

has been a serious flaw in the practice, prevailing in this province, upon applications to quash convictions for crimes; and, as a consequence of his discoveries, he asks for a reversion to the older practice which prevailed for so many years before, and until, the adoption of the present practice in the year 1908, under rules of Court framed, in the first instance, by Mabee, J.

His points are: that no Court, such as that authorized, in sec. 576 of the Criminal Code, to make rules respecting the practice in criminal matters, in this province, now exists, and therefore that the rules made, at the time I have mentioned, have ceased to have any effect. And that sec. 63 of the Judicature Act is not applicable to this case, because it deals with convictions made by a "magistrate" only, whilst the conviction in question was made by "Justices of the Peace;" and this point is persisted in notwithstanding the meaning given to the word "magistrate" in the Interpretation Act, sec. 29 (m) and (r), and in the Interpretation Act, sec. 34 (15) because there is an interpretation of the words "Justice" contained in the Criminal Code, under which the conviction in question was made, and that interpretation, whilst it includes a "Police Magistrate," does not include magistrates generally: sec. 2 (18).

These contentions seemed, and still seem, to me to have no weight; but another point forced itself upon me during the argument, a point which seemed to me to be of sufficient weight to require further consideration before disposing of the application.

Regarding the points made by Mr. Mackenzie, it may not be at all necessary, for any general purpose, to repeat that which was said respecting them during the argument; but so that the applicant may be under no misapprehension respecting them, I shall do so.

If the rules of 1908 were well made, why should they fall, even if there were no Court now competent to make any such rules? There seem to be but two provisions contained in them that might be affected by such a state of affairs, if it really existed; the first is the rule numbered 1284, which provides that the motion to quash shall be made to a Judge of the High Court of Justice for Ontario, sitting in Chambers; and the other—rule numbered 1287—is that which gives a right of appeal, by leave, to a "Divisional Court."