and General Gaol Delivery, held at Toronto in January last.

The prisoner was tried before the Chief Justice of this Court under one indictment, which had been preferred at a previous assize, charging him with having stolen an information laid by one Julia Minor, before the Police Magistrate of the city of Toronto, against one Vincent. The indictment also contained several other presentments of previous convictions for misdemeanor.

The venire for the jury was to enquire "upon their oaths whether the said George Albert Mason be guilty of the larceny above specified or not.

The prisoner, who was undefended by counsel, upon the indictment being read, pleaded not guilty.

The jury rendered a verdict of guilty, which was recorded thus, that "the said George Albert Mason is guilty of the premises aforesaid in the first count of the indictment on him above charged."

The prisoner then urged, in arrest of judgment, that the Police Court was not a Court of Record, nor alleged so to be, and that the information and depositions mentioned in the indictment were not records or orginal documents within the statute. To this the Attorney-General answered, that the prisoner should not be allowed to urge such objections, because the information and deposition were original documents, and also because by 32 Vic. ch. 29, every objection to any indictment, for any defect apparent on the face thereof, should be taken by demurrer, or on motion to quash, before defendant had pleaded, and not afterwards, and that no motion in arrest of judgment should be allowed for any defect in the indictment which might have been taken advantage of by demurrer, or amended under said Act. The prisoner replied that the answer of the Attorney-General was insufficient in law, but the Court considered it sufficient, and sentenced the prisoner to two years imprisonment in the penitentiary.

The assignment of errors, in substance, was: 1st, That notwithstanding the statute, the prisoner had the right to urge these matters in arrest of judgment; 2nd, That no offence was disclosed; 3rd, That the Police Court was not a Court within the statute, and the information was not a record of any such Court; 4th, That the indictment showed no offence committed after a previous conviction, &c., for which a greater punishment was given, so as to make proper the allegations of previous convictions; 5th, That the substance and effect of the indictable misdemeanors were not stated; 6th, That the information was not such a proceeding as was named in the statute, nor was it stated to be an original document.

The Crown joined in error.

Besides the errors assigned, *Harrison*, Q. C., urged another ground, that the prisoner was arraigned and afterwards given in charge on the whole indictment; in effect, that the statement of the previous convictions was improperly read to the jury.

The second indictment contained two counts, the first charging the prisoner with having feloniously stolen an information and deposition, the same being a record of the Police Court of the city of Toronto; and the second, with feloniously, unlawfully, and maliciously destroying the same information and deposition, before then feloniously stolen, contrary to the form of the statute in that behalf, viz, 32 & 33 Vic. ch. 21 sec. 18.

Besides these two counts, the indictment contained statements of previous convictions, as in the first indictment.

The prisoner pleaded not guilty.

The trial took place before Wilson, J., when the prisoner was convicted on the second count, but acquitted on the first. The prisoner, by his counsel, then demurred to the remainder of the indictment, as insufficient in law, and after argument, judgment was given in his favour.

On his being brought up for sentence, the same grounds were urged in arrest of judgment as in the first case, and with the same result. The assignments of error were also the same.

Harrison, Q. C., for the prisoner, cited *Bage* v. *Bromwell*, 3 Lev. 99; *Nash* v. *The Queen*, 4 B. & S. 935; *Regina* v. *Summers*, 19 L. T. N. S. 799; *Regina* v. *Garland*, 11 Cox. 225; *Regina* v. *Cox*, 10 Cox 502; *Regina* v. *Cleworth*, 9 L. T. N. S. 682.

K. McKenzie, Q.C., contra, cited *Regina* v. *Ferguson*, 1 Dears. C. C. 427; *Burns'* Justice, III., 107.

HAGARTY, C. J., (speaking of the first indictment) —Even if it be open to counsel to raise the question raised for the first time by Mr. Harrison on the argument, I am of opinion that it cannot avail. Reliance was placed on a case in Ireland, *Regina* v. *Fox*, (10 Cox 502). But there it appeared that prisoner was given in charge to the jury to enquire "whether she be guilty of the premises in said indictment, or any part thereof." In our case, the prisoner was given in charge, "whether he be guilty of the larceny, in the indictment specified, or not."

If we could gather from the writ of error before us that, although correctly given in charge to the jury, yet that on previous arraignment the prisoner had been required to answer the whole indictment, we should long pause before giving effect to such an objection, when he was rightly given in charge to the jury of trial. In the present case it would be especially improper to give way to the objection, as the indictment was found, and the prisoner arraigned and pleaded, at a previous Court of Assize, and could not in any way have been prejudiced by any mistake in his arraignment.

It is also objected that there is a misjoinder of counts. This is based, I presume, on the idea that this indictment contained more than one count. It is wrong, we think, to apply the term "count" to these allegations of previous convictions. As is said by Blackburn, J., in *Latham* v. *The Queen*, (5 B. & S. 643), "each count is in fact and theory a separate indictment; and if there be no express finding on any one, it would seem there may be a *venire de novo* thereon.

In the case before us, there was no evidence offered, and no finding on anything in the indictment except the first count for larceny. If we treat the allegations of the previous convictions as counts, it is clear, on the express authority of the last case cited, and also on a case ten years earlier, of *Regina* v. *Ferguson* (1 Dearsly 427), that the objection is untenable.