Cromptor, Mellor and Shee, JJ., concurred.

So much for the case of *Turner et al.* and *The Postmaster General*, (34 L. J., M. C., 10).

Now, for the last quotation of Paley, which *is not* a decision. It is only the *then present inclination of opinion* of a judge, who had not studied the question. It is the case of *R.* v. *Rawlins*, 8 C. & P. 439. It was, on an indictment for perjury, alleged to have been committed by the prisoner, on an information against the prosecutor for having sold beer at improper hours. The conviction came up before the Central Criminal Court, at London. The statute stated that all penalties shall and may be "recovered upon the *information* of "any person whomsoever before *two Justices* "*acting in Petty session.*" There *was not any information* IN WRITING, except so far as it was contained in a printed summons delivered to the accused.

The report of this case then states:

"*Bodkin*, for the defence,—The *principal* "objection was that any person, proposing to "make a *complaint*, could only recover the "penalty before Justices in Petty session, "and the indictment stated that the proceed- "ing was before two Justices, but not that "they were assembled in Petty sessions, nor "that *they were acting* for the *division*, in which "the house was *situated.*"

Parke and Patteson, JJ., were of opinion that the *indictment was defective*, for want of an allegation that the justices were acting for the division in which the house was situated.

"Patteson, J., further said that *he had* "*not* given particular consideration to the "question of a *written* information; *but* the "*present* inclination of his opinion was that "it 'was *not* necessary.'"

Mr. Justice Parke did not evidently share the opinion of his colleague. No weight can be attached to such mere opinion of a judge, who admits that he had not studied the question.

The law cannot possibly tolerate the existence of "contradictory" rules of procedure. I shall, moreover, presently show that the Court of Queen's Bench, in England, *held* that the law "does not tolerate" such contradictory rules of procedure. That course, which the law has prescribed for the guidance of a judge of the superior court, must also govern the judge of the inferior court. The justice of the peace, in the summary trial of cases, exercises the double function of the jury and of the judge, in the higher court. On the person, accused before him, he pronounces a verdict of "guilty," or "not guilty," thereby acting as the jury; the guilty person, he condemns to "punishment," thereby acting as the judge.

The information is the basis, the indispensable corner-stone, of the summary trial; the indictment, or the information, as the case may be, is the basis, the indispensable corner-stone, of the more solemn trial.

Since the verdict of the jury and the consequent sentence by the judge, are exclusively confined to the charge preferred in the indictment, or in the information, it necessarily follows that the conviction, by the justice of the peace, must be exclusively confined to the charge preferred in the *written* information received by him.

It is in the interest of the defendant that the law requires that such an information must be in writing. The description of the offence, charged in that information, must be averred with the same precision as is required to be made in an indictment, or in an information. The reason of the strictness so required in pleading, is to enable the defendant to properly defend himself against the specific charge made against him, and to protect him against a second trial for the same offence.

It is, by such a written information alone, that one can ascertain, whether or not, *ab initio*, the justice had jurisdiction to cause the defendant, either to be summoned to appear and answer the charge set forth in the written information, or to be arrested. In order to justify the issue of a warrant of arrest, it is necessary that the written information should have been previously sworn to. In either case, that written information must disclose an offence triable in a summary manner and triable by him.

I shall now quote the case previously referred to by me, as deciding that there are no contradictory rules of proceeding in our law. It is the case of *Christie* v. *Unwin*, 11 Ad. & E., 373.

In that case, it was held that the Lord Chancellor, in exercising a power conferred on him by statute, must state, in his judgment, all the facts required to give him such statutory jurisdiction.

"Coleridge, J.—I am of the same opinion. "We cannot intend for or against the order; "but we must decide according to the words. "However *high* the authority may be, where "a 'special statutory power' is exercised, the "person who acts must take care to bring "himself within the terms of the statute. "*Whether* the order be made by the Lord "Chancellor, or by a justice of the Peace, the "facts, which give the authority, must be stated."

I have frequently found like erroneous statements of judicial rulings, in the works of eminent law-writers. The source of their errors in that respect has been an unsafe reliance on the statements of others as to the actual question settled. It is better that the advocate should, by personally examining the report, be quite certain as to the nature of the decision.

J. O'FARRELL.

Quebec, May 24.