

SUMMARY PROCEEDINGS BEFORE JUSTICES.

who introduced the measure, at the time of the second reading of the bill. This bill has now become law, and it is fitting that it should again be referred to, as it makes some very important changes in the law, and is a carefully drawn and workmanlike enactment prepared by one who has had an immense experience in such matters.

The first section defines what is meant by the words "justice of the peace." The second provides that no conviction or order made by any justice of the peace, and no warrant for enforcing the same, shall, on being removed by *certiorari*, be held invalid for any irregularity, informality or insufficiency therein; Provided, that the Court or judge before which or whom the question is raised is, upon perusal of the depositions, satisfied that an offence of the nature described in the conviction, order or warrant, has been committed, over which such justice has jurisdiction, and that the punishment imposed is not in excess of that which might have been lawfully imposed for the said offence; and any statement which, under this Act or otherwise, would be sufficient if contained in a conviction shall also be sufficient if contained in an information, summons, order or warrant.

As explained by the learned author of the Act, the anomaly has hitherto existed that the Courts of Session—inferior Courts—have had larger powers of preventing a miscarriage of justice than have the judges of the Superior Courts. The section above quoted secures the punishment of offenders, notwithstanding a slip on the part of the justice, and enables the Court or judge to say that a technically correct description of the offence is not imperative.

Sections 3 and 4 may be said to be somewhat novel, in that they give illustrations or examples of difficulties, many of which have arisen and been discussed in

cases and text-books, or which have come before the framer of the Act in the course of his judicial career. As to this form of enactment it might be said, if a precedent were required, that in every well-arranged digest or code the rule is first given and is then followed by illustrations, as witness the course followed by Sir Fitzjames Stephens in his digest of the law of evidence. In the clauses before us it seems the best way of making clear what is intended, and ensuring a full and liberal construction of the Act. Our readers, on referring to these sections, will see how well the light is thrown by them on the main intent of the statute.

Section 5 gives legislative power to do that which is now often indirectly done for the protection of justices from actions, etc., by limiting the use of an order to quash a conviction.

Section 6 provides that no motion to quash a conviction brought before a Court by *certiorari* shall be entertained until proper security be given by the defendant; and it states how the security is to be given. The object of this provision is to make the practice as to security uniform, and to render it more convenient. Justices of the Peace are not generally aware of the Imperial Act requiring them to take security before making a return to *certiorari*. This Act, 5 Geo. 2, cap. 19, sec. 2, is in force under the general adoption of the Laws of England (in the Provinces which adopted them). In Ontario, *R. v. Chuff*, 46 U.C.R. 565, and *R. v. Walker*, 20 C.L.J. 410, are in point. When a defendant is in custody and applies for a writ of Habeas Corpus, the Court or judge under 29 & 30 Vict., cap. 45, directs a *certiorari*; when a writ is issued under this section it is *for the assistance of the Court*, and a recognizance is not required (see *R. v. Nunn*, 20 C.L.J. 408; 10 Ont. P. R. 395, and *R. v. Whelan*, 45 U.C.R. 396). Statutes, as we all know, are often put