

county court, having jurisdiction in the *district* or county within the limits of which the accused is confined." Compare 32-33 Vict. (1869) (Dom.), ch. 30, sec. 53; R.S.C. 1886, ch. 174, sec. 82; Cr. Code, 1892, 55-56 Vict. (Dom.), ch. 29, sec. 602; Cr. Code, R.S.C. 1906, ch. 146, sec. 698.

And throughout all this legislation is the enactment contained in the present Code, sec. 701, that the same order concerning the prisoner being bailed or continued in custody shall be made as if the prisoner was brought up upon a habeas corpus. This, it is submitted, was intended to preserve all the rights to bail which could be had on habeas corpus. The disposal of the case is to be in like manner to the disposal on a habeas corpus although the power under sec. 698 to direct that the justices take bail probably would not involve the penalty to which a Judge would be subject under the Habeas Corpus Act for improperly refusing bail for a misdemeanour.

Another consideration which favors the view that in Canada for a misdemeanour bail is a matter of right, is that sec. 23 of the Indictable Offences Act, 1848 (Imp.), which was probably the basis of the Canadian Act of 1839, was interpreted so as not to displace that doctrine in England. Under that Act it was declared that a justice of the peace might, *in his discretion*, admit to bail for certain felonies and certain misdemeanours; but it was held that such special power and discretion made it none the less obligatory on a Judge to bail on habeas corpus as theretofore in the case of a commitment for trial for a misdemeanour. *Reg. v. Bennett* (1870), 49 L.T.J. 387; *Reg. v. Atkins* (1870), 49 L.T.J. 421; and see *Re Frost* (1888), 4 T.L.R. 757.