

vested in the Superior Court under the existing Statute. I think that injustice will be done, and may be done, if this Act passes, because, really, some of the powers given to magistrates are so great, and some of the errors which they commit are so great, that if they are to be cured in the manner proposed, no magistrate may pay any attention to the law. He may state the wrong offence, or he may state two or three offences, either in his summons or in his judgment, or do anything else, and you cannot take any advantage of it on application for a *certiorari*. I do not know whether the Minister of Justice has given that consideration to it that he ought to have given, nor whether he would not think it better to leave this matter in the hands of the committee to whom the consolidation of the Statutes was referred. The law, as it now stands, contains, at any rate, the opinion of the commissioners as to the extent to which changes should be made. I think, so far as I have been able to examine it, they have attempted to bring it as nearly as possible to the English Summary Convictions Act.

Mr. CAMERON (Huron). Will the Minister tell us what classes of cases are intended to be covered by section 2 of this Bill that are not already sufficiently covered by the law as it now stands? Under the law as it now stands no conviction can be quashed by reason of any defect, either in matters of form or substance, and the Court of Quarter Sessions is bound to hear an appeal upon the merits, quite irrespective of whether the conviction is defective in point of form, or in point of substance; and the court amends the conviction so as to make it conform to the evidence which has been given. I believe that is the practice that prevails, and I believe that it is justified by the law. I think the Minister will find, if he refers to the law as it now stands, that it is broad enough to cover almost every defect, whether it be a matter of form or of substance, so long as the magistrate has jurisdiction over the subject matter of complaint.

Mr. THOMPSON (Antigonish). The principal object of the clause is to enable the judge to say that the conviction shall be maintained. Although it has not been described by its technical name, there are many cases in which decisions have been recorded different from those which were rendered, and although the proceedings have been regular, the charge regular, the offence proved and verdict rendered, yet the magistrate has called the offence by its wrong name, and the prisoner appears to have been tried for one offence and convicted for another.

Mr. McCARTHY. It does not appear that the second clause was intended to meet the case mentioned by the hon. member for Huron (Mr. Cameron). On an appeal to the Court of Sessions the depositions are not referred to, but the case is re-tried. This clause will not affect cases at Quarter Sessions, but it will meet cases on *certiorari*.

Mr. CAMERON (Huron.) Before Quarter Sessions the presiding judge has power to amend a conviction then and there, either in matter of form or in substance.

Mr. McCARTHY. Under what Act?

Mr. CAMERON (Huron.) Under the Summary Jurisdiction Act, so that class of cases is covered by the present law and the 2nd clause of the Bill is therefore wholly unnecessary and would simply come into collision with the existing law. The hon. gentleman should send the Bill to a select committee.

Mr. THOMPSON (Antigonish). I have known many cases in which the existing provisions were held to be insufficient. I am not able to cite them from memory, but I have two on a memorandum here which will fully illustrate the operation of the law. One is that of a person charged with being a frequenter of a house of ill-fame. The offence was proved, but on the conviction it was stated that the

Mr. DAVIES.

defendant was an unlawful frequenter of such place, whereas the phrase should have been a habitual frequenter.

Mr. CAMERON (Huron). How was the matter disposed of? Was there a writ of *certiorari* to quash the conviction?

Mr. THOMPSON (Antigonish). Yes.

Mr. CAMERON (Huron). In that case there was no power to amend when an application was made by *certiorari*. But if there had been an appeal to Quarter Sessions the judge would have had power to amend the conviction either in form or in substance.

Mr. THOMPSON (Antigonish). Another case is one which was decided last year before Hon. Mr. Justice Rose in Ontario. The conviction was for unlawfully selling and disposing of intoxicating liquor to Indians. The conviction failed, because the magistrate stated that the offender was "charged" instead of saying he was "convicted."

Mr. CAMERON (Huron). I quite agree that if this clause is intended to apply to cases of writs of *certiorari* only it should pass. There is no reason why the judge in such cases should not have power to amend, such as is possessed by the judge at Quarter Sessions. But as regards proceedings in appeal at Quarter Sessions the law is ample, and is even greater than that of this section.

Mr. DAVIES. The point is worthy of consideration.

Mr. THOMPSON (Antigonish). In order to meet the objection, I propose to insert the words "on being removed by *certiorari*."

Mr. McCARTHY. I do not think there is the least danger of conflict between the proposed provision and the existing law. The depositions only are returned, and can only be perused by the Superior Court when the *certiorari* is issued. They are not before the court in the other proceedings.

Mr. DAVIES. They can come up as a matter of practice.

Mr. McCARTHY. I do not see how they can as they are officially before the court, and even if they do, where is the conflict? I do not see the slightest conflict, because these words, if they do apply to the Quarter Sessions, do not conflict with what we had before.

Mr. CAMERON (Huron). It is now introduced in different language and much more strongly. The convictions are all returned in the Quarter Sessions, and the first thing objected to is the validity of the conviction on the face of it, and then the judge refers to the depositions. Of course subsequently if the conviction is held to be good, they get in the evidence, and if the evidence does not sustain the conviction it may be amended. But the depositions are before the court and are constantly used.

Mr. McCARTHY. My recollection may be all wrong, but I should have said that the depositions were not returned. In summary convictions the conviction itself is returned, but the depositions remain in the hands of the magistrate.

Amendment agreed to.

On section 3,

Mr. THOMPSON (Antigonish). It sometimes happens that the magistrate uses the past tense instead of the present, in stating his conviction, putting it in the narrative form. Sub-section *a* refers to such cases as that. Sub-section *b* refers to the imposition of a less punishment than the one assigned by law to the offence stated in the conviction. Sub-section *c* is to prevent the conviction being defeated in consequence of the omission to negative circumstances.

On section 4,

Mr. THOMPSON (Antigonish). It sometimes happens that magistrates, in order to avoid the difficulty of giving a