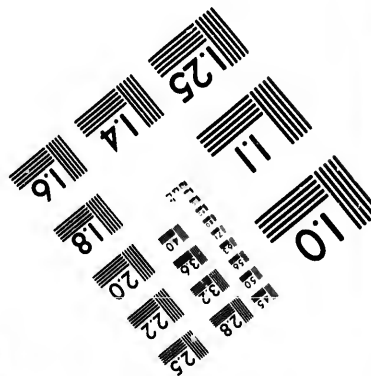
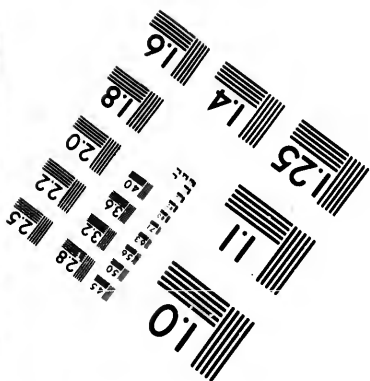
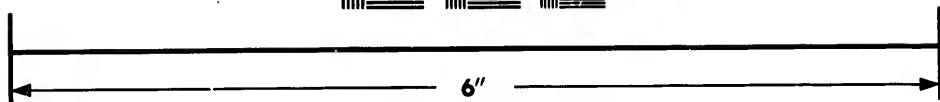
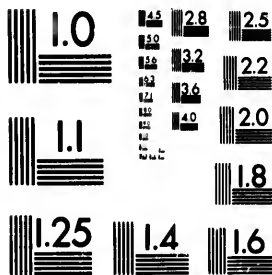


**IMAGE EVALUATION
TEST TARGET (MT-3)**



**Photographic
Sciences
Corporation**

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

14
18
22
25
28
32
36
40
44
48

**CIHM/ICMH
Microfiche
Series.**

**CIHM/ICMH
Collection de
microfiches.**



Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques

10
14
18
22
26
30
34
38
42
46
50
54
58
62
66
70
74
78
82
86
90
94
98
102
106
110
114
118
122
126
130
134
138
142
146
150
154
158
162
166
170
174
178
182
186
190
194
198
202
206
210
214
218
222
226
230
234
238
242
246
250
254
258
262
266
270
274
278
282
286
290
294
298
302
306
310
314
318
322
326
330
334
338
342
346
350
354
358
362
366
370
374
378
382
386
390
394
398
402
406
410
414
418
422
426
430
434
438
442
446
450
454
458
462
466
470
474
478
482
486
490
494
498
502
506
510
514
518
522
526
530
534
538
542
546
550
554
558
562
566
570
574
578
582
586
590
594
598
602
606
610
614
618
622
626
630
634
638
642
646
650
654
658
662
666
670
674
678
682
686
690
694
698
702
706
710
714
718
722
726
730
734
738
742
746
750
754
758
762
766
770
774
778
782
786
790
794
798
802
806
810
814
818
822
826
830
834
838
842
846
850
854
858
862
866
870
874
878
882
886
890
894
898
902
906
910
914
918
922
926
930
934
938
942
946
950
954
958
962
966
970
974
978
982
986
990
994
998

