The second Statute to which attention is directed was passed in the year 1859 (22 Vic. c. 10), and is entituled, "An Act respecting the superior courts of civil and criminal jurisdiction;" and by it her Majesty, by and with the advice and consent of the legislative council and assembly of Canada, enacted as follows—

By Section I., "Her Majesty's Court of Queen's Bench for Upper Canada, and the Court of Common Pleas for Upper Canada, are to continue under the names aforesaid; and all commissions, rules, orders, and regulations granted or made in, by, or respecting such courts, or the judges or officers thereof, existing and in force when such Act took effect, remain in force until altered or rescinded, or otherwise determined."

By Section II., "Such Courts of Queen's Bench, &c., are during the reign of a King, to be called '*His Majesty's Court of King's Bench for Upper Canada*' and during the reign of a Queen, '*Her Majesty's Court of Queen's Bench for Upper Canada.*'"

By Section III., "Such courts are Courts of Record of original and co-ordinate jurisdiction, and respectively possess all such powers and authorities as by the law of England are incident to a superior court of civil and criminal jurisdiction; and have and shall use and exercise all the rights, incidents, and privileges of a court of record, and all other rights incidents, and privileges, as fully, to all intents and purposes as the same were, at the time such Act took effect, used, exercised, and enjoyed by any of Her Majesty's superior courts of common law at Westminster in England, and may and shall hold plea in all, and all manner of actions, causes, and suits, as well criminal as civil, real, personal, and mixed, and proceed in such actions, causes and suits, by such process and course as are provided by law, and as shall tend with justice and despatch to determine the same; and may and shall hear and determine all issues of law, and also hear, and (except in cases otherwise provided for) by and with an inquest of twelve good and lawful men determine, all issues of fact that may be joined in any such action, cause, or suit, and judgment thereon give, and execution thereof award, in as full and ample a manner as, at the time this Act takes effect, can or may be done in Her Majesty's Courts of Queen's Bench and Common Pleas, or in matters which regard the Queen's revenue, (including the condemnation of contraband or smuggled goods), by the Court of Exchequer in England."

By Section IV., "The aforesaid courts are to be held at the *City of Toronto.*"

By Section V., "Such Court of Queen's Bench shall be presided over by the chief justice of Upper Canada and two puisne justices; and such Court of Common Pleas by a Chief Justice and two puisne justices; and such courts respectively may be holden by any one or more of the judges thereof, in the absence of the others; and the chief justice and justices of the said courts respectively has, and may use and exercise all the rights, incidents, and privileges of a judge of a Court of Record, and all other rights, incidents, and privileges, as fully, to all intents and purposes, as the same were, at the time such Act took effect, used, exercised, or enjoyed by any of the judges of any of Her Majesty's Superior Courts of Common Law at Westminster."

As, therefore, Her Majesty's Court of Queen's Bench in Canada has jurisdiction over the same subject-matters as its sister court in England, so the former Court is, as regards Canada, intrusted with the highest jurisdiction; not only over all capital offences, but also all other misdemeanours whatsoever of a public nature, tending either to a breach of the peace, the oppression of the subject, the raising of factions controversy, or debate, or to any matter of misgovernment. So that, whatever crime is manifestly against the public good comes within its cognizance, and this though no person is directly injured. *Neither can any private subject, who has not forfeited his right to the protection of the law, suffer any kind of unlawful violence or gross injustice against his person, liberty, possessions, from any person whomsoever, without a proper remedy from this court;* not only for satisfaction of the private damage, but also for the exemplary punishment of the offender.†

Neither is it necessary, in a prosecution for any such offence in the Canadian Court, to show a precedent of the like crime formerly punished there, agreeing with the present in all its circumstances; for such court, like the Court of Queen's Bench at Westminster, being the *custos morum* of all subjects in Canada, whenever it meets with an offence contrary to the first principles of common justice, and of dangerous consequence to the public if not restrained may and will adopt such a punishment as the heinousness of the offence requires.

The above Acts of Parliament, although they do not in terms exclude the jurisdiction of the Court of Queen's Bench in England, yet, as such court never had any common law jurisdiction over Canada, and as there is no statute conferring upon such court the power of sending its prerogative writs into that colony, the necessity for expressly excluding the jurisdiction of the English courts did not arise. Indeed, had such statutes contained language restraining the jurisdiction of the English courts, the fact might have afforded a plausible ground for asserting that the jurisdiction once existed, although in truth it never has.

More could be stated on this important and interesting subject, was there space for so doing; but sufficient has been alleged to convince any impartial mind, that neither the common law, nor the present topical jurisdiction of the English Court of Queen's Bench at Westminster, ever extended, or now extends to Canada (except as to those matters specially given to it by statute); and that, as there is no statutory power whereby the English court is enabled to grant a *hab. corp. ad. subj.* into that colony, so the writ in Anderson's case should not have been granted.

It has also been demonstrated that, as the lives and liberties of her Majesty's subjects in Canada are protected by her Majesty's courts there, having powers equally extensive, ample, and powerful as those enjoyed by the Court of B. R. in England, so the latter Court has acted improvidently in usurping a jurisdiction which is the privilege of the Canadian courts, and of the Canadian courts alone. Such usurpation may, indeed, in the present instance, be attempted to be palliated by the extreme and urgent circumstances of Anderson's case; but this is undeniable, that a prerogative writ tested in England, and issued by the Court of B. R. here, has been sent for execution on to American soil; that Canadian privileges have been violated; and that a dangerous and alarming precedent has been established, which sooner or later may be made the stepping-stone for further encroachments, and may ultimately lead to a collision between the judicatures of this country and our North American possessions, to end, probably, with a second declaration of American independence.

province of Canada shall continue to subsist within those parts of the province of Canada which now constitute the said two provinces respectively, in the same form and with the same effect as if this act had not been made, and as if the said two provinces had not been reunited as aforesaid."

† 2 Hawkins' "Pleas of the Crown," p. 7.

U. C. REPORTS.

COMMON PLEAS.

(*Reported by* E. C. Jones, Esq., *Barrister-at-Law, Reporter to the Court.*

JOHN GRANT QUI TAM V. MOSES MCFADYEN, ESQ.

Magistrate—Return of conviction—Notice of action against—Con. Stat. U. C., ch. 126.

In an action against a magistrate for the penalty given by the statute (Con Stat. U. C., ch. 124) for having neglected to make an immediate return of the conviction of one J. S

Held, that one month's notice before action under Con. Stat. U. C. ch. 126, secs. 9 and 10, not necessary.