

GENERAL SESSIONS OF THE PEACE.

sions were only confirmed and continued by the first act of our Legislature which specially refers to them. This being so, it becomes necessary to enquire under what authority were the Courts of General or Quarter Sessions in this country first held. We should say, by the act introducing the criminal law of England in this Province.

Now, our act respecting these Courts says nothing in reference to jurisdiction; in which case we must fall back on the English law, and ascertain what law governed the jurisdiction of Courts of General Sessions in England when the criminal law was introduced into this Province.

The Court of General or General Quarter Sessions of the Peace was established in England in the reign of Edward III, for the trial of felonies, and of those misdemeanors and other matters which justices of the peace, by virtue of their commission or otherwise, might lawfully hear and determine. The statute 24 Ed. III. cap. 1, states what offences may be tried by these Courts, and, after enumerating a large number of different classes of cases, goes on to say, "and to hear and determine all and singular the felonies, trespasses, &c., according to the law and statutes of England." There was some considerable doubt entertained as to what the words "felonies" and "trespasses" included, and what constructions ought to be placed upon them; but the authorities now seem to be agreed that, with the exception of *perjury at common law*, and *forgery at common law*, the Court of Quarter Sessions has jurisdiction of all felonies whatsoever—even murder (2 Hawk. P. C. cap. 8, sec. 63). It has been long ago settled that for *perjury at common law*, an indictment at the Quarter Sessions will not lie (see 2 Hawk. P. C. cap. 8, sec. 64; *R. v. Bainton*, 2 Str. 1088); but *perjury under the statute* 5 Eliz. cap. 9, is within the jurisdiction. In a case that came up before Lord Kenyon, C. J.: *R. v. Higgins*, 2 East. 5 (an indictment for soliciting a servant to steal goods from his master), it was argued that the case did not fall within the jurisdiction of the Sessions, but his Lordship said, "I am clearly of opinion that it is indictable at the Quarter Sessions, as falling within that class of offences which, being violations of the law of the land, have a tendency, it is said, to a breach of the peace, and are therefore cognizable by that jurisdic-

tion. Of this rule there are indeed two exceptions, namely, forgery and perjury;—why exceptions, I know not; but having been expressly so adjudged, I will not break through the rules of law." His Lordship, in referring to the above exceptions, no doubt alluded to the *common law* offences, perjury under the statute of Elizabeth not having been decided to be without the jurisdiction.

Such being the state of the law when it was introduced into this country, has the jurisdiction of the Sessions been diminished or changed by any Provincial act?

But before going further, we may mention that the English law has been altered by Imp. stat. 5 & 6 Vic. c. 38, s. 1, and the jurisdiction of the General Sessions greatly lessened. By that statute, among other crimes excepted from its jurisdiction, are the crimes of murder, perjury, subornation of perjury, forgery, &c.; but this statute having been passed long subsequent to the time when the English criminal law was introduced into Canada, does not affect our law on the subject. It may be said, from the fact of the crimes before mentioned being expressly excepted from the jurisdiction of the General Sessions, that the English Legislature considered that such crimes were not before then without the jurisdiction of these Courts; but this does not necessarily follow, as the law was very properly defined so as to prevent any doubt or uncertainty as to the jurisdiction.

If we, then, have no special enactment excepting these crimes, it would seem that, as regards them, the jurisdiction of General or General Quarter Sessions of the Peace still exists. The only act since the act first referred to (Con. Stat. U. C. cap. 17), bearing on the subject, is the act of 24 Vic. cap. 14, which abolishes the power of the Quarter Sessions to try treasons and felonies punishable with death. This act was, however, repealed by Dominion statute 32 & 33 Vic. cap. 36. The Dominion Act 32 & 33 Vic. cap. 29, sec. 12, withholds jurisdiction from the Sessions in cases of felony punishable with death, and libel; and cap. 21 withholds it in cases of fraud by agents, bankers, factors, trustees and public officers (*vide* sec. 92); and 32 & 33 Vic. cap. 20, in certain offences against the person, set forth in secs. 27, 28 & 29, withholds jurisdiction; so that, with these exceptions, the power of the Quarter Sessions is the same as before.