Summary Convictions

by J. C. MARTIN, K.C.

IT IS Part XV of the Criminal Code which lays down the procedure to be followed in summary conviction matters. Some of its features, particularly with reference to its general application and its relation to Part XVI, have been noted already, as well as the fact that its provisions have been imported into many federal and provincial statutes. It is no exaggeration to say that cases within its purview—many of them of minor importance—constitute by far the greater part of police work. The result is that it is in cases falling within Part XV that the peace officer most often finds himself cast in the role of prosecutor.

Police advocacy is a subject about which some controversy has arisen. In England it appears to have received judicial attention in 1886, in a case in which a police witness, at the direction of his superintendent who was prosecuting, had refused to answer a question as to where he had been hiding at a particular time. On appeal, one of the Judges "thought it a most unfortunate practice for police officers to be allowed to act the part of advocates in courts of justice. When witnesses they should be mere witnesses, and not be allowed to take up the position of advocates." The other Judge "thought it a very bad practice to allow a policeman to act as an advocate before any tribunal, so that he would have to bring forward only such evidence as he might think fit and keep back any that he might consider likely to tell in favor of any person placed upon his trial." The appeal was allowed on the ground that the question was relevant and should have been answered.[1]

In the following year, counsel for an accused person objected to an inspector for the S.P.C.A. being permitted to conduct a prosecution, and his objection was upheld.[2] The Society appealed, however, and its appeal was allowed because the inspector, being himself the informant, had the right to conduct his own case. Incidentally, with reference to the previous case, the Court observed, "I entirely concur with the general observations made in the case cited of Webb v. Catchlove, for to allow a policeman, as the case was there, to become an advocate in the very proceedings of which he had charge, is wrong."

The subject came up again in 1910 in a case in which a person was charged with driving a motorcycle at a speed dangerous to the public.[3] On that occasion the Court held as follows:

"With regard to police advocacy I do not approve of it, but there are cases where there may be no objection to the facts being brought before the Court by a policeman. But that such advocacy was permitted is no objection to the conviction. It is not said that any injustice was done to the appellant owing to the case being conducted by this police-sergeant."

In 1936, a Canadian legal publication reported, of a case which had come on for hearing in Ontario, that "Because a sergeant of the Royal Canadian Mounted Police wanted to be the complainant, the prosecutor,

[1]Webb v. Catchlove, 3 Times L.R. 159.
[2]Duncan v. Toms, 56 L.J.M.C. 81.
[3]May v. Beeley, 79 L.J.K.B. 852.