of high treason) the stipendiary magistrate and a justice of the peace, with the intervention of a jury of six, may try *any* charge against any person or persons for *any* crime" (which must include the crime of treason).

Sub-section 10 provides that "any person arraigned for *treason* or felony may challenge peremptorily and without cause not more than six jurors." It was remarked that this is the only mention of treason in the Act, but it was the only occasion for its being specially mentioned. In view of the peculiar right of challenge in a case of treason, under the laws of England, it was important to place it beyond doubt, by special mention, that in a case of treason as in any other case the number of peremptory challenges was to be limited to six. The wording of the sub-section may not be strictly correct, as not recognizing that treason is a felony, but the sub-section is not on that account of any less importance as showing the intention to give to the court jurisdiction over a charge of treason.

I cannot agree with the argument of counsel for the Crown, that an objection to the information is not open on this appeal, on account of the prisoner having pleaded to the charge. He demurred to the charge, and his demurrer being overruled he was obliged to plead. There is no indictment, and I do not think that an objection to the charge need be by a formal demurrer. In fact, it appears that the proceedings may be of the most informal character. Under section 77, "a person convicted of an offence punishable by death" has a right of appeal to this court, which has jurisdiction "to confirm the conviction or to order a new trial." There can be no appeal until there has been a conviction, and I cannot see that the prisoner should be prevented from making any point that he may raise in any way before the court below the subject of appeal. If a new trial should in any case be granted on the ground of a defect in the charge, it would undoubtedly be allowed to the prisoner to withdraw his plea when he should be again brought up for trial, if this were considered necessary in order to give effect to the objection. Indeed, it appears to me that this would not be necessary, for I am of opinion that, upon a new trial, everything must be begun *de novo*, and the prisoner asked to plead again. There is no court continuing all the time before which he has pleaded; there must be a new court established for the trial of each charge, and the proceedings upon the first trial cannot be incorporated with those upon the second.

In my opinion, it is not necessary that a "charge," within the meaning of sub-section 5, should be made on oath before the court having the jurisdiction to try the charge. By section 76, the stipendiary magistrate is given the "magisterial and other functions of a justice of the peace," and power to "hear and determine any charge against any person" in the manner set out in the various sub-sections of the section. I take it that the "charge" referred to in the 5th sub-section is one laid before him by information, as before a justice of the peace, to procure the committal of a party for trial. The charge having been so made he has to summon the jury and procure the attendance of a justice of the peace, and before the court so constituted the charge is to be tried. This is what has been done in the present instance.

The remaining objection of law to the conviction is to the method of taking the notes of the evidence, I cannot agree in the view that the clause requiring full notes of the evidence and other proceedings to be taken upon the trial is directory merely. Whether the notes are to be taken merely for transmission to the minister of Justice, as required by the 8th sub-section, or with a view also to use upon the appeal allowed, it is equally important that they be taken. If it is only with a view to their transmission to the minister, as the 8th sub-section also provides for the postponement of the execution of a sentence of death until the pleasure of the Governor has been communicated to the Lieutenant Governor, it is an important part of the procedure at the trial that the notes of evidence be taken in order that the action of the Executive may be based upon the real facts proved; almost, if not quite, as important as that the evidence should be laid properly before the jury itself. I should not hesitate to adjudge illegal a conviction of a capital offence shown to have been obtained upon a trial so conducted that these facts could not be properly laid before the Executive by the notes of evidence, for which the statute provides, taken down during the progress of the trial.