

the case in which the parties have not appeared. This will be found a convenient arrangement to adopt, but the order of proceedings is entirely in the discretion of the Justices composing the Court of Petty Sessions. When a case is finally taken up, should neither party appear or answer when duly called by the Constable, the only course is to *dismiss the complaint*.

Non-appearance of the Complainant—Appearance of the Defendant.—In case the defendant appears and the complainant does not appear, either personally or by attorney or counsel, then the complaint may be dismissed, unless the Justices are of opinion that the ends of Justice require that an adjournment should be made; and if the case be one of an aggravated character, or there is room to suppose that the complainant's absence is owing to accident or necessity, it would be proper to adjourn the hearing on such terms as may seem just. The 16 Vic., cap. 178, has the following provision in sec. 12:—

“If on the day and place so appointed as aforesaid such defendant shall appear voluntarily in obedience to the Summons in that behalf served upon him, or shall be brought before the said Justice or Justices by virtue of any warrant, then if the said complainant or informant do not appear by himself, his counsel or attorney, the said Justice or Justices shall dismiss such complaint or information, unless for some reason he or they shall think proper to adjourn the hearing of the same until some other day, upon such terms as he or they shall think fit.”

Proceedings on appearance of Complainant—Non-appearance of Defendant, and ex parte Hearing.—If at the time appointed for the hearing the complainant should appear and the defendant should not appear, it will be for the Justices to determine whether they will proceed with the case or adjourn till a future day. Should the defendant send or bring to the notice of the Justices any reasonable excuse for his non-attendance, as illness, compulsory attendance elsewhere, or some other reasonable excuse, and the Justices are satisfied that such excuse is made in good faith, and not for the purpose of evasion or delay, and the ends of Justice do not imperatively demand immediate action, the proper course is to adjourn the hearing to a future day, directing a notice of the adjournment or a fresh summons (the latter is the better practice) to be served on the defendant; or if the Justices discover by the examination of the officer who serves the summons, or by any other means, that the defendant's absence is accidental or unavoidable, and find that his appearance can be insured by an adjournment, they should by all means postpone the hearing—the presence of both litigants being always desirable with a view to a safe and satisfactory adjudication.

If, however, the defendant does not appear, and no excuse for his non-attendance is offered or ap-

pears, the Justices may take one of two courses, *in their discretion*, that is to say, they may either *issue a warrant* to compel the attendance of the defendant or proceed to hear the case *ex parte*. As already noticed, the proceeding by warrant should only be taken where the defendant is otherwise likely to evade justice, or the case is of an aggravated or serious nature—and whichever alternative be adopted—whether issuing warrant or proceeding to hear the case in the defendant's absence—great care should be taken in making the proper preliminary enquiry, so as to satisfy the Justices that the summons has in fact found its way into the defendant's hands, [2] and that his non-attendance is owing to wilfulness or negligence; it would be a grievous wrong to act against a defendant who had no proper notice of being required to answer, or who was prevented from appearing by accident or inevitable necessity. In order then to satisfy themselves on this point, the Justices should call up the Constable who was entrusted with the service of the summons and examine him; first administering an oath to the following effect:—

“You shall true answers make to all such questions as shall be demanded of you touching this case.—So help you God.”

The Constable's deposition should then be taken down in writing, and when concluded signed in the usual way. The officer, after he is sworn, should be particularly questioned as to the *time* of service, and when the summons has not been given personally to the defendant the *manner* in which service has been made, as has been before particularly referred to; [3] and also if he knows of any impediment to defendant's attending. When the service is found to be sufficient according to the mode prescribed by the Statute under which the proceeding is had, or if no mode be prescribed, when it is ascertained that the service has been personal, or that the summons has been left for the defendant at his last or most usual place of abode, a sufficient period before the time appointed for hearing, to enable the party to come prepared with his defence, the Magistrates may safely proceed to hear and determine the case *ex parte*—that is, they may take the evidence and proceed with the case as if defendant were present.

The following provisions on the subject of hearing *ex parte* are contained in the 16 Vic., cap. 178, sec. 2:—

“Or if where a summons shall be so issued as aforesaid, and upon the day and at the place appointed in and by the said summons for the appearance of the party so summoned, such party shall fail to appear accordingly in obedience to such summons, then and in every such case, if it be proved on oath or affirmation to the Justice or Justices then present, that such summons was duly served upon such party a rea-

[2] See ante pages 8—23 and 24.

[3] See ante page 8.