

sec. 169, but in sec. 296. The assault is one of those specially designated as "aggravated assaults," and is indictable but not punishable on summary conviction, as is the wilful obstruction of the officer. Furthermore, sec. 169 includes as an offence punishable either on indictment or on summary conviction the wilful obstruction of any person in the lawful execution of any process against any lands or goods or in making any lawful distress or seizure. That offence is not included in sub-sec. (e) of sec. 773 as one of the subjects of a summary trial under Pt. XVI. apart from the extended jurisdiction of sec. 777.

In order to find the procedure to be followed where a summary conviction is sought, reference has to be made to Pt. XV. of the Code, and by sec. 706 Pt. XV. was to apply to every case in which a person committed an offence for which he was liable to be punished on summary conviction, but the application of Pt. XV. was subject to any special provision otherwise enacted with respect of such offence. The question then arose whether sec. 773 should be treated as regards offences which might be punished on summary conviction as subsidiary to the provisions of Pt. XV. or as an independent method of procedure. The weight of authority seems now to be in favour of the latter theory. It is also supported by sec. 798, which declares that, with certain exceptions not material to this question, Pt. XV. shall not apply to any proceedings under Pt. XVI. The list of offences now specified in sec. 773 is one of indictable offences, and there is, consequently, no inconsistency in viewing the procedure of summary trial under Pt. XVI. as an alternative for the procedure by indictment. This was not always the case, as prior to the amendment of 1909, sec. 773 included under sub-sec. (f) certain vagrancy offences which were declared the subject of summary conviction, and which were not to be indictable, such as being an inmate or habitual frequenter of a disorderly house. Sub-sec. (f) was amended in 1909, and later, in 1915, with the result that no offence is now included in sec. 773 which is not indictable. The officials authorized to hold a summary trial under Pt. XVI. are generally qualified also to hold a "summary conviction hearing" under Pt. XV., and, except where the accused has been asked whether he elects summary trial or not in the terms of sec. 778, in which case the record would shew a consent, if given, it is not easy to ascertain whether the magistrate intended to try a charge of obstructing a peace officer under the procedure of Pt. XV. or that of Pt. XVI. In some of the provinces the jurisdiction of summary trial for the offence was absolute without the consent of the accused: see Criminal Code sec. 776, as to British