

may be convicted of an attempt to commit any offence so included." So that upon the trial of an indictment under s. 269, the accused might have been found guilty of an indecent assault or a common assault, because the greater offence includes the lesser of a kindred character: *Reg. v. Read*, 1 De 1. 377; *Reg. v. Connolly*, 26 U.C.R. 317; *Reg. v. Bradley*, 17 Cox, 463; even if the girl assented: *Taschereau*, p. 275.

My opinion is asked as to whether the Police Magistrate has authority to try the accused on the charge of having committed an indecent assault upon the same female on the same occasion as he was alleged to have had carnal knowledge of her.

The Police Magistrate, I think, has no such power. Under s. 785, where a person is charged before a Police Magistrate with having committed any offence for which he may be tried at a Court of General Sessions of the Peace, such person may with his own consent be tried before such magistrate and may, if found guilty of any such offence, be sentenced by the magistrate to the same punishment as he would have been liable to if he had been tried before the Court of General Sessions of the Peace. And, where the accused consents to be tried by the magistrate, the magistrate is (s. 786) to reduce the charge to writing and read the same to the accused, and if he pleads not guilty the magistrate is to examine the witnesses for the prosecution and also to hear the witnesses for the defence, if the accused desires to call any.

When the accused consented to be tried by the Police Magistrate, he was put upon his trial charged with an offence the commission of which included the commission of another offence, i.e., an indecent assault, or a common assault, and the accused might have been convicted of any offence so included which was proved although the whole offence charged had not been proved.

There being no sufficient evidence to convict on the charge of having carnal knowledge of the prosecutrix, if there was evidence upon which the accused would have been found guilty of an indecent assault or of a common assault, the Police Magistrate should have convicted him of which ever of these offences the evidence warranted, as they were included in the commission of the more serious offence with which he was charged.

The fact that under an Act respecting Speedy Trials of Indictable Offences, (being Part LIV. of the Code, s. 774) where "the judge in any case tried before him shall have the same power as to . . . convicting of any other offence than that charged as a jury would have in case the prisoner were tried at a sittings of any court mentioned in this part," etc., has not changed my mind as to the powers of a Police Magistrate trying an accused person under sections 785 and 786.

The accused might have been tried for the offence charged at a Court of General Sessions of the Peace, but consented to be tried summarily on the charge by the Police Magistrate. And, although tried summarily, the trial must be subject to the same rules of law as a trial at the General