

See note under 23: *R. v. Davies*, 8 Cox C. C. 486, and note under section 24 as to the word justified.

A warrant can only be executed by the person to whom it is directed, and if executed by any other this other commits a trespass: *Symonds v. Kurtz*, 16 Cox C. C. 726.

An officer may break the outer door of a house when it is necessary to execute a criminal process. *Harvey v. Harvey*, L. R. (1: 20 C. D. 644; *Fantasse v. Task* (1894), 27 N. S. R. 329.

A prosecution under the Canada Temperance Act is a criminal prosecution. *Messenger v. Parker* (1885), 18 N. S. R. 237; *R. v. Calhoun* (1888), 20 N. S. R. 395.

26. EXECUTION OF ERRONEOUS SENTENCE OR PROCESS.—

If a sentence is passed or process issued by a court having jurisdiction under any circumstances to pass the sentence or issue such process, or if a warrant is issued by a court, justice or person having jurisdiction under any circumstances to issue the warrant, the sentence passed or process or warrant issued shall be sufficient to justify the officer or person thereby authorized, to execute the same, and every gaoler and person lawfully assisting in executing or carrying out such sentence, process or warrant, although the court passing the sentence or issuing the process had not in the particular case authority to pass the sentence or to issue the process, or although the court, justice or other person in the particular case had no jurisdiction to issue, or exceeded its or his jurisdiction in issuing, the warrant, or was, at the time when such sentence was passed or process or warrant issued, out of the district in or for which such court, justice or person was entitled to act. 55-56 V., c. 29, s. 18.

A warrant valid on its face affords complete protection to a constable executing it, notwithstanding that the awarding of the punishment may have been erroneous. *R. v. King*, 18 O. R. 566; *Sleeth v. Hulbert* (1896), 3 Can. C. C. 197, 25 S. C. R. 620.

See note under section 24 as to the word 'justified,' also *West v. Smallwood*, 3 M. & W. 418; *Phillips v. Byron* (1721), 1 Strange 509; *Parsons v. Lloyd*, 2 Wm. Bl. 845; *R. v. Harrison* (1812), 15 East. 615; *Codrington v. Lloyd* (1839), 8 A. & E. 449.

27. SENTENCE OR PROCESS WITHOUT JURISDICTION.—

Every officer, gaoler or person executing any sentence, process or warrant, and every person lawfully assisting such officer, gaoler or person, shall be protected from criminal responsibility if he acts in good faith under the belief that the sentence or process was that of a court having jurisdiction, or that the warrant was that of a court, justice or other person having authority to issue warrants, and if it be proved that the person passing the sentence or issuing the process acted as a court under colour of having some appointment or commission law-