© 1985

Technical and Bibliographic Notes/Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- | | |
|--|--|
| <input type="checkbox"/> Coloured covers/
Couverture de couleur | <input type="checkbox"/> Coloured pages/
Pages de couleur |
| <input type="checkbox"/> Covers damaged/
Couverture endommagée | <input type="checkbox"/> Pages damaged/
Pages endommagées |
| <input type="checkbox"/> Covers restored and/or laminated/
Couverture restaurée et/ou pelliculée | <input type="checkbox"/> Pages restored and/or laminated/
Pages restaurées et/ou pelliculées |
| <input type="checkbox"/> Cover title missing/
Le titre de couverture manque | <input checked="" type="checkbox"/> Pages discoloured, stained or foxed/
Pages décolorées, tachetées ou piquées |
| <input type="checkbox"/> Coloured maps/
Cartes géographiques en couleur | <input checked="" type="checkbox"/> Pages detached/
Pages détachées |
| <input type="checkbox"/> Coloured ink (i.e. other than blue or black)/
Encre de couleur (i.e. autre que bleue ou noire) | <input checked="" type="checkbox"/> Showthrough/
Transparence |
| <input type="checkbox"/> Coloured plates and/or illustrations/
Planches et/ou illustrations en couleur | <input type="checkbox"/> Quality of print varies/
Qualité inégale de l'impression |
| <input type="checkbox"/> Bound with other material/
Relié avec d'autres documents | <input type="checkbox"/> Includes supplementary material/
Comprend du matériel supplémentaire |
| <input type="checkbox"/> Tight binding may cause shadows or distortion
along interior margin/
La reliure serrée peut causer de l'ombre ou de la
distorsion le long de la marge intérieure | <input type="checkbox"/> Only edition available/
Seule édition disponible |
| <input type="checkbox"/> Blank leaves added during restoration may
appear within the text. Whenever possible, these
have been omitted from filming/
Il se peut que certaines pages blanches ajoutées
lors d'une restauration apparaissent dans le texte,
mais, lorsque cela était possible, ces pages n'ont
pas été filmées. | <input type="checkbox"/> Pages wholly or partially obscured by errata
slips, tissues, etc., have been refilmed to
ensure the best possible image/
Les pages totalement ou partiellement
obscurcies par un feuillet d'errata, une pelure,
etc., ont été filmées à nouveau de façon à
obtenir la meilleure image possible. |
| <input type="checkbox"/> Additional comments:
Commentaires supplémentaires: | |

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	14X	18X	22X	26X	30X
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12X	16X	20X	24X	28X	32X

The copy filmed here has been reproduced thanks to the generosity of:

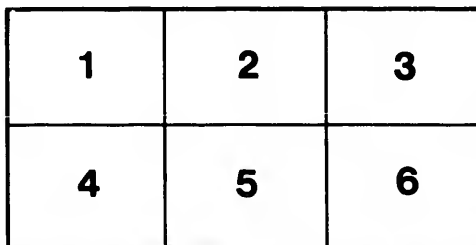
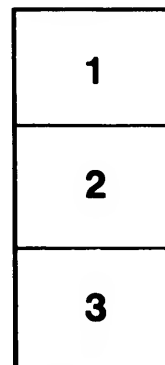
Douglas Library
Queen's University

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol \rightarrow (meaning "CONTINUED"), or the symbol ∇ (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:



L'exemplaire filmé fut reproduit grâce à la générosité de:

Douglas Library
Queen's University

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole \rightarrow signifie "A SUIVRE", le symbole ∇ signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.

ails
du
odifier
une
page

rata
p
elure,
à

2X

i
i
w
o
a
m

P
In
In
We
Su
Wa
Inf
Se
Cer

BLANK FORMS.

The following Blank Forms for the use of Magistrates, comprising every form requisite in the discharge of their multifarious duties, each properly headed so as to prevent the possibility of mistake, have been carefully supervised by Richard Dempsey, Esquire, Barrister-at-Law, and Crown Attorney for the city of Toronto and the United Counties of York and Peel, author of the Magistrate's Hand-Book, &c., &c., and may be relied upon as in exact accordance with the statutory schedules.

For the convenience, therefore, of the Justices of these Counties, a supply of *all* these forms will be kept hereafter at the office of the Clerk of the Peace, where the same can be readily obtained at the ordinary rate.

It was at first intended to have incorporated these forms in an addenda to the "Magistrate's Hand-Book," but when it was found that such a course would actually extend that work nearly sixty additional pages, and thereby double the expense of the preparation thereof, it was deemed more advisable to adopt the present arrangement for those who may think proper to avail themselves of the same.

Under the "Act respecting the duties of Justices of the Peace out of Sessions, in relation to persons charged with *Indictable Offences*."—Con. Stats. C., c. 102.

