should have been in the form given by the Act and should be separate from the complaint, is not without reason. The Act says, "these forms or others of like effect." A conviction which is not perfect in itself is not a form "of like effect." There may be an informal conviction which may be extended: Paley on Convictions, pp. 61-2. In fact this is a common practice, and it has been held that the formal conviction can be made at any time before the record is sent upon Certiorari: *Silwood* v. *Mount*, 48 C. L. R., 55. It has even been held that such formal conviction can be drawn up and substituted for the informal one at any time before the conviction is quashed: *Carter* v. *Grecian*, 66 C. L. R., 216. The informal conviction as sent up in this case is certainly objectionable.

The fourth objection is that the option of prosecution for imprisonment instead of distress is no part of the conviction, and being included therein vitiates the conviction. The regular mode, undoubtedly, is, first to convict, then the defendant is expected to pay *instanter;* if he does not, the prosecutor may choose imprisonment under the Act, instead of distress. There is a reported case in which, under like circumstances, immediate imprisonment was held good, even when defendant was not present at the time of conviction. In that case, however, the conviction appears to have been entered, and the order for imprisonment was a subsequent act: *Arnold* v. *Dimsdale*, 75 C. L. R., 579.

This adjudication of imprisonment, being a substantive part of the conviction, leads me to consider the question decided by Mr. Justice Torrance, as well as by Mr. Justice Drummond in the Papin case. (*Ex parte Papin*, 16 L. C. J., 319 and 8 C.L.J., p. 122.) It is there held that the British North America Act does not confer power (sec. 92, ss. 15) upon the Local Legislature to enforce laws made upon subjects within its jurisdiction by both fine and imprisonment at the same time. I cannot agree with this holding. The words of the Imperial Act are: "the imposition of punishment by fine, penalty or imprisonment, for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this section." It was held in the case referred to that only one of these modes of punishment could be exercised at one time, because the enactment is in the alternative, as indicated by the word "or." I think it was intended by this section to give the range of these modes of punishment, not one or other of them and only one at a time. The word "or" is not necessarily disjunctive in all cases. It is sometimes a mere connective. For instance, Art. 325 of the Civil Code provides for interdiction in case of "imbecility, insanity or madness." Ray, in his Medical Jurisprudence, classifies under the general head of insanity, idiocy, imbecility, mania and dementia, and remarks, "It is not pretended that any classification can be rigidly correct, for such divisions have not been made by nature and cannot be observed in practice": Ray's Medical Jurisprudence of Insanity, p. 84. The word "or" in this instance cannot certainly be used in a disjunctive sense. Dodderidge, J., in *Creswick* v. *Rokeby*, 2 Bulsts., 47; Dwarris on Statutes, p. 773 — said, "When the sense is the sama the words 'and' and 'or' are all one, and the words conjunctive and disjunctive are to be taken *promiscue.*" I take it, at all events, that there is sufficient ambiguity in the expression to warrant a resort to the rules of interpretation where there is want of explicitness in the words of the statute. The B. N. A. Act, conferring legislative powers, is not to be construed rigorously, like a penal act conferring judicial powers. Prior to the B. N. America Act there can be no doubt that each Province had the power to enforce laws which now relate to subjects under the exclusive jurisdiction of the Provincial Legislature by fine, penalty and imprisonment, using discretion as to one or all, as circumstances might require. It is a generally accepted doctrine that where the Imperial Government has granted powers to a colony, it never withdraws them. This doctrine is recognised in *Phillips* v. *Eyre*, Law Rep. (Q.B. p. 42.)

If the Imperial Act is to be understood in the reductive sense, and the Provincial Legislature can only enforce its laws by fine, penalty or imprisonment, taking its option by one of the three modes, but by only one of the three modes, then a right and power which existed before that Act was passed has been taken away, inasmuch as the Provincial Legislature has exclusive jurisdiction over certain classes of subjects, and if it has not the large powers that existed under the old constitutional acts, it has been taken away altogether; and the inference necessarily follows that it was intended, contrary to constitutional maxims of legislation, to abridge our powers, and it has been done.

This conclusion should not be reached unless we are forced to it by explicit enactment, or by evident intendment gathered from the Act generally. Chancellor Kent says (Kent's Commentaries, vol. 1, pp. 431, 434.) "It is an estab-