

were not indictable, the general scope of Pt. XVI. was always for the trial of minor indictable offences, and in its present form it embodies no offences but those which are indictable. The system of summary trial under Pt. XVI. bears the general heading "Summary trial of indictable offences," and its provisions are to be entirely disregarded in pursuing a prosecution as for an offence punishable on summary conviction. Prosecutions for indictable offences are matters peculiarly under the control of the Crown authorities, but where an indictable offence is also made punishable on summary conviction as an alternative method of procedure, a private prosecutor is enabled not only to initiate a charge, but to carry the same forward to its ultimate hearing and disposition. He is the plaintiff in the proceedings, and has a status to be awarded his costs of the prosecution as against the defendant in case the latter is convicted.

It will be seen from this that the application of Pt. XVI. in limitation of the power of two justices or of a police magistrate to make a summary conviction would have the effect of depriving a private prosecutor of a substantial remedy which he has under Pt. XV. in advancing his own cause of complaint against the defendant for an infraction of the criminal law under sec. 169. It may, of course, be that his prosecution might be superseded by the action of the Crown authorities in intervening in his proceedings under Pt. XV., but that is quite a different matter from being dependent entirely upon the Crown authorities to prosecute his sworn information before a magistrate, as he would be dependent in many jurisdictions in Canada if Pt. XVI. has the limitative effect indicated in the *Crossen* case.

If the only information before the magistrate is one laid by the peace officer or other party aggrieved in which he expressly asks a trial under the Summary Convictions Act (Code Part XV.), being satisfied to have the lesser punishment imposed which is applicable to that procedure, it may be doubted whether the magistrate would have any authority to turn the case into a "summary trial" under Part XVI. without the prosecutor's consent, or to proceed with a preliminary enquiry and committal for trial without a fresh information. See *Ex parte Duffy*, 8 Can. Cr. Cas. 277; *Re McMullen*, 20 Can. Cr. Cas. 334, 8 D.L.R. 550; *R. v. Mines* (1894), 1 Can. Cr. Cas. 217, 25 Ont. R. 577, *R. v. Lee*, 2 Can. Cr. Cas. 233; *R. v. Shaw*, 23 U.C.Q.B. 616; *R. v. Dungey*, 5 Can. Cr. Cas. 38, 2 O.L.R. 223.