Information and Complaint for an Indictable Offence.

Warrant to Apprehend a person charged with an Indictable Offence.

Summons to a person charged with an Indictable Offence.

Warrant when the Summons is Disobeyed.

Information to obtain a Search Warrant.

Search Warrant.

Certificate of Indictment being found.

Warrant to Apprehend a person Indicted.

Warrant of Commitment of a person Indicted.

Warrant to Detain a person Indicted, who is already in Custody for another offence.

Endorsement in backing a Warrant.

Summons to a Witness.

Warrant when a Witness has not obeyed a Summons.

Warrant for a Witness in the first instance.

Warrant of Commitment of a Witness for refusing to be sworn, or to give evidence.

Depositions of Witnesses.

Statement of the Accused.

Recognizance to prosecute or give evidence.

Condition to prosecute.

Condition to prosecute and give evidence.

Condition to give evidence.

Notice of the said Recognizance to be given to the Prosecutor and his Witnesses.

Commitment of a Witness for refusing to enter into the recognizance.

Subsequent Order to Discharge the Witness.

Warrant Remanding a Prisoner.

Recognizance of Bail instead of Remand, on an adjournment of examination.

Notice of Recognizance to be given to the Accused and his Sureties.

Certificate of non-appearance to be Endorsed on the Recognizance.

Warrant to convey the Accused before a Justice of the County in which the offence was committed.

Receipt to be given to the Constable by the Justice for the County in which the offence was committed.

Recognizance of Bail.

Notice of the said Recognizance to be given to the Accused and his Bail.

Warrant of Deliverance on bail being given for a Prisoner already Committed.

Warrant of Commitment.

Gaoler's Receipt to the Constable for the Prisoner, and Justice's Order thereon for the payment of the Constable's expenses in executing the Commitment.

Under the "Act respecting the duties of Justices of the Peace out of Sessions, in relation to *Summary* Convictions and Orders."—Con. Stats. C., c. 103.

Summons to the Defendant upon an Information or Complaint.

Warrant when the Summons is disobeyed.

Warrant in the First Instance.

Warrant of Committal for Safe Custody during an adjournment of the hearing.

Recognizance for the Appearance of the Defendant when the case is adjourned, or not at once proceeded with.

Notice of such Recognizance to be given to the Defendant and his Sureties.

Certificate of non-appearance to be endorsed on the Defendant's Recognizance.

Summons to a Witness.

Warrant where a Witness has not obeyed a Summons.

Warrant for a Witness in the first instance.

Commitment of a Witness for refusing to be sworn or give evidence.

Warrant to Remand a Defendant when Apprehended.

Conviction for a Penalty to be levied by Distress, and in default of sufficient Distress, by Imprisonment.

Conviction for a Penalty, and in default of payment, Imprisonment.

Conviction when the Punishment is by Imprisonment, &c.

Order for Payment of Money to be levied by Distress, and in default of Distress, Imprisonment.

Order for Payment of Money, and in default of Payment, Imprisonment.

Order for any other matter where the disobeying of it is punishable with Imprisonment.

Order of Dismissal of an Information or Complaint.

Certificate of Dismissal.

Warrant of Distress upon a Conviction for a Penalty.

Warrant of Distress upon an Order for the Payment of Money.

Endorsement in Backing a Warrant of Distress.

Constable's Return to a Warrant of Distress.

Warrant of Commitment for want of Distress.

Warrant of Commitment upon a Conviction for a Penalty in the first instance.

Warrant of Commitment on an Order in the first instance.

Warrant of Distress for Costs upon an Order for Dismissal of an Information or Complaint.

Warrant of Commitment for want of Distress in the last case.

Certificate of Clerk of the Peace that the Costs of an Appeal are not paid.

Warrant of Distress for Costs of an Appeal against a Conviction or Order

Warrant of Commitment for want of Distress in the last case.

General Form of Information on Oath.

Form of Order of Dismissal of an Information or Complaint.

