they do not materially help the case for the Crown. There is no regular conviction. Great leniency may be proper in the case of a county magistrate, but the proceedings here are more informal and slovenly than I feel called upon to encourage in the case of a salaried official. The complaint does not disclose an assault, for the relative position of the parties is not alleged, and there is nothing to shew that the prisoner was at the time in a position —near enough—to execute his threat, or that he actually attempted to strike the complainant. This defence is not necessarily fatal, particularly if I were dealing with the question of quashing the conviction, for the complainant in his evidence swears, "He had a hammer in his hand and struck at me and I warded off the blow," and there is other evidence to the same effect. The prisoner denies any attempt to strike; and the question of fact was entirely a question for the magistrate. But there is nothing to shew whose evidence he accepted or acted upon. He goes back to the charge as it was laid, and as it is repeated in the heading of the evidence, and he says: "I adjudge the said George Peart guilty of the charge of threatening to strike Biet on the head with a hammer, and I order him to be committed to the common gaol" (where?) "for the period of three months without hard labour;" and the warrant of commitment is for "threatening" accordingly.

I do not propose to quash the conviction, if this amounts to a conviction.

I am asked to discharge the prisoner conditionally only, under sec. 1120 of the Criminal Code, as amended by 7 & 8 Edw. VII. ch. 18, sec. 14. Speculation as to the meaning of this obscure section is set at rest by the Court of Appeal in Rex v. Frejd (1910), 22 O.L.R. 566. The prisoner now applying is not "charged with an indictable offence;" the magistrate assumed to exercise summary jurisdiction; and the offence, if any, disclosed was one in which he could exercise summary jurisdiction. But there would be no justice in any case in further detaining the prisoner, as already he has served the two months for which at most the magistrate could lawfully commit him, or within a day or two of two months. In the view I take, it is not necessary to consider the effect of the complaint that the prisoner was not afforded an opportunity to elect as to the mode of trial.

Neither can I amend under sec. 1121 of the Criminal Code. I cannot find that "there is a good and valid conviction" in law to sustain the warrant of commitment—assuming that I am at liberty to give effect to the proceedings produced in Court.