

him. And after the prisoner was represented by counsel, he was not permitted—as the shorthand notes of the trial clearly shew—to make his full defence, as, whether strictly regular or not, he ought to have been; but was restricted to evidence of his good character. It ought not, and may not, be necessary, even if excusable, to repeat again the oft-quoted words of the Lord Chief Justice of England, upon this subject, so forcibly expressed in the case of *Martin v. Mackonachie* (1878), 3 Q.B.D. 730, 775, but I do so lest we Justices, whether of superior or inferior courts, forget; and because that case is in point upon the main question involved in this case, as the first words I intend reading shew: 'It seems to me, I must say, a strange argument in a court of justice, to say that when, as the law stands, formal proceedings are in strict law required, yet if no substantial injustice has been done by dealing summarily with a defendant, the proceeding should be upheld. In a court of law such an argument *à convenienti* is surely inadmissible. In a criminal proceeding the question is not alone whether substantial justice has been done, but whether justice has been done according to law. All proceedings *in pœnam* are, it need scarcely be observed, *strictissimi juris*; nor should it be forgotten that the formalities of the law, though here and there they may lead to the escape of an offender, are intended on the whole to insure the safe administration of justice and the protection of innocence, and must be observed. A party accused has a right to insist upon them as a matter of right, of which he cannot be deprived against his will; and the Judge must see that they are followed. He cannot set himself above the law which he has to administer, or make or mould it to suit the exigencies of a particular occasion. Though a murderer should be taken red-handed in the act, if there is a flaw in the indictment the criminal must have the benefit of it. If the law is imperfect, it is for the Legislature to amend. The Judge must administer it as he finds it. And the procedure by which an offender is to be tried, though but ancillary to the application of the sub-