Form of Certificate of Dismissal.

General Form of Notice of Appeal against a Conviction.

Form of Recognizance to try the Appeal, &c.

Form of Notice of such Recognizance to be given to the Defendant (Appellant) and his Surety.

Complaint by the party threatened for Sureties for the Peace.

Form of Recognizance for the Sessions.

Form of Commitment in Default of Sureties.

M

DU

CO

INTEN

MA

FRI

WH

DE

GU

E

“ J
UNDE
TO AN
v. *Bor*

MAGISTRATE'S HAND-BOOK.

OBSERVATIONS

UPON THE

DUTIES OF MAGISTRATES,

COMPILED BY DESIRE OF THE JUSTICES OF THE PEACE OF
THE UNITED COUNTIES OF YORK AND PEEL IN SESSION.

INTENDED TO BE BRIEF AND SUCCINCT, AND AT A BIRD'S-EYE GLANCE TO ENABLE
MAGISTRATES TO ASCERTAIN, WHEN APPLIED TO, PARTICULARLY UPON THE MORE
FREQUENT CLASSES OF CRIME, WHETHER THEY CAN, AND IF SO, HOW AND IN
WHAT MANNER ACT: AND TO REFER THEM TO THE STATUTES AND AUTHORITIES
BEARING UPON THE SUBJECT IN QUESTION FOR, IF NECESSARY, MORE FULL
GUIDANCE.

BY RICHARD DEMPSEY, Esq.,

BARRISTER-AT-LAW AND CROWN ATTORNEY FOR THE CITY OF TORONTO
AND THE UNITED COUNTIES OF YORK AND PEEL.

“JUSTICES OF PEACE WERE A CLASS OF PERSONS TO WHOM THIS COUNTRY WERE
UNDER AS GREAT OBLIGATIONS, AS THIS OR ANY OTHER NATION IS, OR EVER WAS,
TO ANY MEMBERS OF ITS COMMUNITY.”—*Court of Queen's Bench, (England,) Rex.
v. Borran, 3 B. & Ald. 433.*

TORONTO:
ROWSELL AND ELLIS, PRINTERS.

1860.

LP
K

I 380

MEANING OF ABBREVIATIONS.

4 & 5 V., c. 27, s. 27.	4 & 5 Victoria, chapter 27, section 27.
Con. Stats. C., c. 102, p. 1043.	Consolidated Statutes of Canada, chapter 102, page 1043.
Con. Stats. U. C.	Consolidated Statutes of Upper Canada.

NOTE.—Where several statutes or other authorities are referred to after each subject, they need not all be consulted. They are all thus quoted for the convenience of the Justice, in the expectation of his having one or other of the authorities: thus, where reference is made to “13 & 14 V., c. 54, Con. Stats. C., c. 114,” either of the two within reach of the Justice contains the whole (and the same) law upon the subject.

TORONTO, MARCH, 1860.

We have carefully perused the little work compiled by Richard Dempsey, of Toronto, Esquire, Crown Attorney for the City of Toronto and the United Counties of York and Peel, intituled "Magistrate's Hand-Book," and can safely recommend the same, as a correct compilation and useful treatise, and one likely to be of vast convenience and usefulness to the Magistracy generally.

