

The question must next be considered, whether the proceedings against the appellant have been conducted according to the requirements of this Act.

The record before the Court shows that the trial took place before a stipendiary magistrate and a justice of the peace, with a jury of six selected and sworn after the appellant had exercised his right of challenging several jurors.

Two objections to the regularity of the proceedings are, however, raised. The first of these is, that the information upon which the appellant was charged was exhibited before the stipendiary magistrate alone, and not before the stipendiary magistrate and a justice of the peace. An inspection of the document shows the fact to be so. But is it necessary that the information should be exhibited before both?

The powers and jurisdiction of stipendiary magistrates are set out in section 76 of the North-West Territories Act, 1880.

The first part of the section says, each stipendiary magistrate "shall have the magisterial and other functions appertaining to any justice of the peace, or any two justices of the peace, under any laws or ordinances which may from time to time be in force in the North-West Territories." That is a distinct proposition. By the schedule annexed to the Act one of the laws in force there is the 32 & 33 Vic., c. 30. Under the 1st section of that Act it is clear that a charge or complaint that any person has committed, or is suspected to have committed treason, may be exhibited before one justice of the peace, and a warrant for his apprehension issued by such justice.

Section 76 then goes on further, that each stipendiary magistrate "shall also have power to hear and determine any charge against any person for any criminal offence," &c. In all other criminal cases than those specified in the first four sub-sections he and a justice of the peace, with the intervention of a jury of six, may try the charge. It is only when the charge comes to be tried that the presence of a justice of the peace along with him is necessary. To hold that the words "try any charge" include the exhibiting of the information, or that it must be so, before both a stipendiary magistrate and a justice of the peace, seems to me to involve the holding also, that for the purpose of exhibiting the information there is also necessary the intervention of a jury of six. Now the jury cannot be called into existence until the charge has been made, the accused arraigned upon it, and he has pleaded to it.

The case of *Reg. vs. Russell*, 13 Q. B. 237, was cited in support of this objection, but, as I read that case, it is a direct authority against it. An information was exhibited under the Act for the General Regulation of the Customs, before a single justice, and was dismissed by the justices before whom the charge was brought for trial, on the ground that it should have been exhibited before two justices, in conformity with section 82 of the Act for the Prevention of Smuggling. That section provided that all penalties and forfeitures incurred or imposed by any Act relating to the customs should and might be "sued for, prosecuted, and recovered by action of debt, bill, plaint, or information in any of Her Majesty's Courts of Record," &c., "or by information before any two or more of Her Majesty's Justices of the Peace," &c. A rule calling on the justices to show cause why a mandamus should not issue commanding them to proceed to adjudicate upon the information, was obtained. Upon the return of the rule, counsel for the justices contended, that the provision that the penalty may be "sued for," by information, must refer to the commencement of the proceeding, in like manner as in the provision that it may be "sued for" by action. But the Court made the rule for a mandamus absolute, Lord Denman, C. J., who delivered the judgment of the court, saying, "The 82nd section of the Act does not necessarily mean that the information must be laid before two justices, but only that it must be heard before two justices."

The next objection is, that at the trial full notes of the evidence and proceedings thereat, in writing, were not taken, as required by the statute, section 76, sub-section 7. What was actually done, as it is admitted on both sides, was, that the evidence and a record of the proceedings were taken down at the time by stenographers appointed by the magistrate, and they afterwards extended their notes.

The objection cannot be, that the magistrate did not himself take notes of the