

criminal law and criminal procedure assigned by the constitution (the B.N.A. Act) to the exclusive jurisdiction of the Parliament of Canada.

This is due to the continuance in effect of the local practice which was in force at the time when each province entered Confederation, except as it might subsequently be varied under statutory authority. As to criminal matters, the writ of *habeas corpus* is specially dealt with in secs. 576, 941, and 1120 of the Criminal Code, 1906.

Sec. 576 of the Criminal Code confers power upon every superior Court of criminal jurisdiction to pass rules of Court to apply to all proceedings relating to any prosecution, proceeding or action instituted in relation to any "matter of a criminal nature or resulting from or incidental to any such matter," and in particular (*inter alia*) for regulating in criminal matters the pleading, practice and procedure in the Court including the subjects of mandamus, *certiorari*, *habeas corpus*, etc.

The term "criminal matter" has been held in England to have a very wide significance and to include a matter in the result of which the party may be fined or imprisoned as for a wrong: *Seaman v. Burley*, [1896] 2 Q.B. 344; *R. v. Fletcher*, 2 Q.B.D. 47; and, in this sense, prosecutions under certain provincial statutes such as the liquor laws are sometimes spoken of as proceedings relating to provincial crimes or as quasi-criminal prosecutions.

Whether or not a detention order made as in *Re Thaw* (No. 3), *supra*, under the Immigration Act, could properly be placed in the category of "criminal matters" it did not become necessary to decide because of the irregularity in the service of a copy of the writ instead of the original writ itself. This objection would apply whether or not the writ was to be controlled by the criminal law practice under federal jurisdiction or the civil practice under provincial jurisdiction. In the provinces of Ontario and Quebec, no rules of Court have yet been passed under the Criminal Code for the purpose of regulating *habeas corpus* practice in criminal matters, although *certiorari* rules were passed in Ontario, 27th March, 1908 (Ont. Consolidated Rules 1279-1288), which are not affected by the Consolidated Rules, 1913, the latter being a consolidation of the rules in civil cases only.

If a writ of *habeas corpus* is issued under the *Habeas Corpus Act*, 1679, it must be indorsed "*per statutum*, etc.," and signed by the person who awards the same, this being an express requirement of 31 Car. II. ch. 2. If a writ were issued not so indorsed, it may still be a good writ of *habeas corpus* at common law: *Crosby's Case* (1771), 3 Wils. 188; *Hobhouse's Case* (1820), 3 B. & Ald. 420.

The writ of *habeas corpus* as regards the Canadian Immigration law (9 and 10 Edw. VII. (Can.) ch. 2), is subject to the restriction contained in sec. 23 of the latter statute directing, in effect, that the Court shall not have jurisdiction to review or quash detention orders made under the authority and in accordance with the provisions of the Immigration Act unless the person detained is a Canadian citizen or has Canadian domicile. The right to a *habeas corpus* exists by the common law and is not created by