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HIGH COURT DIVISION.

MIDDLETON, J., IN CHAMBERS.

SEPTEMBER 9TH, 1915.

***REX v. WEST.**

Criminal Law—Obstructing Peace Officer—Criminal Code, sec. 169 — Summary Conviction by Magistrate — Indictable Offence — Option of Crown—Procedure — Conviction by Police Magistrate—Secs. 773 (e) and 778 of Code.

Motion, upon the return of a habeas corpus and certiorari in aid, for the discharge of the defendant from custody under a warrant of commitment pursuant to a conviction for obstructing a peace officer in the execution of his duty, made by the Police Magistrate for the Town of Wiarton.

G. H. Kilmer, K.C., for the accused.
Edward Bayly, K.C., for the Crown.

MIDDLETON, J., said that sec. 169 of the Criminal Code created the offence, and gave the Crown the right either to try summarily, when a less severe punishment might be inflicted, or, if the Crown thought the offence serious enough to warrant an indictment, the accused might, at the Crown's election, be prosecuted as for an indictable offence, with the result that he had the right of election afforded by sec. 778, and upon conviction more serious punishment might follow. The right to choose the mode of prosecution is a right given to the Crown, and not the right of the accused. His sole right is to select the tribunal to try him if the Crown elects to prosecute for an indictable offence.

Section 773 (e) of the Code mentions this particular crime in the catalogue of indictable offences which may be tried sum-

*This case and all others so marked to be reported in the Ontario Law Reports.