

to elect for a summary trial under s. 778 of Criminal Code may be made through the magistrate's clerk speaking for him. *Rex v. Ridehaugh*, 7 Can. Cr. Cas, 340, followed.

2. On the application of a prisoner undergoing sentence imposed by a police magistrate after conviction on summary trial of an indictable offence, on the ground that the warrant of commitment does not shew that the prisoner consented to be tried summarily, the judge may look at the conviction if it is before him, and, if the conviction shews such consent, s. 1121 of the Code applies and the warrant should be held good. *Reg. v. Sears*, 17 C.L.T. 124, distinguished.

*Hagel*, for prisoner. *Patterson*, K.C., D.A.-G., for the Crown.

Robson, J.]

[August 2.]

SHONDRA v. WINNIPES ELECTRIC RY. CO.

*Negligence—Findings of jury—Contributory negligence—Damages for personal injury.*

In an action for damages for personal injury, caused by a car of the defendants, the jury found that defendant's negligence was the cause of the accident, but also, that the plaintiff might, by the exercise of reasonable care have avoided the accident. There was evidence sufficient to justify both these findings.

*Held*, 1, following *London Street Railway Co. v. Brown*, 31 S.C.R. 642, that the plaintiff could not recover.

2. When the law as to contributory negligence has been properly explained to the jury, it is not necessary for the judge to ask the jury in what respect the plaintiff omitted to take reasonable care.

*Trueman and Chapman*, for plaintiff. *Anderson*, K.C., and *Guy*, for defendants.

Mathers, J.]

SMITH v. DUN.

[August 7.]

*Libel—Mercantile agency reports to subscribers—Privilege—Publication of true extract from a public record.*

*Held*, 1. The publication without malice by a mercantile agency to its subscribers of an extract from a register kept by virtue of an Act of a Provincial Legislature, which was open to