power as to the admitting of prisoners to bail. But I understand those authorities as establishing that the Court of Queen's Bench may take bail in cases even of the greatest magnitude, but not as declaring that that Court could, consistently with justice, refuse bail in trivial misdemeanors."

[His honor next considers the question as to whether the prisoner ought to bailed with reference to the statute law of England from which our own statute has been taken, and arrives at the conclusion, "that in England under 11 and 12 Vic., Cap. 42, a Justice of the Peace would be bound to accept sufficient bail if offered by any person charged with a misdemeanor, such as that of which the prisoner is accused, *however clear the proof* might be against him." His honor then adverts to the Canadian Act, C.S C. cap. 102. We extract the following :—]

"The last clause of the section (53) is particularly deserving of attention ; it is : 'and *in default* of such person procuring sufficient bail, then such justice or justices may commit him to prison.' Here the default of a person accused 'to procure sufficient bail' is in express terms made the condition upon which it shall be in the power of the justice 'to commit him to prison.' All doubt, however, as to the obligation under our statute of a Justice of the Peace to accept bail from a person accused of misdemeanor seems to me to be removed by the 57th section which contains the words, 'or if the offence with which the party is accused be a misdemeanor, then such justices *shall* admit the party to bail as hereinbefore provided.' This is the provision of our law which makes it obligatory upon Justices of the Peace to accept bail in cases such as the present ; and as has been well observed by Mr. Justice Badgley, 'the section 53 does not regulate the principles of admitting to bail, but determines by whom it may be exercised, namely by one justice.'....

"It has also been contended that the rule making a distinction between felonies and misdemeanors with respect to the right to be admitted to bail is a most unreasonable one, and ought not to be followed by this court. But we know that the distinction between felonies and misdemeanors runs through the whole body of our law, and that we meet it at every stage of the proceedings in bringing offenders to justice... One of the advantages which results from the division of offences into felonies and misdemeanors is that it enables the Legislature to lay down a certain rule with respect to the taking of bail in a large class of cases."....

[His honor proceeds to consider the order made by Mr. Justice Mondelet while presiding in the Court of Queen's Bench, Crown side. We make the following extracts from his observations :]

"If to-morrow the prisoner could make his innocence clear beyond the possibility of a doubt, it would be in vain for him to do so. No judge could give him the benefit of the writ of *habeas corpus*, so as to bail him.... I therefore deem the order objectionable, because for a period of nearly six months, it placed the prisoner, charged with a misdemeanor, but *not* convicted, in the same situation with respect to bail, as if he had been convicted. In this respect I cannot avoid thinking the order unjust, and, so far as I know, it cannot be supported by even a single precedent.....

"I shall conclude by recapitulating the points which I think have been established in the course of the foregoing observations. They are as follows :

1st. That according to the well established jurisprudence of the Courts in England, before the passing of 11 and 12 Vic., chap. 41, prisoners charged with misdemeanors were entitled to be bailed, the words of Lord Denman in the last reported case decided under the old law being, 'for many years the received opinion 'and practice has been that *all* persons accused 'of *misdemeanors* whether *common or otherwise* 'are *entitled* to be bailed.'

2nd. That under the English Statute 11 and 12 Victoria, chapter 42, a Justice of the Peace could not refuse bail in a case such as the present.

3rd. That by our statute, chap. 102, C.S.C., Justices of the Peace are bound to take bail in all cases of misdemeanor.

4th. That this Court, at the close of the term, could not consistently with reason refuse to take bail in any case in which, under the statute, a Justice of the Peace is bound to take bail, the statutory directions to Justices of the Peace having always been regarded by the Courts as "the common landmarks" by which they ought to be guided in deciding applications to be admitted to bail.

5th. That there is nothing in the order of Mr. Justice Mondelet to prevent this Court from admitting the prisoner to bail.

6th. That that order is objectionable as tending to restrain the learned Judge by whom it was made, and all his brother Judges, from the exercise, during vacation, of a power vested in them by law for the protection of the liberty of the subject.

"Considering these points established and bearing in mind, 1stly, that no instance in modern times has been found of any Court in England having refused to accept bail in a case of misdemeanor ; and, secondly, that the prisoner has been tried twice without being found guilty, the conviction has forced itself upon my mind that we cannot, consistently with those rules by which we are usually guided in the administration of justice refuse to admit the prisoner to bail. It is with regret that I have found the Court divided as it is in this case ; but this difference of opinion has been for me an additional reason to examine and weigh with the utmost care the authorities and arguments submitted. I shall add merely that in explaining my views in this