

or in respect of which the prosecutor is so bound over, or for any charge founded upon the facts or evidence disclosed on the depositions taken before the justice. The accused may at any time before he is given in charge to the jury apply to the court to quash any count in the indictment on the ground that it is not founded on such facts or evidence, and the court shall quash such count if satisfied that it is not so founded. And if at any time during the trial it appears to the court that any count is not so founded, and that injustice has been or is likely to be done to the accused in consequence of such count remaining in the indictment, the court may then quash such count and discharge the jury from finding any verdict upon it.

[2. The counsel acting on behalf of the Crown at any court of criminal jurisdiction may prefer against any person who has been committed for trial at such court a bill of indictment for the charge on which the accused has been so committed or for any charge founded on the facts or evidence disclosed in the depositions taken before the justice.]

3. The Attorney General or any one by his direction or any one with the written consent of a judge of any court of criminal jurisdiction or of the Attorney General, may prefer a bill of indictment for any offence before the grand jury of any court specified in such consent; and any person may prefer any bill of indictment before any court of criminal jurisdiction by order of such court.

4. It shall not be necessary to state such consent or order in the indictment. An objection to an indictment for want of such consent or order must be taken by motion to quash the indictment before the accused person is given in charge.

5. Save as aforesaid no bill of indictment shall after the commencement of this Act be preferred in any province of Canada."

NOTE.—The only amendment consists in the insertion of subsection 2. The subsequent subsections are renumbered to accord with this change.

*By inserting immediately after section 678 the following section:—*

*["678A. Either before or during the sittings of any court of criminal jurisdiction, the court, or any judge thereof, or any judge of any superior or county court, if satisfied by evidence upon oath that any person within the province likely to give material evidence, either for the prosecution or for the accused, will not attend to give evidence at such sittings without being compelled so to do, may by his warrant cause such witness to be apprehended, and forthwith brought before such court or judge, and such witness may be detained on such warrant before such court or judge or in the common jail with a view to secure his presence as a witness, or, in the discretion of the court or judge, may be released on a recognizance, with or without sureties, conditioned for his appearance to give evidence."]*

NOTE.—Intended to meet the case of absconding witnesses. Section 583 provides a similar means of securing the attendance of a witness upon a preliminary investigation, but there is no corresponding provision as to witnesses required at the sessions or assizes. An unwilling witness served with a subpoena may abscond, and there is no way of enforcing his attendance until the trial upon proof of default. See section 678.