any act prescribing its punishment, it is sufficient ;—32 & 33 Vict., c. 29, sec. 79. Sec. 30, 32 & 33 Vict., c. 32, was also referred to. With regard to the latter of these sections, it may at once be disposed of. The defect if it be founded is not formal ; and the conviction, which I have had an opportunity of examining, is precisely in accordance with the commitment.

The application of the other statute gives rise to some difficulty. In the first place it does not apply to any offences other than those tried on indictment, and where there is a verdict. It might perhaps be argued that where there was a consent to waive trial by jury and to accept the jurisdiction of the magistrate, his judgment was equal to a verdict ; but this is not a consent trial. The Court of Queen's Bench, over-ruling the decision in *Deery's* case, held that sect. 79 could not be extended, and so where a common law offence, like murder, was incidentally alluded to in a statute, without the words recognized by the common law as expressive of the crime of murder, a count of an indictment setting up an intent to murder without these words would be bad even after verdict.

The present case has given rise to a somewhat involved discussion, owing to the extremely unskilful manner, in which our criminal acts are drawn. It is only fair to say this in justification of the magistrates, who can hardly be expected, in the midst of the immense pressure of business in a great centre of population, to work out the Chinese puzzles which are prepared for them, unconsciously, I presume.

The making of criminal laws is one of those operations which does not demand the highest order of capacity ; but it is an art which *amateur* commissions will not practise successfully.

It is evident the petitioner was convicted under the Summary Trial by consent Act (32 & 33 Vict., c. 32.) Generally speaking this is not an act creating new offences, incidentally it may be, however, by attaching a penalty to an act, and probably it does so in this case ; but I think it would be violating the intention of sect. 79, even if we could get over the former objection, to apply it to the

reference to an act, absolutely innocent in itself, and which only becomes criminal because it is made penal. I may also add that it is not an offence " subjected to a greater degree of punishment," by cap. 32.

Section 15 of the Summary Trial by consent Act, creates an exception of a very awkward kind, and one quite unnecessary.

I am of opinion that the commitment in this case sets forth no offence of which the Recorder could take cognizance, that it covers no valid conviction, and therefore that the prisoner must be discharged.

Sexton and Pignolet, for the Petitioner.

Davidson, Q.C., and Ouimet, Q.C., for the Crown.

SUPERIOR COURT.

MONTREAL, July 3, 1884.

Before JETTÉ, J.

LEBEAU V. TURCOT.

Insulting conduct—Damages.

A person performing a voluntary and gratuitous service, such as the collection of the offertory in a church, will not be permitted to make use of his office to offend and humiliate a member of the congregation, and an action of damages will lie for such offence. A wilful and marked omission to present the plate to a member of the congregation, was held to be an offence for which an action lay.

The judgment fully explains the case :—

" La cour, etc.

" Attendu que le demandeur réclame du défendeur des dommages au chiffre de $199, à raison de l'injure qu'il allègue lui avoir été faite le 23 décembre dernier par le défendeur, qui, chargé de faire la quête dans l'église de la paroisse de St-Laurent, aurait intentionnellement et malicieusement passé le banc du demandeur, sans solliciter l'offrande de ce dernier, présent alors, et ce, dans le but d'injurier et de mortifier le dit demandeur, et après avoir prévenu d'avance plusieurs personnes qu'il agirait ainsi à son égard, dans le but de l'humilier ;

" Attendu que le défendeur plaide : 1o Qu'il remplissait dans la circonstance une fonction volontaire et gratuite et, par suite, n'était pas tenu de s'adresser au demandeur pour la dite quête, et qu'en conséquence, celui-ci n'a pas