

and the Court of King's Bench of Manitoba may be said to depend upon the question whether or not Code sec. 698 (former sec. 602 of the Code of 1892), has any limitative effect upon bail of persons committed for trial who apply for bail by means of the writ of habeas corpus. If it does not, then the Habeas Corpus Act, 31 Car. II., ch. 2, has still to be construed in its reference to felonies and misdemeanours. As regards the mode of prosecution, the distinction between felony and misdemeanour was abolished by the Canadian Criminal Code of 1892, sec. 535, and this enactment is now sec. 14 of the Criminal Code, 1906. Notwithstanding the statutory abolition of the distinction, it may still be necessary to limit the effect of prior statutes dealing in terms with misdemeanours so that it will not apply to a Code offence which but for Code sec. 14 would be a felony. *R. v. Fox* (1903), 7 Can. Cr. Cas. 457, 2 O.W.R. 728. The Criminal Code did not re-enact or repeal the Habeas Corpus Act, and it may be questioned whether Code secs. 698-701 were intended to interfere in any way with the powers and duties of a superior Court exercising habeas corpus jurisdiction. The procedure appears to have been intended as an alternative one, involving less delay and expense than that of habeas corpus. The title to the first Canadian Act, in which these Code provisions appeared, 32-33 Vict. (1869), ch. 30, was "An Act respecting the duties of Justices of the Peace out of Sessions in relation to persons charged with indictable offences." The statutory power of bail to which the discretion was attached was not limited to Courts or Judges of Courts having power to entertain a habeas corpus motion. It included, with some limitation of the class of offences, Judges of the County Courts which had no habeas corpus jurisdiction, and as to Judges of superior Courts enabled them in their discretion to order bail before justices, which powers, before the enactment, might have been exercisable on habeas corpus by the Court in term or by a single Judge sitting for and exercising the functions of the Court, or by a single Judge in the special contingencies provided for by the Habeas Corpus Act. The distinction between the class of functionaries given special powers under Code sec. 698 and a provincial superior Court of criminal jurisdiction is made in Code sec. 699 in its reference to the "order of a superior court of criminal jurisdiction for the *Province* in which the accused stands committed." The statute from which Code sec. 698 is taken conferred its enabling powers in furtherance of the assimilation of the laws of Quebec, Ontario, Nova Scotia and New Brunswick (32-33 Vict. 1869 (Dom.), ch. 30), and the same phraseology has been followed throughout: "Any Judge of any *superior* or