

advice, and you will save yourselves trouble and expense.

ON THE DUTIES OF MAGISTRATES.

SKETCHES BY A. J. P.

(Continued from page 45.)

OF THE INFORMATION OR COMPLAINT.

THE mode of commencing summary proceedings of a penal nature before Justices of the Peace is by preferring an information or complaint.^[1] The information is the foundation of the Justice's jurisdiction—the basis of all the subsequent proceedings; containing a *formal charge*, it apprizes the defendant of the supposed offence he is to answer, and the Magistrate what facts he is to try and adjudicate; and so, being in the nature of an indictment, or declaration, it ought to be no less certain in substance and form.^[2]

In all cases of complaint upon which Justices may make an order for payment of money or otherwise, the complaint must be in *writing and on oath*, unless enacted to the contrary by the particular Statute on which the complaint is framed;^[3] but the Magistrate may not unreasonably require the complaint to be reduced to writing in every case,^[4] and it is strongly recommended to do so, as the safer and more convenient practice.^[5] Where the proceedings are at the instance of one who is not personally aggrieved by the offence, it has always been customary to have the information drawn up in regular form and lodged with the Justice before granting a summons. If the particular Act of Parliament *expressly dispenses* with an oath, it should not be *required* of the informant, unless the information is intended to be the ground-work of a warrant to arrest; but the addition of an oath will not prejudice.^[6]

[1] Where a Justice is authorized to convict on his own facts, no previous information or charge is necessary.

[2] Per Lord Kenyon in *R. v. Swallow*, 8 T. R. 236; and see also observations of Abbott, C. J., in *R. v. Paine*, 5 B. & C. 251; *R. v. Wheatman*, Doug. 232.

[3] 16 Vic. c. 178, s. 7.—Note that in England, under the Act 11 & 12 Vic. it is not necessary that the complaint should be made in writing, unless it is required to be so by some particular Act of Parliament, upon which such complaint shall be framed.

[4] In the great majority of cases the information is expressly required to be laid on oath (see 4 & 5 Vic. caps. 25, 26, and 27), and whenever a Justice issues a warrant, in the first instance the facts must be substantiated by oath, before a warrant can be legally issued—16 Vic. c. 178, s. 2. (See also *R. v. Riddell*, 4 B. & R. 734; *R. v. Whately*, 2 Man. & Ry. Mag. cases, 313.) Should the party aggrieved be unable to identify the offender, or otherwise unable to make oath to the fact, he can lay the information without oath, and a credible witness who can swear to the facts should depose to the commission of the act complained of in order to satisfy the terms of the Statute. Whenever a complaint claims to exhibit the information *without oath*, this caution is given:—Let the Magistrate, before he acts, see that the oath is not necessary in consequence of there being an express dispensation in the particular Statute taking the case out of the general rule (16 Vic. c. 178, s. 2 and 7.)

[5] Where the substance of the charge is committed to writing, it enables the Justice to frame his summons or warrant properly: it gives the defendant fuller information of what he has to defend, and serves to keep the subsequent inquiry within proper limits.

[6] See ante Note 1.

Informations laid without oath are said to be *exhibited*, and are merely required to be in writing and signed or acknowledged by the informant in the presence of the Magistrate. Informations on oath are in like manner signed or acknowledged, and the Magistrate, after reading the document over to the informant, or being otherwise satisfied that he understands the contents, administers an oath to him, that "the contents are true and correct."^[7] It should appear on the face of the information itself, whether it was *taken upon oath*, or *exhibited* merely, and the Magistrate's signature must be affixed.

A general form of information upon oath, as well as by way of *exhibit*, taken from the Schedule in the English Act, are subscribed.^[8]

[9] The information or complaint should contain and accurately set forth the following particulars, viz.:—*the name and addition of the complainant*, either the party aggrieved or a common informer, as the case may be;—*the name and style of the Justice before whom it is laid*, and the date and place of *exhibiting*:—*the name and addition of the defendant*—*the nature and description of the offence*,—and the

[7] When taking informations from illiterate persons, either upon oath or otherwise, the magistrate should not only carefully explain the contents, but examine as to the facts in each case, that no statements and confusion of facts may be avoided. Upon this point, Coleridge J., observed: "A Magistrate taking depositions has a discretion to exercise, as to how to examine the witness, hear his evidence, and judge of the nature in which it is given." So also Patterson J. observed: "Magistrates should be careful not to omit the part of their duty to a clerk. Depositions of this kind are not like affidavits, which are made to be used or not by a party in a cause, as he sees fit. It is a matter of some discretion to determine how depositions are to be acted upon, and ought therefore, to have the Magistrate's full consideration."

[8] *General form of Information on oath.*
County of } The information and complaint of A. B., of the Township of
to wit, } _____, in the County of _____, *gentleman*, taken and made
upon oath before me, the undersigned J. J., one of Her Majesty's
Justices of the Peace for the said County of _____, this _____ day
of _____, in the year of our Lord one thousand eight hundred and
_____, at _____, in the said County, who saith that on the _____ day
of _____ last, at the Township of _____, in the County aforesaid, D.
E., of the Township of _____, in the said County of _____, labourer,
did unlawfully (here state the offence committed, so as to come within
the terms of the statute under which the information is laid) contrary
to the Statute in that case made and provided: and thereupon the
said A. B. prays that the said C. D. may be summoned to answer
the said charge according to law; (or, in case of a warrant being
issued in the first instance, may be apprehended for the said offence,
and dealt with according to law.)

Taken and sworn before me at _____ aforesaid, }
the day and year first above written. } _____ (Informant's signature.)
(Justice's signature.)

Form of Complaint or Information without oath.
County of } He it remembered that, on this _____ day of _____ in the
to wit, } _____ year of our Lord one thousand eight hundred and _____, and
at _____ in the said County of _____, A. B. (the informant) of the
Township of _____, in the said County, *gentleman*, personally cometh
before me, J. J., Esquire, one of Her Majesty's Justices of the
Peace for the said County of _____, and complaineth against D. E.,
of the Township of _____, in the said County, labourer, for that he
the said D. E., on the _____ day of _____ now last passed, at the
Township of _____, in the County aforesaid, did unlawfully, &c.,
here state the offence committed, so as to be within the terms of the
Statute under which the information is laid, contrary to the Statute
in that case made and provided: And hereupon the said A. B.
prays that the said C. D. may be summoned to answer the said
complaint.

Exhibited before me on the day and year }
and at the place first above mentioned. } _____ (Informant's signature.)
(Justice's signature.)

[9] That is, in cases where a common informer is allowed to proceed.