there are the words—"Making up books and orders of sessions, declaring the limits of the division courts, and *entering the times and places* of holding the courts," and the tariff adopts the same words; and sec. 15 of Division Court Act, already cited, directs him to record the divisions declared and appointed, and the times and places of holding the courts. But we cannot, I think, avoid the conclusion, that to entitle him to do the work and charge therefor the fees prescribed by the tariff, he must shew that the appointments or orders for times and places of holding the courts, which he sends to the Government and the different clerks, are orders or acts of the court of quarter sessions.

This he cannot do, and I think he must therefore fail.

Per cur.—Rule discharged without costs.

Regina v. Shuttleworth.

Negligent escape—Conviction—Evidence.

One W was brought before magistrates in the custody of defendant, a constable, to answer a charge of misdemeanor, and after witnesses had been examined he was verbally remanded until the next day. Being then brought up again, and the examination concluded the justices decided to take bail, and send the case to the assizes. He said he could get bail if he had time to send for them and the justices verbally remanded him till the following day, telling defendant to bring him up then to be committed or bailed. On that day defendant negligently permitted him to escape, for which he was convicted

Held, that W. was in custody under the original warrant, and the matter still pending before the magistrates, until finally disposed of by committment to custody or discharge on bail, and that the conviction was proper.

Criminal Case Reserved.

At the Court of Oyer and Terminer and General Gaol Delivery for the county of Oxford, begun and holden in the town of Woodstock, on Tuesday, the twenty-first day of October, in the year of our Lord one thousand eight hundred and sixty-two, and continued by adjournment until Saturday, the twenty-fifth day of the same month, James Shuttleworth, a constable of the said county, was indicted, tried, and convicted by a jury of his country of a misdemeanour, in permitting one Jesse Williams Woodward, charged with committing a rape on one Ellen Jane Carrol, to escape from his custody as such constable, after having been committed to his custody to be safely kept for further examination

From the evidence given at the trial, it appeared that Woodward was on Thursday, the twenty-first day of August, 1862, brought before two of the justices of the peace for the county of Norfolk, under the said charge, on a warrant issued by one of the justices; that an examination of witnesses was had on that day, and Woodward was verbally remanded to the custody of the defendant until the next day, then to be brought before them for further examination.

On the next day, Friday, the twenty-second day of August, the defendant brought Woodward before them, and having finished the examination of the witnesses on that day, the justices concluded to admit Woodward to bail, and to send the matter to the assizes.

The prisoner stated he could procure bail if he had time to send for them, and the justices informed him that they would remand him for a day, and if the bail arrived in the meantime they would take it; and the defendant was verbally directed to bring Woodward before them the next day, to be committed or bailed as they thought fit. The next day Woodward escaped from defendant's custody, and was not brought before the justices; he escaped by defendant's negligence.

On the trial the defendant's counsel objected:

1. That Woodward was in the custody of the defendant only for the purpose of enabling him to procure bail, he having been remanded to defendant's custody by the magistrates to enable them either to bail him, if he could procure bail, or commit him if he could not obtain bail: that such remanding being illegal, defendant was not bound to detain Woodward, and he could not therefore be legally convicted of a misdemeanour for his escape.

2. That the allegations in the first count of the indictment are, that the defendant arrested Woodward on the charge of rape, and brought him before the justices, and that they remanded him to defendant's custody for twenty-four hours, and that he escaped whilst defendant had him in custody under such remand: that the evidence shewed that Woodward was really in custody on a second verbal remand, for the purpose of enabling him to procure bail, and therefore he was not in custody as alleged in the indictment; and that there being a variance, he ought to be acquitted. And further, that he was in custody under the second verbal instructions to enable him to procure bail after the justices had decided to commit him for trial: that such last instructions were illegal and not justified by the statute, and therefore defendant could not be properly convicted of an escape as Woodward was not legally in his custody.

It was left to the jury to say, as a matter of fact, if defendant negligently allowed Woodward to escape, and they found him guilty.

In consequence of the objections raised, the court, in the exercise of its discretion under the statute, reserved the question if defendant could be properly convicted, on the objections taken, and on the evidence, for the consideration of the justices of her Majesty's Court of Queen's Bench for Upper Canada, and postponed the judgment on the conviction until such question shall have been considered and decided, which said question is hereby referred to the consideration of the said Court of Queen's Bench.

It was held that the second count of the indictment could not be sustained, and the defendant was bound over to appear at the next sittings of the Court of Oyer and Terminer and General Gaol Delivery for the County of Oxford, to receive judgment. The indictment and copy of the evidence at the trial are herewith.

All of which is hereby certified to the Court of Queen's Bench aforesaid, pursuant to the statute in that behalf.

W. B. Richards,

Presiding Judge at the aforesaid sittings of the Court of Oyer and Terminer and General Gaol Delivery.

W. H Burns for the Crown, cited Burns' Justice, titles "Arrest" and "Warrant;" *Wright* v. *Court*, 4 B. & C. 596; Hale P. C, vol. ii, p. 120; Archbold's Snowden's Magistrates' Assistant, 4th ed. p. 73

D. G. Miller, for defendant, cited Consol. Stats. C., ch. 102, secs 25, 40, 43; *Rex* v. *Fell*, 1 Salk, 272; Russell on Crimes, vol. i, p. 423.

Hagarty, J.—The first count in substance alleges that defendant being a constable, &c, brought one Woodward before the justices, and he was then charged on oath with felony, and the justices duly adjourned the examination, and remanded the prisoner from 21st of August to the 22nd of August, (being under three days,) and verbally ordered defendant to keep the prisoner in custody, and have him before them on the 22nd of August, and that the defendant so having him in custody negligently permitted him to escape.

The second count alleges that Woodward was charged on oath with felony, and a warrant duly delivered to defendant, a constable, to apprehend and bring him before justices; that he arrested and had him in custody, and allowed a negligent escape.

The facts were, that being brought up on the 21st of August, the justices adjourned to next day, remanding the prisoner. On the 22nd the examination was resumed, and the justices announced that they had resolved to send him to the assizes, but would take bail. The prisoner asked for time to send for bail. They agreed to remand him to next day for that purpose, and he escaped before being brought up next day on the remand.

My very strong impression is, that the defence urged is not open to the defendant, if the facts be sufficiently stated.

It appears to me that the prisoner was in custody on the original warrant till finally disposed of, by either commitment for trial or discharge on bail. Till disposed of finally by the justices, I think the custody on the warrant continues. The form of warrant given by our statute is to apprehend and bring before the said justices, &c, "to answer unto the said charge, and to be further dealt with according to law." I therefore do not see why the second count should not support a conviction. We have not to deal with any question as to an illegal remand for a longer period than the statute allows

Nor can I accede to counsel's argument, that as the evidence was fully taken and the justices had made up their minds to send him to the assizes if he could not obtain bail, an adjournment for a day at the prisoner's instance, and for his accommodation, to enable him to send for bail, rendered the custody illegal, so that