

Co. Ct.]

CURRIE V. L. MCCALLISTER AND JAMES RUSSELL.

[Co. Ct.]

against them jointly, where more than one. Upon this Statute, was decided the case of *Drake v. Preston*, 34 U. C. R. 257, where Mr. Justice Wilson says, "As the act to be done is single in its nature, to make a return, for that can be only one return, a joint return, and if that be not done, the one forfeiture, the single payment of the penalty will acquit the two." As regards the Acts of both Legislatures then, I think the action must be a joint one, against all, where there is more than one justice. The right to sue each separately, under the Ontario legislation, existed till the passing of chapter 76 of the Revised Statutes, when it was taken away by the omission of the words "and each and every of them" (found in chapter 124 U. C. C. S.) from section 3 of said chapter 76. So it appears, that whether the conviction was made by two or more justices, under a Dominion or an Ontario Statute, and they neglect to return the conviction, "such justices" (to use the words employed by both Legislatures) "shall forfeit and pay the sum of \$80." The action appears to be, therefore, rightly against both defendants, if they were present and joined in the conviction—though it was otherwise when *Drake v. Preston* (quoted in the argument) was decided—and so the remarks of Wilson, J., on page 265 of that judgment, as to the necessity for proceeding against the defendants separately, where the conviction was under an Ontario statute, have now no force.

Before we proceed to the next point, it may be well to arrange chronologically, the statutes above referred to, and the cases cited on the argument—this will enable us to see what particular statute was in force when each case was decided :

1. Ontario, 124 C. S. U. C. . . . 1859
- " 32 Vict. c. 6 1868
2. Canada, 32-33 Vict. c. 31 . . . 1869
- " 33 Vict. c. 27 1870
3. *Drake v. Preston*, ante 1873
4. *Corsant v. Taylor*, 23 C. P. . . 1874
5. *Darragh v. Patterson*, 25 C. P. . 1875
6. Rev. Stat. c. 76 (Ontario). . . 1877

The second objection is, that the declaration is not founded on, or authorized by, any statute. In the face of what I have

already said, that the whole law on the subject is now consolidated in the Revised Statutes, chap. 76, and the declaration alleging the duty of the defendants to be under that statute, this objection must also be disallowed.

The third objection is, that the declaration does not disclose the nature of the offence whereof the defendants convicted Peter Currie.

The case of *O'Reilly v. Allen*, 11 U. C. R., decided that this was not necessary, and so did *Keenahan v. Egleson*, 22 U. C. R. 626. The point was raised in *Drake v. Preston*, *supra*, but not decided. When, however, that case was argued, a different return was required, and a different penalty imposed, as regarded neglect to return convictions for offences under Dominion and Local jurisdiction, respectively. Now there is no difference in the penalty; and no difference as to the return, except that, when made by two or more justices, the Ontario Act requires an immediate return, the Dominion Act does not. The declaration alleges the duty of the defendants, to be under Revised Statutes, chap. 76. In *Drake v. Preston*, *supra*, Mr. Justice Wilson, says: "It may be proper, under the different enactments of the two Legislatures, to shew the nature of the offence for and upon which the conviction was made, otherwise we shall not, in the case of two justices of the peace, know whether there is to be a separate penalty on each justice, or a single penalty against both for the one default, or whether they should be joined, or should not be joined, in the same action."

When we find, as above stated, that there is now no difference between the two legislations (except as to an immediate return by two or more justices) we must come to the conclusion that there need not now, in a case of this sort, be any statement as to the nature of the offence, any more than when *O'Reilly v. Allen*, *supra*, was decided. Until I see some further authority, I must consider this allegation not necessary—though, if no reference had been made to any particular statute, it might perhaps be necessary to consider the point further.

The fourth objection is that the declaration