

W. F. O'Connor, and F. McDonald, in support of application.

R. T. MacIlreith, contra.

GRAHAM, E.J.:—This is an application by Sam Chak to quash a judgment of a stipendiary magistrate removed into this Court by a writ of certiorari.

The judgment was given in an action brought before the magistrate to recover the head tax of \$500 payable by a Chinaman on entering Canada under the Chinese Immigration Act, R. S. C., c. 95, s. 7.

By s. 31 it is provided that "All suits or actions for the recovery of taxes or penalties under this Act and all prosecutions for contraventions of the Act (not indictable offences), shall be tried before one or more justices of the peace or before the . . . stipendiary magistrate having jurisdiction where the cause of action arose or where the offence was committed."

First, the provision is attacked on the ground that it is ultra vires the parliament of Canada to pass such a provision in respect to a Court.

There are reasons in *Rex v. Wipper*, 34 N. S. R. 202, which show why such a provision is within the power of that Parliament. The expression "having jurisdiction where the cause of action arose," plainly, I think, refers to the territorial jurisdiction, and means "in the locality." *Attorney-General v. Flint*, 16 S. C. R. 707.

It happens, in Nova Scotia at least, that stipendiary magistrates have jurisdiction in respect to debts not exceeding the sum of \$80. R. S. N. S. c. 160. It is quite competent for the parliament of Canada to confer upon those tribunals jurisdiction in respect to amounts above that sum. The reasoning in *Attorney-General v. Flint*, 16 S. C. R. 707, and *Valin v. Langlois*, 5 App. Cas. 115, conclusively shews that. Parliament having conferred this jurisdiction upon a stipendiary magistrate it is well established that in such a case it is to be exercised according to the procedure and forms, mutatis mutandis, which are already used by the tribunal upon which the new jurisdiction has been conferred.

This applies to the mode of procedure used here, and I think that mode more nearly resembles procedure ordinarily adopted for the collection of a statutory debt, and