

the said colonies, or of the colony of British Columbia, passed since such union, or by the Criminal Code or any other Act of the Parliament of Canada, and as altered, varied, modified, or affected by any such Ordinance or Act, shall be the criminal law of the province of British Columbia.

This makes it of importance to consider, as to the province of British Columbia, parts of the statutory law of England which having been enacted subsequently to the year 1792 in which the adoption of the English criminal law took effect in Ontario, were not material to the consideration of *R. v. Petrie* (1890), 20 O.R. 317.

The statute 4 Anne, ch. 16, in terms applied "in any action" at Westminster (which phrase would ordinarily not relate to a proceeding by indictment) and authorized the Court to order special writs commanding the selection of six out of the jurors therein named to whom the matters controverted should be shewn by two persons appointed by the Court.

Mansfield, L.J., stated the Rules for Views (1 Burr. 252) as follows: "Before the 4 & 5 Anne, ch. 16, sec. 8, there could be no view till after the cause had been brought on to trial. If the Court saw the question involved in obscurity, which might be cleared up by a view, the cause was put off, that the jurors might have a view before it came on to be tried again. The rule for a view proceeded upon the previous opinion of the Court or Judge at the trial, 'that the nature of the question made a view not only proper, but necessary,' for the Judges at the assizes were not to give way to the delay and expense of a view unless they saw that a case could not be understood without one. However, it often happened in fact that upon the desire of either party causes were put off for want of a view upon specious allegations from the nature of the question that a view was proper, without going into the proof so as to be able to judge whether the evidence might not be understood without it. This circuitry occasioned delay and expense; to prevent which the 4 & 5 Anne, ch. 16, sec. 8, empowered the Courts at Westminster to grant a view in the first instance previous to the trial. Nothing can be plainer than the 4 & 5 Anne, ch. 16, sec. 8. The Courts are not bound to grant a view of course; the Act only says 'they may order it where it shall appear to them that it will be proper and necessary.' We are all clearly of opinion that the Act of Parliament meant a view should not be granted unless the Court was satisfied that it was proper and necessary. The abuse to which 'they are now perverted, makes this caution our indispensable duty; and, therefore, upon every motion for a view, we will hear both parties, and examine, upon all the circumstances which shall be laid before us on both sides, into the propriety and necessity of the motion; unless the party who applies will consent to and move it upon terms which shall prevent an unfair use being made of it, to the prejudice of the other side and the obstruction of justice."

An English statute, of 1825, 6 Geo. IV., ch. 50, secs. 23 and 24, provided that in any case civil or criminal wherever "it shall appear . . . that it will be proper and necessary that some of the jurors who are to try the issues in such case should have the view of the place in question, in