

there should be no manoeuvring allowed for or against the trial by jury as far as the magistrate is concerned. If Parliament has expressed any opinion at all as to the respective merits of the two months of trial it would rather seem to be in favour of indictment because then the heavier penalty can be imposed and there is an appeal from the Justice. All the more serious crimes are triable by jury and as long as Parliament has confidence in that method it ought to be sufficient."

Again, it has been held in unreported cases in Saskatchewan, that, where alternatives exist, it is "the plain duty" of the Justice, at least in cases in which there is no defence counsel, to inform the accused whether he is being tried summarily or undergoing preliminary hearing. But the contrary, in effect, has been held in British Columbia.¹⁵ Still, this seems to be a point which need not arise, as it is a simple matter for the Justice, if he intends to proceed summarily, to say so.

Apart from those cases in which alternative modes of trial are distinctly provided by statute, if an offence is stated to be triable on summary conviction it is triable in that way only. Therefore, in a case in which the accused had been committed for trial upon a charge of stealing trees valued at \$14.00, the Court of King's Bench in Quebec expressed itself as follows in quashing the indictment:

"All offences now are either indictable or summary matters. All summary matters, by statute, fall under the jurisdiction of justices of the peace; and the offence now before the Court is declared to be a summary matter—.

When the statute in the same clause which prohibits the act specifies a special mode of trying the offence, that mode must be employed and no other.—

In a general way Superior Courts, either Civil or Criminal, have what we may call a residuary jurisdiction; that is, they (have) jurisdiction over all cases which are not specially assigned to other Courts. But, the present case, by the Code, is specially assigned to the justices of the peace, and therefore the Court of King's Bench has no jurisdiction."¹⁶

There is in Canada no provision similar to Section 17 of the English Summary Jurisdiction Act of 1879 whereby a person, accused of an offence which is punishable on summary conviction by imprisonment for more than three months and which is not an assault, may demand to be tried by jury. The Code approaches it most nearly when by one section¹⁷ it removes from the jurisdiction of the justice a case of common assault which involves a question to title to land, and when by another,¹⁸ it gives the justice the right to commit for trial a person charged with common assault if the evidence, in his opinion, discloses an assault of a more serious kind.

Summary conviction matters may be disposed of by one or more justices of the peace as directed by the legislation creating the offence. If nothing be said upon this point, then one justice will constitute the court. The word 'magistrate' appears not at all in Part XV, but 'justice', by definition, includes judges and magistrates, who, if they are invested with the power

¹⁵Rex v. Sam Hing, 45 C.C.C. 202.

¹⁶Rex v. Beauvais, 7 C.C.C., at p. 496.

¹⁷Sec. 709.

¹⁸Sec. 732.