the further error of adjudging imprisonment in the Ontario Reformatory for a definite term, although both provincial and federal legislation permits only "an indeterminate period:" see the Ontario Reformatory Act, R.S.O. 1914 ch. 287, sec. 19; and the Prisons and Reformatories Act, R.S.C. 1906 ch. 48, sec. 44 (enacted by 3 & 4 Geo. V. ch. 39, sec. 1).

On the 4th April, 1919, a writ of habeas corpus was obtained, and notice of motion for the discharge of the prisoner was given on the next following day; but the writ was not served upon any one, nor was any return to it made. On the motion for the discharge of the prisoner, affidavits by and on behalf of the prisoner were filed in support of the motion, and by the magistrate in opposition to it; the magistrate was cross-examined on his affidavit, and his depositions were used upon the motion.

The Judge in Chambers ruled that the punishment inflicted was greater than the magistrate had power to inflict, but ruled also that he (the Judge) had power to order an amendment of the conviction so as to impose a penalty within the magistrate's power, and the issue of a new warrant of commitment in accordance with the amended conviction, and to remand the prisoner to the custody of the gaoler, to be held under the new warrant; and an order was issued accordingly.

The learned Judge had no such power on the application before him; but, considering that he might direct the issue of a certiorari, and that, upon the conviction and warrant being brought up, he would have power to impose the new punishment, took the short course of doing it without having the papers regularly brought before him—adding the observation that the papers were already actually before him.

By whatever irregular means the papers were taken from their proper place of custody, "among the records of the general or quarter sessions of the peace" of the County of Wellington (Criminal Code, sec. 793), they were not properly before the Judge, and were not before him "on being removed by certiorari," and therefore there was no power to rectify an error, as the Judge purported to do, under sec. 1124 of the Code.

A sentence of one year in the Ontario Reformatory at hard labour was changed to one of six months in the common gaol at Guelph, apparently without hard labour.

There was no power in the Judge in Chambers to change the warrant or conviction; without the change the warrant was bad and the conviction also; and, accordingly, this appeal should be allowed, the order appealed against set aside, and an order directing the discharge of the prisoner out of custody should be made—unless the Court should now see fit, acting under sec. 1120 of the Code, to direct the magistrate to impose a proper punishment;