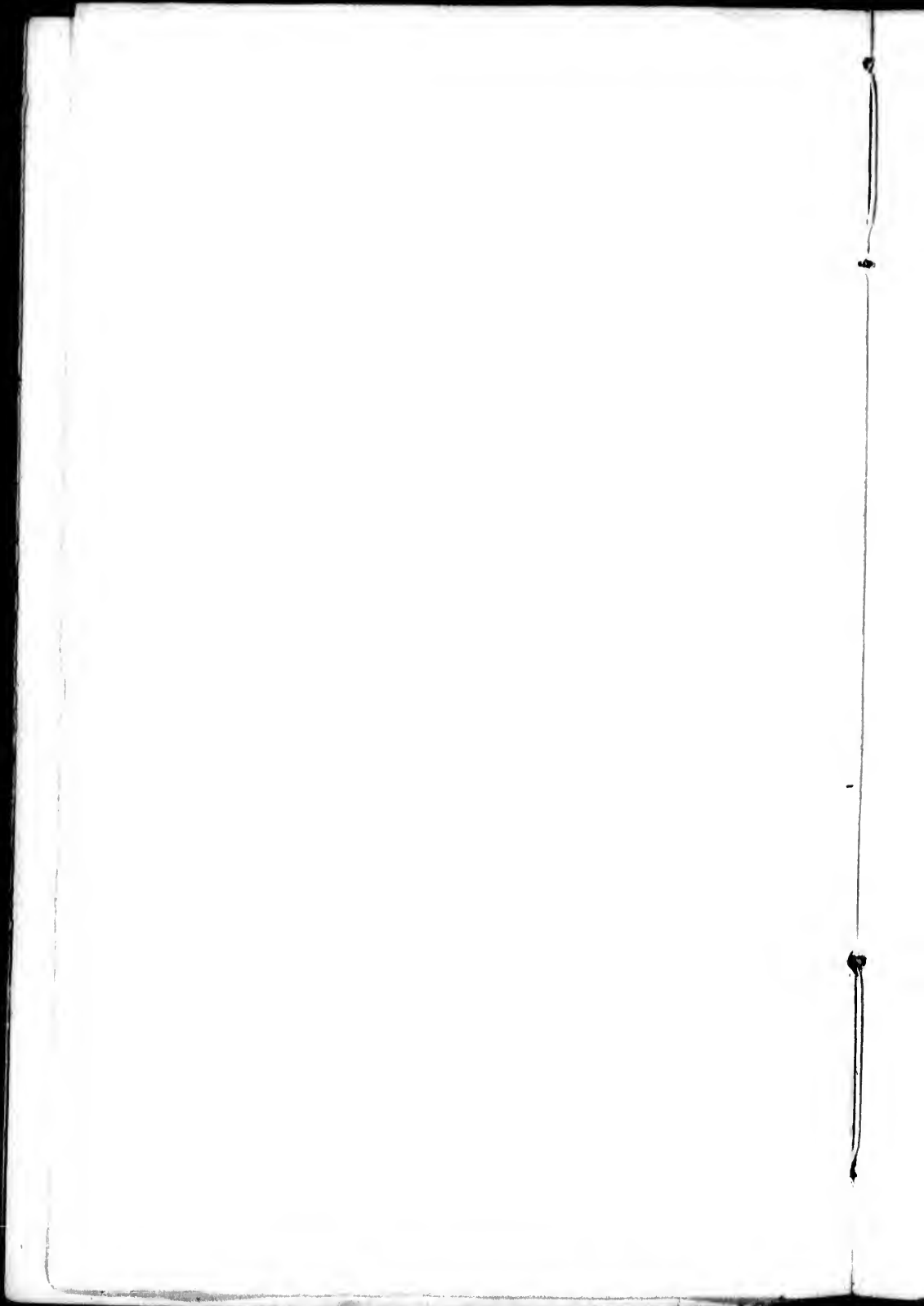
S. B. HARRISON,

Chairman Quarter Sessions, York & Peel.

GEO. GURNETT,

*J. P., Clerk of the Peace, York & Peel, and
Police Magistrate City of Toronto.*

277132



PREFACE.

Although this little volume was originally intended simply as a modernization of a small pamphlet of some six pages, published in 1844, yet the author having once entered upon the work, found himself almost irresistibly drawn into a longer detail. As it is, there are doubtless other offences cognizable by Magistrates, summarily or otherwise, than those herein enumerated, but the more particular mention of which would render the volume too cumbersome. It is expected, however, that all those matters of which Magistrates are called upon more usually to treat are not omitted. All others will be readily found under their proper headings, either in the Consolidated Statutes of Canada, or the Consolidated Statutes of Upper Canada.

