

On the first point I have satisfied myself the appeal will lie. It is provided by statute that no action can be brought against a magistrate for an act done in excess of his jurisdiction until the conviction or order has been quashed, R.S.O., c. 73, sec. 4: *Graham v. McArthur*, 25 U.C.Q.B. 478.

On the second point mentioned, the difficulty that stood in the way of the appeal when the case of *In re Murphy and Cornish* was before the courts (see 8 P. R. 420) appears to be got over now by section 879 of the Criminal Code, which permits any person aggrieved by an order or conviction, the prosecutor or complainant, as well as the defendant, to appeal; and by R.S.O., c. 74, sec. 5, the practice and proceedings, in an appeal to the sessions in matters within the Legislative authority of the Province of Ontario, shall be the same as the practice and proceedings in an appeal under the Dominion statutes, except that either of the parties to the appeal may call witnesses and adduce evidence in addition to the witnesses called, and evidence adduced, at the original hearing.

The order of the magistrates must be quashed on the ground that the evidence was taken by one magistrate sitting alone, but without costs.

I will now consider the case on the evidence and its merits.

Assuming Dr. McLean tried to reach the Medical health officer by the telephone and failed to do so, and that he afterwards wrote him a post card and posted it to his address, stating there was a case of scarlet fever at Mr. Wilson's, I cannot consider this a reasonable compliance with the Act, which by sec. 80 requires that within twenty-four hours he should have given notice in such manner as is directed by rules 2 and 3 of sec. 17, schedule "A," and these rules provide that the notice shall be given on special forms to be provided by the medical health officer, or secretary of the local board of health, setting forth various particulars regarding the case—the names and age of the patient, the locality where the patient is, the disease, the school attended by children from the house, and the measures employed for isolation and disinfection. A card merely stating there was a case of scarlet fever at Mr. Wilson's, cannot be considered a substantial compliance with these requirements. Dr. McLean states he was not supplied with the proper forms to give the notice required. I do not think this can excuse him; rule 1 of sec. 17 of the schedule says he shall be provided with the forms by the Medical health officer, or secretary of the local board of health; this must mean that he is to be provided with them free of charge on application for them; it can hardly mean that the forms are to be sent to all medical men practising in the municipality. How can they be ascertained in cities such as Toronto or even in much smaller municipalities? Some medical men are continually changing their places of residence, others periodically go "on circuit," as it were, to long distances from their homes; others again, who are specialists, or widely and favorably known, go to all parts of the province on special calls, and how are all these to be found out and supplied with the forms in every municipality they visit? The only reasonable interpretation to the Act I can see is that the blank forms are to be kept on hand and supplied free of charge to medical men when applied for.