The return of gaoler Clifford disclosed that Sperdakes was confined in the common gaol under an order of the learned Judge of the St. John County Court until arrangements were completed to transfer him to Dorchester penitentiary.

Dr. W. B. Wallace, K.C., and MacRae, Sinclair & McRae, appeared for the prisoner.

H. A. Powell, K.C., and Clarence H. Ferguson, for the Attorney-General.

Wallace, K.C., moved for the discharge of the prisoner.

Reads: Sec. 825, Criminal Code as amended by ch. 9 of Statutes of Canada, 1909:—

"Where an offence charged is punishable with imprisonment for a period exceeding five years, the Attorney-General may require that the charge be tried by a jury, and may so require, notwithstanding that the person charged has consented to be tried by the Judge under this part, and thereupon the Judge shall have no jurisdiction to try or sentence the accused under this part."

The Attorney-General has not exercised this option and he must do so.

Enabling words are always compulsory where they are words to effectuate a legal right.

See Reg. v. Tithe Commissioners, 14 Q. B. 459

The word "may" involves a duty. In cases such as this you must construe the word "may" from a standpoint of public interest and not in the broad sense of implying permission only.

It was the duty of the learned County Court Judge to call upon the Attorney-General to exercise this option.

Words implying permission have a compulsory force in cases of this nature.

Cites: The King v. Barlow, at pages 302 and 303 of Hardcastle on Statute Law.

Powell, K.C, I thoroughly agree with the view of my learned friend, that words which ordinarily imply permission, are, from a standpoint of public policy, to be construed as imperative.

Under sec. 825 as amended by ch. 9, Statutes of Canada, 1909, the Attorney-General may, if he sees fit, intervene to order the accused to be tried by a jury. There is nothing