

it would be well to have a subscribing witness thereto, or at least that the arbitrators should sign in the presence of some one who could afterwards swear to the affidavit of execution; and if there be two or more arbitrators they should sign in the presence of each other.

An award is said to be *made* as soon as it has been signed by the arbitrators or umpire, and to be *published* as soon as the arbitrators or umpire apprise the parties that it is ready to be delivered. The moment an award is made and published, the arbitrators, or umpire, are powerless, and cannot afterwards alter it. When the award is made, the arbitrators or umpire should notify the parties that it is ready for delivery, and it should be delivered to the party in whose favour it is on his paying the arbitrators their reasonable charges for acting on the reference. In conclusion, we again remind the parties interested in a reference that if the time within which an award is to be made, according to the terms of the order of reference, is allowed to pass, no award can be legally made.

ON THE DUTIES OF MAGISTRATES.

(SKETCHES BY A. J. P., CONTINUED FROM PAGE 25.)

SOME GENERAL OBSERVATIONS ON MATTERS ANTECEDENT TO THE INFORMATION.

HAVING briefly noticed some general rules in reference to the law of summary conviction, especially as relates to the person before whom, within what time, and in what locality, complaints should be laid, we now come to *details* of the proceedings before magistrates in their judicial capacity.

Before the passing of the 16th Victoria, cap. 178, there was, we may say, no general, statutory provision, regulating the course of proceedings in summary convictions before magistrates, and no uniform practice prevailed.^(a) This defect was remedied by that statute which traces out and defines the procedure very fully; thus giving confidence to magistrates in the discharge of their multiform duties, and securing their decisions against reversals on technical grounds; for the act not only makes ample provision for regulating pro-

cedure, but provides also a complete set of forms applicable to the several stages of a summary conviction.^(b) It may be observed, the provisions of the 16 Vic. c. 178 will in general regulate all proceedings which partake of a *criminal* character—where the Justice has the power of summary punishment by fine and imprisonment, or by enforcing compensation for the injury—while in matters of a *civil* nature,—as those springing out of contract—the proceedings, it is apprehended, will be regulated by the particular act which gives the jurisdiction to magistrates. These sketches, unless otherwise mentioned, are to be considered as treating of the former branch of cases—those partaking of a criminal character.

For some of the injuries which may be made the subject of a summary proceeding before magistrates, the law allows a proceeding by Indictment, and gives also a remedy by civil action for the injury sustained. Thus, in cases of assault and battery, the party may bring a civil action, prefer an indictment, or proceed under the law for summary conviction. The choice of remedy for injury or injustice is therefore often important, at least in respect to proceedings before magistrates as judges to convict—for in some of the statutes giving this power, there is a provision that the magistrate's conviction shall conclude the matter,^(c) and his certificate thereof is a complete bar to the adoption of any other proceedings for the same injury.^(d) In favor of the adoption of a complaint before magistrates with a view to a summary conviction, may be urged—that the party aggrieved can, in most cases, be a witness on his own behalf,—and that the proceeding is speedy and inexpensive.^(e) On the other hand, if the injury is of magnitude, and calling for damages and compensation is the party's main object, the civil action for damages is the suitable remedy—and the indictment will not have the effect of depriving the injured person of his right to recover damages as a conviction before a magistrate would.

Magistrates will do well to inform complainants on this head, or at least make them aware that the summary proceedings will be a bar to a civil action to recover damages for the injury sustained.

(a) The 16 Vic. c. 178, was introduced by the Hon. Mr. Justice Richards, when Attorney-General—it is after the model of the English Act, but in many respects altered and improved, which will be seen as we proceed with our subject. We fear, however, that one clause in particular, the 31st, may create some difficulty in construction, and unless its scope is settled by judicial construction, will diminish to us the value of decisions on the English Act.—If the Act intended to be repealed had been specified, this difficulty might have been avoided.

(b) The 4 & 5 Vic. c. 25, sec. 62, and 4 & 5 Vic. c. 26, sec. 26, for example.

(c) Generally so by the particular enactment, and see *R. vs. Robinson*, 12 Ad. & Ell. 672—*Skuse vs. Davis*, 10 Ad. & Ell. 635.

(d) The U. C. Division Courts Extension Act of 1853, enlarges the jurisdiction of these Courts so as to embrace all personal actions (subject to the exemption in the 1st sec.) when the damages do not exceed £10. In these Courts the plaintiff may be examined as a witness on his own behalf at the instance of the Judge—and the proceedings are simple and inexpensive; When, therefore, the malicious injury complained of does not involve a loss beyond ten pounds, and the complainant's chief object is compensation for the grievance, he should seek his remedy before the Division Courts, where there is power to award him compensation in the shape of damages.

(e) The single enactment on the subject was 2 Wm. IV. c. 4. Each particular statute conferring power on magistrates to determine summarily, contained, as a general thing, a suitable form of conviction for their guidance; the 2 Wm. IV. c. 4, gave a general form of conviction for all cases, in which the Legislature had not provided a special form, to be filled up, and used, as circumstances required. This statute also made one Justice competent to receive the information—even in those cases in which the conviction was required to be by two Justices at least—and also to issue a warrant to enforce a conviction, made by two or more Justices, and contained other minor provisions which need not be referred to. At best it was of little assistance to magistrates, and the constant additions to their duties, and the innumerable difficulties in practice which obstructed them, presented considerations to the Legislature, which produced a not remedying the difficulties magistrates were under—viz., the 16 Vic. c. 178.