Governor's proclamation for that purpose, and I understand that no such proclamation was issued. In Regina vs. McLean & Hare, British Columbia, in 1880, reported by one of the Judges, the learned Chief Justice alluding to the Supreme Court of that Province, says: "Those powers and authorities were and are no other than those possessed by the Queen's "Bench in England. It would have been exceedingly important if one English case had been "cited in which a Judge of the Queen's Bench had sat and tried without commission and "without removal by certiorari or otherwise, a criminal committed by a justice of the peace to "take his trial at the next Court of Oyer and Terminer. But no such case was produced from "the records of several centuries, and it is believed none is producible." The learned Chief Justice further said: "It is true one case was produced from the Ontario Courts (Whelan vs. "the Queen) 28 U.C.Q.B.R. 27, in which an attempt was made to impeach such a trial "unsuccessfully, The trial was actually impeached, although an extant enactment by competent "legislature had expressly declared that a Court of Oyer and Terminer might be presided in by "a Judge of the Supreme Court without commission. It is impossible to read the arguments "and judgments upon this point without perceiving what the result would have been in the "absence of such a statute. And there is no statute in force here. It is true the Ontario "provision has been copied into a local Act here, but being matter of criminal procedure it is "*extra vires* of the Local Legislature; and moreover it only purports to come into force from a "day not yet named. All these Acts of Parliament are in effect statutory declarations that by "the law of England and the Provinces, these commissions are necessary to confer jurisdiction "and that nothing less than an Act of Parliament can render them unnecessrry. The whole "argument upon this point, based upon Whalen vs. the Queen, which was referred to at great "length by Counsel for the Crown, is almost decisive in favor of the prisoners."

The learned Chief Justice concluded his judgment as follows:—"The Gaoler alleges two "causes of detention. One the sentence of Mr. Justice Crease the other a Warrant of commit- "ment by Mr. Senator Cornwall, J. P. The rule *Nisi* was obtained on the sole ground of the "invalidity of the sentence and the various informalities at the late alleged trial. With these "objections we agree and we consider that the prisoners have never been tried at all. But as "to the second cause of detention, the Warrant of commitment, it has not been at all impeach- "ed, and we cannot at this stage allow it to be now impeached. I think therefore the proper "Order is to remand the prisoners to be held in custody according to the exigence and tenor "of the last mentioned Warrant."

The case of the prisoners had been brought before the Court by a rule *Nisi* for a Writ of *Habeas Corpus ad subjiciendum* for their discharge on account of the invalidity of the conviction, and they were discharged therefrom but remanded under the Warrant for their commitment.

The "Ontario" Statute referred to was passed before Confederation by the Legislature of combined Provinces, Upper and Lower Canada, and was therefore *intra vires*, but that of British Columbia was after its Union with Canada, and therefore was as the learned Chief Justice I think properly says *extra vires*. Such being the case there is no Parliamentary dispensation of Commissions in Criminal cases, and as in my opinion the Lieutenant-Governor had no power to issue them the learned Judge who tried and sentenced the prisoner had for those reasons no jurisdiction.

There was another point of objection raised to the jurisdiction. The venue in the margin of