Of the great practical utility that this may prove to Justices on the Commission, Reeves, and Deputy-Reeves throughout the country, the author has thought it unnecessary to seek any further endorsements than those (although local it may be, in their functions) of the Honourable Samuel Bealey Harrison, Judge and Chairman of the Quarter Sessions of the United Counties of York and Peel for the past twelve years, and heretofore a legal author of note; and of George Gurnett, Esquire, J. P., Clerk of the Peace of the same counties, since the year 1851 Police Magistrate of the city of Toronto, and for over a quarter of a century actively and energetically engaged in every phase of a Magistrate's duty in this country.

The writer perhaps should also say that he himself has

had an intimate acquaintance with Magisterial functions for a period of over nine years.

The question has been asked of the compiler, Why was not there a more minute Index added? The reply to this is, that the work itself is to a certain extent in the nature of an Index, and that any further Index to this Index would have in a measure defeated the object originally contemplated. This object was to render the whole of the topics embraced as familiar as possible to the, as yet perhaps, unpractised Magistrate, by the necessity, for a time at all events, of perhaps having to exercise a little research over the contents relating to the particular subject, to find the exact point he is in quest of.

The very great and various powers vested in Justices of the Peace, must, it is presumed, render every attempt to facilitate to them the execution of so arduous and important an office acceptable.

If the following pages tend even in the slightest manner toward such a consummation, it will be a source of great gratification to the

AUTHOR.

MAGISTRATE'S HAND-BOOK.

MAGISTRATES have jurisdiction in the first instance over all offences against the law, from the highest to the lowest classes of crime; and it is the duty of a Magistrate to take cognizance of all such offences committed within his division.

These offences are divisible into two general classes, viz.: *Firstly*, Those over which the law gives the Magistrate *summary* jurisdiction, and, *Secondly*, Those which the law requires to be sent to a *higher tribunal* for final trial.

SUMMARY JURISDICTION.

Offences disposable of summarily by *one* or more Magistrates are, amongst others,—

ASSAULTS (a) AND BATTERIES (b).—4 & 5 V. c. 27, s.

(a) An assault is an attempt to commit a forcible crime against the person of another, such as an attempt to commit a battery, murder, robbery, rape, &c.; striking at the person of another, even holding up the fist at him in a threatening or insulting manner; or with such other circumstances as denote at the time an intention, coupled with a present ability, of actual violence against his person, as by pointing a weapon when he is within reach of it (1 East P. C. 406); striking at another with a cane, stick or fist, although the party striking misses his aim (2 Roll. Abr. 545 l. 45); drawing a sword or bayonet, or throwing a bottle or glass with intent to wound or strike; presenting a gun at a man who is within the distance to which the gun will carry; pointing a pitch-fork at him when within reach of it; or any other act indicating an intention to use violence against the person of another, is an assault.—1 Hawk c. 62, s. 1. It is an assault to point a loaded pistol at any one; but not an assault to point at another a pistol which is proved not to be so loaded as to be able to be discharged.—James's Case, 1 C. & K. 530. Although to constitute an assault there must be a present ability to inflict an injury, yet if a man is advancing in a threatening attitude to strike another, so that the

27, Con. Stats. C., c. 91, ss. 37, 38, pp. 959, 960; Keele's Prov. Jus., 4th Ed. p. 60 (*one or more Magistrates*). (*c.*)

MALICIOUS INJURIES done to property with intent to steal, *i. e.* :

Stealing, cutting, breaking, rooting up, or otherwise destroying or damaging *with intent to steal*, any tree, sapling, shrub or underwood, wheresoever growing, of value of 20 cents at least.—4 & 5 V., c. 25, s. 31, Con. Stats. C., c. 92, s. 36, p. 969. (*one or more Magistrates.*)

Stealing, cutting, breaking or throwing down *with intent to steal*, any live or dead fence, or any wooden post, pale or rail, set up or used as a fence, or any stile or gate, or any part thereof.—4 & 5 V., c. 25, s. 32, Con. Stats. C., c. 92, s. 37, p. 969. (*one or more Magistrates.*)

