

technical description of the offence, describe it a second time, and many convictions have been set aside on this ground.

Mr. CAMERON (Huron). It seems to me that the tendency of this amendment will be to encourage carelessness and laxity among the magistrates, many of whom are not the best men in the world to deal with criminal cases. It is of great consequence that there should be certainty as far as possible in stating the offence. The same certainty ought to exist with respect to the conviction as to the indictment in order that a man may be able to understand exactly what he is charged with and could prepare to meet it. The law is very fair with respect to that matter now, as the magistrate can amend the information before the case is finally disposed of. Unless there is some grievance which is not met by the present law, I do not think this clause should pass in its present form.

Mr. THOMPSON (Antigonish). The difficulty is, as I have already stated, that the magistrate frequently describes the offence twice over, sometimes using technical language the first time and conventional language afterwards, and such convictions are almost always set aside.

Mr. CAMERON (Huron). That could not be the case under the Bill, because the judge could amend it.

Mr. THOMPSON (Antigonish). Yes, with reference to the conviction, but this is as to the summons and information as well.

Mr. McCARTHY. I do not think it should state the information or summons because that is always amendable. If any difficulty is found in the disjunctive or conjunctive statement of offences, the prosecutor should certainly have the right to amend, and the matter might be adjourned if necessary. Whatever force there might be in applying this amendment to convictions and orders, there seems to be no necessity for it so far as the information or summons is concerned.

Mr. THOMPSON (Antigonish). I do not think it is intended to take away the right of objecting and having the proceedings amended, but it is to prevent the proceedings after conviction being adjudicated invalid. That, I think, is the only case in which it would be desirable to make the change.

Mr. McCARTHY. Practically it takes away the necessity for amendment, because if the information is not had by reason of the double charge, the parties insist on going on as it is and therefore the proceedings would be valid.

Mr. DAVIES. I take it that applies to a case where a party is summoned and does not appear.

On section 5,

Mr. CAMERON (Huron). The magistrate is now amply protected under the law as it stands. It is almost impossible to bring an action successfully against the magistrate unless you can show that he has been actuated by corrupt motives or by malice. It appears to me that under this 6th clause, although a magistrate may be actuated by the most corrupt and malicious motives, the court may have power to protect him. Now, I do not believe that a magistrate actuated by such motives ought to receive the slightest protection at the hands of the court or anybody else. While he acts in good faith under what he considers the law to be, and happens to make a mistake unintentionally, I think the law ought to protect him, but we find that occasionally decisions have been given and have been sustained against magistrates who acted from bad motives. It may be said that a judge before whom the validity of a conviction is contested can decide whether the magistrate has acted from corrupt motives or not, but we know that is impossible,

because, when an application is made to a court to quash a conviction, the court will hear no evidence as to the motives by which the magistrate was actuated, and the result is that magistrates who do not deserve the protection of the court will probably receive its protection.

Mr. McCARTHY. I quite agree with what has fallen from the hon. member for West Huron. It appears to me that the section goes altogether too far. In fact, I cannot imagine that under any circumstances the section ought to be there. If the magistrate acts without having jurisdiction, and inflicts a wrong on a person, either by imprisonment or fine, I do not see why he should not be answerable as he is now, if, on the other hand, he acts maliciously, the reason is still stronger for the omission of the clause.

Mr. THOMPSON (Antigonish). It is not desired to give protection to a magistrate who acts maliciously, but it is intended to restrict actions against magistrates which are brought by reason of convictions made without jurisdiction. The judge who sets aside a conviction, it is true, cannot enter into the question of malice, but he can enter into the question of jurisdiction, to ascertain whether it was purely by mistake or otherwise that the magistrate acted. When he makes a mistake of that kind, he is liable to a civil action, and it is proper to protect the magistrate and to restrict the actions brought against him; and I propose to amend the clause in that particular. In cases connected with the liberty of the subject when the prisoner is discharged, it frequently happens that the persons who have had the prisoner in custody are protected against actions. I think it is more reasonable to protect a magistrate who has made a conviction through a mistake in jurisdiction. If that will meet the objection, I will amend the clause in that way.

Mr. CAMERON (Huron). I do not see any reason, as the hon. member for Simcoe states, why a magistrate who acts without the slightest power or jurisdiction should be protected. I will give the hon. gentleman an illustration within my own knowledge. I know a magistrate who within the last three years convicted a young man under the Masters and Servants Act because he did not pay the tailor who made a pair of trousers for him, fined him, and ordered that he should be sent to goal if the fine was not paid within thirty days. Now, I would ask if that magistrate ought to be protected, or if he ought not to have been removed from the bench. If actions were brought against a few magistrates who exceeded their duty in that way, they would teach them that they should not interfere with the administration of justice unless they know something about it. I quite agree with the hon. member for North Simcoe that the clause should disappear entirely from the Bill, as under the law as it stands there is the fullest protection.

Mr. THOMPSON (Antigonish). There is the fullest protection except where the magistrate exceeds his jurisdiction, and it may be that whether or not a magistrate exceeds his jurisdiction requires a great deal of consideration to determine. As the hon. gentleman knows, it has been decided by the superior courts sometimes by a majority of only one that a magistrate has exceeded his jurisdiction. I think in such cases he is entitled to protection, and I apprehend that the operation of the clause, amended as I propose, would be not so much to change the position of magistrates acting under the criminal law as to free them from what is now really a terror and a threat against them continually, at the instance of defendants who are arraigned before them. Magistrates are frequently induced, from fear of prosecution and from doubt as to their protection, to refrain from enforcing the law. I think it would be wise to let them know they are protected, first of all, in a class of cases in respect of which it is necessary to prove malice, and,