

fines were paid under protest. The question reserved was whether the magistrate had absolute jurisdiction under sec. 774 of the Criminal Code to try defendants without their consent, or whether they had a right to elect to be tried by a higher Court.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, MEREDITH, J.J.A.

A. M. Lewis, Hamilton, for defendants.

J. R. Cartwright, K.C., for the Crown.

OSLER, J.A.:—That a common gaming house was a disorderly house and an indictable nuisance at common law there can be no doubt. It was treated as being in that respect on the same plane as a common bawdy house, and is so referred to in the British statute of 25 Geo. II. ch. 26, which speaks of "persons having the care, management, or government of any bawdy house, gaming house, or other disorderly house," language which finds an echo in sec. 228 (2) of the Code: and see *Jenks v. Turpin*, 13 Q. B. D. 505, 514.

Under the Code such a house is expressly declared to be a disorderly house, and the keeping of it is an indictable offence which may be prosecuted before a jury upon an indictment or before the County Court Judge under the speedy trials sections, part XVIII. of the Code.

The question raised by the case reserved is, whether a police magistrate has not also absolute and summary jurisdiction to try the offence under the summary trials clauses, secs. 773 and 774, part XVI., a jurisdiction which he undoubtedly possesses in respect of the offence of keeping a disorderly house of another character, viz., the common bawdy house or house of ill fame. The answer to the question depends upon the proper construction and meaning of the expression "disorderly house," having regard to its collocation with the other words of the section. The same expression is found in other sections, a reference to which and comparison with the language of secs. 773 and 774 will aid us in ascertaining its meaning.

Section 225 defines a common bawdy house as being a house, room, set of rooms, or place of any kind kept for the purposes of prostitution; sec. 226 defines a common