sions of this statute, as to the mode of *proceeding* upon an indictment for an offence committed after a previous conviction, could constitute error, I see no reason for presuming that, nor would we be justified in presuming that those provisions were not complied with; on the contrary, I think it sufficiently appears that they were complied with. Those provisions are, that the offender shall, in the first instance, be arraigned upon so much only of the indictment as charges the subsequent offence, and if he pleads not guilty, the jury shall be charged, in the first instance, to inquire concerning such subsequent offence only, and if they find him guilty, he shall then, and not before, be asked whether he was so previously convicted as alleged; but if he denies that he was so previously convicted, or stands mute, the jury shall then be charged to inquire concerning such previous conviction. Now with this latter inquiry the jury in this case were never charged, because it appears that, upon their rendering their verdict that the prisoner was guilty of the felony charged in the second count, but was not guilty of the felony charged in the first count, the prisoner, by his counsel, demurred in law, (as appears by the record thereof endorsed on the indictment) *to the remainder of the said indictment.*

Whether this proceeding by way of demurrer was at all necessary, and whether the prisoner could not have had the same benefit precisely, if, when asked if it be true he had been previously convicted as alleged in that behalf, he had without any formal demurrer pointed out that the statement did not allege or shew that the misdemeanors referred to, or any of them, had been for misdemeanors within 32 & 33 Vic ch. 21, is a matter now of no moment. But the course which was taken, whether necessary or unnecessary, and whether or not the strictly proper course to have been pursued, seems conclusively to shew that the provisions of the statute were strictly complied with, and that what the prisoner had pleaded not guilty unto were the *offences charged* in the indictment, and which alone were given in charge to the jury, and that, as to the statements of previous convictions, no reference was made to them until after the jury had rendered their verdict upon the offences charged, when the prisoner objected to any inquiry as to previous convictions, as above stated.

[Proceeding to consider the errors assigned, the learned Judge said:]

As to the second and third of these objections, we are all of opinion that the Police Court, in the second count mentioned, is a Court of Justice within the 18th section of the 32 & 33 Vic. ch. 21, and that an information or deposition made and used in that Court, is a document of or belonging to such Court, whether it be a record or not, the stealing or destruction of which is made felony within that section. The term deposition is expressly used in the statute and the indictment; and what is alleged in the first count to have been stolen, and in the second to have been destroyed, is one document, namely, "a certain information and deposition, which we take to be a sufficiently certain allegation that the document referred to was an information upon oath, that is, was a deposition within the meaning of the Act.

The fifth objection is an attempt to open again the matter already concluded by the judgment of the Court of Oyer and Terminer, and so concluded in the prisoner's favor, and which therefore he was not required to answer. and in respect of which the jury who tried him were never charged. Attributing to these statements of previous convictions the character of seperate counts (although we do not think, strictly speaking, they are counts, but merely statements appended to the counts which charge the criminal offences to be tried), it is no objection, which can be taken upon error, that a verdict has been rendered upon one count in an indictment charging felony, and no verdict taken or rendered on another. Nor is there error in such case, although that other be a count charging a misdemeanor; it is the same as if the indictment contained the single count upon which the conviction was made: *Regina* v. *Ferguson* (1 Dearsly, 427). But, treating the statements of previous convictions to be not counts, but merely statements made for the purpose of founding an inquiry to be entered into only in the event of the prisoner being found guilty of the *offence charged* in the indictment; when it appears that they were not enquired into at all, and that the jury was not charged with them, and that they were in substance so effectually removed from the indictment that the prisoner was in no way prejudiced by their insertion, I cannot understand upon what principle he can now be heard to contend that there was error in their insertion.

Then as to the fourth objection.

What is insisted upon is, that the alleging the previous convictions for misdemeanor at all, made the indictment bad; and in support of this contention we were referred to *Regina* v. *Summers* (19 L. T. N. S. 799, also reported in L. Rep. 1 C. Cas. Reserved, 182), *Regina* v. *Fox* (10 Cox, 502), and *Regina* v, *Garland* (11 Cox, 225, and 8 I C. L. 383). These were cases of indictments for misdemeanors, in which were either alleged previous convictions for felony, or, without being alleged, proof was offered of a previous conviction for felony under Imperial Act 27 & 28 Vic., ch. 47, sec. 2. These cases have no bearing upon the present case, for this is not the case of an indictment for misdemeanor, containing a statement of a previous conviction for felony, which in those cases it was said no statute authorized, but an indictment for felony under 32 & 33 Vic., ch. 21, containing statements of previous convictions for misdemeanors, which the Statute *does* authorize, if the previous convictions were for misdemeanors indictable under the same Act; and all that is wrong is that the previous convictions are not stated with the preciseness required by 32 & 33 Vic., ch. 29, sec. 26. Whether or not it be error, according to the law of England, in an indictment for misdemeanor, to state a previous conviction for felony, although the Statute 27 & 28 Vic., ch. 47, allows it to be proved, and when proved imposes for that reason a heavier punishment, is a point with which we need not at present concern ourselves, for not only is this case a wholly different case, but our law as to what may or may not be objected on error, essentially differs from that of England. By our Act 32 & 33 Vic.. ch. 29, sec. 32, it is enacted that "*every* objection to any indictment for *any defect* apparent on the face