

had received the lists, but refused to answer, though the magistrate ruled that the question was relevant. He was then committed. The particular list from which the accused was charged with striking off a name could not be produced, as it was not with the other documents relating to the election, which had been transmitted by the Clerk of the Crown in Chancery to the prothonotary of the Court of King's Bench.

Held, 1. Under s. 585 of the Code, a magistrate would not be justified in committing a witness to gaol for refusal to answer a question unless it were in some way relevant to the issue, as that section only applies when the refusal is made "without offering any just excuse," and the form of the warrant of commitment contains the words "now refuses to answer certain questions concerning the premises now put to him."

2. If the list in question had been produced, the question from whom Ayotte had received it before sending it to Rittson would have been immaterial to the issue as to whether the latter had altered it or not.

3. But, as the list was not forthcoming, the prosecution might have to give secondary evidence of its contents and to shew that it contained the name alleged to have been struck out, and the proof of the contents might necessarily involve as a part of the chain, information as to the source from which the returning officer obtained it, and whether that particular list had been furnished by the Clerk of the Crown in Chancery, or by a provincial officer, as it might have been, under the legislation governing the matter, furnished by either; and, in that view, it could not be held that the question objected to was not in some way material. Application refused without costs

Mathers, for applicant. *A. J. Andrews*, for the Crown.

Province of British Columbia.

SUPREME COURT.

Full Court.]

[Nov. 25, 1904.]

WILES v. THE VICTORIA TIMES PRINTING & PUBLISHING Co.,

Libel—Newspaper article—Fair comment.

Appeal from judgment of IRVING, J., dismissing an action for damages for libel. Defendants published on page 1 of their newspaper an article stating that some women from Seattle had been canvassing some time ago in Victoria for subscriptions for a bogus foundling institution, and on being questioned by the po-