

CRIMINAL APPEALS BY WAY OF STATED CASE.

Some confusion exists as to the right of appeal by way of stated case from decisions of justices of the peace which it might be well shortly to refer to. This question recently came before the Supreme Court of Nova Scotia in *The Queen v. Hawes* (ante, p. 36), wherein it was held that a magistrate trying a charge of theft of goods of the value of less than \$10 under the summary trials procedure (Code ss. 783 and 786) with the consent of the accused, is not a "court or judge having jurisdiction in criminal cases" within Code s. 742 allowing an appeal by way of case reserved; and that the proper mode of review of any question of law involved on such a trial is by way of "stated case" under s. 900 of the Code.

It will be noticed that this section makes provision for the review by way of "stated case" of a justice's decision in respect of error of law or excess of jurisdiction, and by its own terms is limited to the questioning of "a conviction, order, determination or other proceeding of a justice *under this part*," i.e., under Part LVIII of the Code, which part deals with the subject of "summary convictions." Then by the last section of Part I.V., relating to "summary trials," it is enacted that the provisions of Part LVIII shall not apply to any proceedings under Part I.V. This indicates that the procedure by "stated case" does not apply to a conviction made under the "summary trials" procedure of Part I.V., notwithstanding the dictum of the court in the *Hawes Case*.

In *R. v. Egan*, 1 Can. Cr. Cas. 112 (Man.), it was held by Killam, J., that a person convicted under s. 783 (a) on a similar charge had no right of *appeal*, as the effect of s. 808 is to prevent the application of any of the provisions of Part LVIII in which are found the sections as to appeals from summary convictions, to convictions under Part I.V. The decision of Wurtele, J., in *R. v. Racine*, 3 Can. Cr. Cas. 446 (Que.), is to the same effect. The sections as to stating a case being likewise within Part LVIII, the same result would follow. If, however, the summary trial takes place before *two justices* sitting together a right of appeal is given by s. 782 (a) as amended by 58 & 59 Vict., c. 40, "in the same manner as from summary convictions under Part LVIII," and ss. 879 et seq. are by it expressly made applicable in that event. This was held in the Ontario case of *R. v. Nixon* (1895), 35 C.L.J.