

[Reference to *Regina v. Gompertz*, 9 Q. B. 838, *Regina v. —*, 1 Chit. 698.]

Since the last case (1819) the practice began by which, before the trial, the Court would direct particulars to be given, and this was done in *Regina v. Rycroft*, 6 Cox C. C., "even though there had been a previous committal by a magistrate." This is a pretty strong intimation that particulars were not sought in the preliminary stage of investigation (1852).

The next stage in development (1868) is marked in *Mulcahy v. The Queen*, L. R. 3 H. L. 306, in which Willes, J., says (touching the absence of particulars): . . . "An indictment only states the legal character of the offence (conspiracy), and does not profess to furnish the details and particulars. These are supplied by the depositions, and the practice of informing the prisoner or his counsel of any additional evidence not in the depositions which it may be intended to produce at the trial:" p. 321.

The present state of the practice is stated in the latest text-book thus: "Occasion seldom arises for making an order for particulars, because the evidence for the prosecution in almost every indictable case appears either in the depositions or in the notice of further evidence given before the trial:" Archbold's Crown Prac., 23rd ed., p. 71.

These authorities, however, all relate to the furnishing of particulars for the purposes of the trial, and are not relevant to the policy of the law as to the earlier investigation before the committing magistrate. He is not to be fettered in the proceedings before him by having limitations imposed by means of particulars which necessarily restrict the inquiry—but the whole range of relevant facts is left him to be availed of at his discretion: *Regina v. Ingham*, 14 Q. B. 396; and see *Rex v. Kennedy*, 20 Cox C. C. 232.

So it comes to this, as put in *Re Higgins*: In prohibition the only question is whether the justices had jurisdiction. If they had refused to hear legal evidence or decided improperly upon the evidence, that would be misconduct, but it would be different from acting illegally and without jurisdiction: 8 Q. B. at p. 150. In the report in 10 Jur. it is said the remedy for misconduct would be by criminal information,