Unlawful possession of trees, fences, &c., of 40 cents value, found under search warrant.—4 & 5 V., c. 25, s.

blow would almost immediately reach him if he were not stopped, and he is stopped, this is an assault.—*Stephens v. Myers*, 4 C. & P. 349. So there may be an assault by exposing a child of tender years, or a person under the control and dominion of the party, to the inclemency of the weather.—*Bidley's Case*, 2 Camp. 650; *Marsh's Case*, 1 C. & K. 496. If a man strike at another, but at such a distance that it cannot possibly touch him, it is *no* assault.—*Ros. Cr. Ev.* 524.

(*b*) When an injury is actually inflicted it amounts to a battery, which includes an assault. A battery seems to be, when any injury whatsoever, be it never so small, is actually done to the person of a man, in an angry, or revengeful, or rude, or violent manner; as by spitting in his face, or throwing water on him; or any way touching him in anger, or violently jostling him out of the way; pushing another man against him; holding him by the arm; striking a horse upon which he is riding, whereby he is thrown, or the like. The injury need not be effected directly by the hand of the party: thus there may be an assault by encouraging a dog to bite; by riding over a person with a horse; or by wilfully and violently driving a cart, &c., against the carriage of another person, and thereby causing bodily injury to the persons travelling in it. If a man strike at another with a cane or fist, or throw a bottle at him, or the like, if he miss him it is an assault; if he hit him it is a battery.—*Roscoe Cr. Ev.* 280; *Arch. Cr. Pleading* 524.

(*c*) In cases of assault and battery, observe the fine must not exceed \$20.00, *including the costs*. When desiring therefore to impose the highest penalty, first ascertain the amount of costs; then impose a fine which, together with the costs, will not exceed \$20.00.

33, Con. Stats. C., c. 92, s. 38, p. 970. (*One or more Magistrates.*)

Stealing, destroying or damaging, *with intent to steal*, any trees, plants, fruits or vegetables, in gardens, &c., greenhouses or hothouses, &c.—4 & 5 V., c. 25, s. 34, Con. Stats. C., c. 92, s. 39, p. 970. (*One or more Magistrates.*)

Stealing, destroying or damaging, *with intent to steal*, any cultivated root or plant used as food for man or beast, or for medicine, or for distilling or dyeing, &c., in any place *not being a garden*.—4 & 5 V., c. 25, s. 35, Con. Stats. C., c. 92, s. 40, p. 970. (*One or more Magistrates.*)

MALICIOUS INJURIES TO PROPERTY (*i. e.*, wanton or malicious mischief, but without the *intent to steal*.) *i. e.* :

Maliciously destroying or damaging any tree, sapling, shrub or underwood, wheresoever growing, of value of 20 cents.—4 & 5 V., c. 26, s. 20, Con. Stats. C., c. 93, s. 25, p. 985. (*One or more Magistrates.*)

Maliciously destroying or damaging with intent to destroy any plant, root, fruit or vegetable in any garden, &c.—4 & 5 V., c. 26, s. 21, Con. Stats. C., c. 93, s. 26, p. 985. (*One or more Magistrates.*)

Maliciously throwing down and destroying any fence, wall, stile, or gate.—4 & 5 V., c. 26, s. 23, Con. Stats. C., c. 93, p. 985. (*One or more Magistrates.*)

Maliciously damaging any other property not hereinbefore specially mentioned.—4 & 5 V., c. 26, s. 24, Con. Stats. C., c. 93, s. 28, p. 986. (*One or more Magistrates.*)

ANIMALS, (or any poultry, dogs, or domestic animal or bird,) CRUELTY TO.—20 V., c. 31, Con. Stats. C., c. 96, p. 999. (*One or more Magistrates.*)

APPRENTICES AND MINORS, (law respecting).—14 & 15 V., c. 11, ss. 6 & seq., Con. Stats. U. C., c. 76, pp. 802 & seq. (*One or more Magistrates.*)

COMMON SCHOOLS.—Con. Stats. U. C., c. 64, ss. 138, 139, 140, p. 767.

