

THE JURISDICTION OF THE COURTS OF GENERAL SESSIONS OF THE PEACE.

continue to be administered and should be observed as law in the Province of Quebec, as well in the description and quality of the offence as in the method of prosecution and trial; and that by the Provincial Act 40 George III. chapter 1, passed in July, 1800, after reciting the Imperial Act just referred to, it was enacted that the criminal law of England, as it stood on the 17th September, 1792 (being the date of the meeting of the first Provincial Parliament), should be and was declared to be the criminal law of the Province.

I think, then, it may be fairly assumed that the Courts of General Quarter Sessions of the Peace in the Province of Upper Canada possessed whatever jurisdiction the same Courts had in England on the 17th September, 1792.

As the County of Lincoln was settled early in the history of this country, the first Parliament of the Province being held within its limits, I was in hopes of finding some old commissions of the peace which might throw light on the mode in which they were originally issued. The earliest in date that I have been able to find, however, was issued in 1817. It appears to follow closely the form given in Archbold's Practice of the Quarter Sessions of the Peace as used in England, even retaining among the offences to be inquired into and punished by the justices appointed by it, "enchantments, sorceries, arts magic." The same words are included in the commissions of 1823 and 1828, but omitted in that of 1833, and all subsequent thereto. Of course they had no effect, all prosecutions for these offences, except for pretending to practise witchcraft, having been abolished by 9 George II. chap. 5. Their retention only affords another instance of forms surviving the object for which they were created.

The jurisdiction of the Courts of Quarter Sessions in England has been so reduced and limited by the English statute 5 & 6

Vict. cap. 33, passed 30th June, 1842 (which has never been adopted in this country), that the English decisions since that time are of no assistance to us but are rather calculated to mislead, and but little help can be obtained from modern treatises which are of course written with a view to the existing practice in England. A very clear and succinct statement of the jurisdiction of these Courts under the commission (as distinguished from jurisdiction under subsequent statutes) will, however, be found in Archbold's Practice, already alluded to at the commencement of the work (to which I refer my readers), and of which I will merely give a brief outline and the results.

The Courts of General Quarter Sessions were established by the Act 34 Ed. III. cap. 1, by which it was enacted that in every county in England should be assigned for the keeping of the peace one lord and with him three or four more of the most worthy in the county with some learned in the law, and that they should have power to restrain the offenders, rioters and all other barrators; and to pursue, arrest, take and chastise them according to their trespass or offence, and to cause them to be imprisoned and duly punished according to the law and custom of the realm; and also to hear and determine at the king's suit all manner of felonies and trespasses done in the same county, according to the laws and customs aforesaid.

In the commissions issued in pursuance of the statute the language of the statute is amplified, a good deal, but the words "all and all manner of felonies and trespasses" (or trespassings, as I see in the later commissions in this Province) are always used, and the jurisdiction of the Court is governed by the construction put on these words.

What is the proper construction was in former times a matter much disputed, and