

in which, under sec. 776, the jurisdiction under Pt. XVI. for this offence is absolute without the consent of the party charged. In *R. v. Jack* the sentence was six months' imprisonment, and this would be authorized either on a summary conviction or on a summary trial.

In the opinion of Walkem, J., the punishment on summary conviction is limited to that specified in sec. 169. Section 781, providing a different punishment on a trial before a magistrate with the consent of the accused, would have no application where the procedure under the summary convictions clauses was followed. *Seemle*, if the charge were for an assault of the officer in the performance of his duty, secs. 773 and 781 would then apply, and not sec. 169, if the magistrate was only having jurisdiction only under sec. 773 and not authorized to act under sec. 777. Where a police magistrate has authority under sec. 777, the limitation of sec. 781 is expressly excluded by sub-sec. (3) of sec. 777.

The theory that sec. 773 limits the power of summary conviction under sec. 169 is supported by a Manitoba case, *R. v. Crossen* (1899), 3 Can. Cr. Cas. 152, and was followed by Judge Weatherbe, of the Nova Scotia Supreme Court, in *R. v. Carmichael* (1902), 7 Can. Cr. Cas. 167. Both of these cases are disapproved in *Ex parte McAdam*, *supra*. The theory of the *Crossen* case appears to have been that, if it happened that the charge under sec. 169 came on for hearing before an official qualified as a "magistrate" under sec. 771, the procedure of Pt. XVI. became obligatory as regards such magistrate, and was limitative in its effect upon the jurisdiction to make a summary conviction for the offence. In Manitoba, as appears from the reference above made to sec. 771, two justices of the peace, sitting together, had no power of summary trial in respect of this offence, their power of summary trial being limited by sec. 771, sub-sec. (a 7), to offences under sub-sec. (a) and (f) of sec. 773, while the offence here dealt with, of obstructing a peace officer, is contained in sub-sec. (e) of sec. 773. Two justices in Manitoba, sitting together, would, by the express terms of sec. 169, have power to make a summary conviction, but would not have any general power of summary trial under Pt. XVI. The Court of Queen's Bench of Manitoba said, in effect, that, no matter what two justices might be able to do under sec. 169, a police magistrate or other functionary who was a summary trials magistrate under sec. 771, did not necessarily have the same power, and that upon a person being charged before him with an offence under sec. 169, sec. 773 at once applied to compel him in hearing