. The right to the writ has, however, been confirmed by various statutes both in England and in Canada: *Re Sproule*, 12 Can. S.C.R. 140.

The original *Habeas Corpus* Act, 31 Car. II. ch. 2, provided for the issuing of the writ in all cases where a person is committed or detained for any cause (except for felony or treason plainly expressed in the warrant) upon the application of the person detained or of *any one in his behalf*, and it applied only to cases of detention or imprisonment for "criminal or supposed criminal offences." This statute was introduced into the old "Province of Canada" now the Provinces of Ontario and Quebec as part of the criminal law of England under the Quebec Act, 1774: see Cr. Code 1906, sec. 10, and *R. v. Malloy*, 4 Can. Cr. Cas. 116 (Ont.).

The Habeas Corpus Act, 31 Car. II. ch. 2, was intended to meet the various devices by which the common law right to the writ had theretofore been evaded, and, in particular, by making the writ readily accessible during vacation, by obviating the necessity for the issue of a second and third writ known respectively as the *alias* and *pluries* writ, by imposing penalties for the wrongful refusal of the writ, and generally by regulating the granting and issue of the writ, and the procedure upon its return. As the Act applied only to cases where persons were detained in custody for some "criminal or supposed criminal matter," its beneficial provisions did not extend to cases of illegal deprivation of liberty otherwise than on a "criminal charge" as, for example, where children were unlawfully detained from their parents or guardians by persons who were not entitled to their custody, or where a person was wrongfully kept under restraint as a lunatic, or where a person was illegally kept in confinement by another. In all such cases the issue of the writ during vacation depended solely upon the common law and remained unregulated by statute in England until the year 1816, on the passing of the *Habeas Corpus* Act, 1816. In Canada, provincial statutes have been passed upon similar lines to the latter Act, so as to facilitate the speedy hearing of the questions involving the regularity of the detention.

A statute of the late Province of Canada, 29 and 30 Vict. ch. 45, extended the application of the writ to matters other than criminal matters, and fixed the practice in certain particulars: *R. v. Cameron*, 1 Can. Cr. Cas. 169; *R. v. Bougie*, 3 Can. Cr. Cas. 487; *R. v. Marquis*, 8 Can. Cr. Cas. 346. That practice, except as it may be altered under federal authority, remains effective in Ontario and Quebec.

In Ontario and Quebec, the writ of *habeas corpus* is the institution of the proceedings and until its return there is ordinarily no opportunity for the opposing party to be heard. The writ itself is granted on an *ex parte* application, and while probably the Crown, as represented by the Attorney-General's department of the province, might, in a criminal matter, intervene and be heard in opposition to the motion for the writ, it is not the practice to notify the department of the intention to apply in those provinces. The writ having been obtained on an *ex parte* motion and service