liarly to convictions under Pt. XVI., would probably not be conclusive that Part XVI. had been followed; and if it appeared that the summary convictions clauses of Pt. XV. had been invoked in the first instance and their procedure followed, the words "charged before me" might be treated as surplusage.

The better opinion seems to be that Pt. XVI. in no way affects the jurisdiction or the procedure upon a charge which is being prosecuted by a complainant as for an offence punishable on summary conviction, although the same offence might be prosecuted under sec. 773 by way of summary trial before the same official.

In *Rex* v. *West*, 24 Can. Cr. Cas. 249, at 250, 9 O.W.N. 9, Mr. Justice Middleton says:—

"Section 169 creates the offence, and gives to the Crown the right either to try summarily, when a less severe punishment may be inflicted, or, if the Crown thinks the offence is serious enough to warrant an indictment, then, at the Crown's election, the accused may be prosecuted as for an indictable offence, with the result that he has the right of election afforded by sec. 778, and with the consequence that, upon conviction, more serious punishment may follow. The right to choose the mode of prosecution is a right given to the Crown, and not the right of the accused. His sole right is to select the tribunal to try him if the Crown elects to prosecute for an indictable offence.

"The only colour that is lent to the argument for the accused is the mention in sec. 773 (*e*) of this particular crime in the catalogue of indictable offences for which persons may be tried summarily. This, I think does not help the argument, for the whole of Pt. XVI. of the Code, secs. 771 to 799, relates solely to the trial of indictable offences, and sec. 773 (*e*) must relate to cases where the charge against an accused is laid as an indictable offence."

That decision was affirmed by the Appellate Division in *R.* v. *West* (No. 2), 35 O.L.R. 95.

In *Rex* v. *Nelson* (1901), 4 Can. Cr. Cas. 361, Mr. Justice Drake held that the accused could be tried for obstructing a peace officer under Pt. XV., although the charge happened to be brought before a police magistrate having authority under Pt. XVI. To the same effect was the decision of Mr. Justice Walkem, in *R.* v. *Jack*, 5 Can. Cr. Cas. 304, 9 B.C.R. 19, in which he said that there was no ground for upholding the contention that what is now sec. 169 should be controlled by what is now sec. 773. Both of these decisions were in British Columbia,