an instance. In addition to that, the provisions of the Criminal Code respecting extraordinary remedies, secs. 1120 to 1132, have quite taken the sting out of technical objections based upon defects in warrants of commitment, among other like objections.

It may also be observed that, if the letter of the law prevails and is taken advantage of, there may be no appeal to this Court in this case, the prisoner not having been remanded to custody again upon the original warrant of commitment or by virtue of any warrant, rule, or order of the Court or a Judge; and so it may be that, if great literal strictness prevailed, it might be necessary to make a new application before an appeal would lie. . .

The application for the prisoner's discharge was based upon allegations contained in an affidavit made by him as to what took place upon his trial, as well as upon the formal objections to the warrant and other proceedings . . . Two points are made : (1) that the prisoner did not really elect summary trial, and that, if he did so, he should not have been refused a re-election such as he, through his counsel, afterwards sought; and (2) that the prisoner was denied an opportunity for making his full answer and defence, in being refused a postponement of the trial to procure witnesses.

No affidavits appear to have been filed in answer, the Crown apparently relying upon the record of the proceedings at the trial as a sufficient answer. These papers were brought up with the conviction by means of a writ of certiorari issued at the instance of the Crown.

For the prisoner it was urged that there was no power to bring the papers up in that manner, and that, therefore, they cannot be used as evidence in these proceedings. But why might not the Court direct that the proceedings be so brought up? And what is there in this case limiting the right of the Attorney-General ex officio to the writ? Nothing in the powers conferred by sec. 5 of the provincial Habeas Corpus Act lessens the right to such a writ.

But, whether brought up on habeas corpus or otherwise, I would not have determined the question of the legality of the imprisonment upon the mere affidavit of the prisoner.

Fortunately, in the interests of truth, the prisoner was examined at the trial as a witness in his own behalf, and proved, as the record also shews, that he did elect summary trial; and proved also that he had once before elected and been tried in like manner upon another charge; and, lastly, proved that he had no witnesses, and so did not need any postponement of the trial for that purpose. . . .