S. 138.—If any trustee of a common school knowingly signs a false report, or if any teacher of a common school keeps a false school register, or makes a false return, with the view of obtaining a larger sum than the just proportion of school moneys coming to such common school, such trustee or teacher shall, for each offence, forfeit to the Common School Fund of the township, the sum of twenty dollars, for which any person whatever may prosecute him before a Justice of the Peace, and for which he may be convicted on the oath of one credible witness other than the prosecutor, and if upon conviction the penalty is not forthwith paid, the same shall, under the warrant of such Justice, be levied with costs by distress and sale of the goods and chattels of the offender, and such penalty when so paid or collected, shall by such Justice be paid over to the said Common School Fund; or the said offender may be prosecuted and punished for the misdemeanor.—13 & 14 V., c. 48, s. 13.

S. 139.—Any person who wilfully disturbs, interrupts, or disquiets the proceedings of any school meeting authorised to be held by this act, or any school established and conducted under its authority, or wilfully interrupts or disquiets any grammar, common, or other public school, by rude or indecent behaviour, or by making a noise, either within the place where such school is kept or held, or so near thereto as to disturb the order or exercises of such schools, shall for each offence, on conviction thereof before a Justice of the Peace, on the oath of one credible witness, forfeit and pay for common school purposes, to the school section, city, town, or village, within which the offence was committed, such sum, not exceeding twenty dollars, together with the costs of the conviction, as the said Justice may think fit; or the offender may be indicted and punished for any of the offences hereinbefore mentioned as a misdemeanor.—13 & 14 V., c. 48, s. 46; 16 V., c. 185, s. 19.

S. 140.—Unless it is in this act otherwise provided, all fines, penalties, and forfeitures recoverable by summary proceeding, may be sued for, recovered and enforced, with costs, by and before any Justice of the Peace having jurisdiction within the school section, city, town, or village in which such fine or penalty has been incurred, and if any such fine or penalty and costs be not forthwith paid, the same shall, by and under the warrant of the convicting Justice, be enforced, levied and collected with costs by distress and sale of the goods and chattels of the offender, and shall be by such Justice paid over to the school treasurer of the school section, city, town, or village, or other party entitled thereto, and in default of such distress, such Justice shall by his warrant cause the offender to be imprisoned for any time not exceeding thirty days, unless the fine and costs and the reasonable expenses of endeavouring to collect the same be sooner paid.—16 V., c. 185, s. 19.

DIVISION COURTS.—Con. Stats. U. C., c. 19, ss. 183, 184, p. 168, 169.

S. 183.—Every bailiff shall exercise the authority of a constable during the actual holding of the court of which he is a bailiff with full power to prevent breaches of the peace, riots or disturbances within the court-room or building in which the court is held, or in the public streets, squares, or other places within the hearing of the court, and may, with or without warrant, arrest all parties offending against the meaning of this clause, and forthwith bring such offenders before the nearest Justice of the Peace, or any other judicial officer having power to investigate the matter or to adjudicate thereupon.—13 & 14 V., c. 53, s. 13.

S. 184.—If any officer or bailiff (or his deputy or assistant) be assaulted while in the execution of his duty, or if any rescue be made or attempted to be made of any property seized under a process of the court, the person so offending shall be liable to a fine not exceeding twenty

dollars, to be recovered by order of the court, or before a Justice of the Peace of the county or city, and to be imprisoned for any term not exceeding three months; and the bailiff of the court, or any peace officer, may in any such case take the offender into custody, (with or without warrant,) and bring him before such court or Justice accordingly.—13 & 14 V., c. 53, s. 100.

DOG, BEAST, OR BIRD, (stealing of).—Is not a felony, but is punishable summarily.—4 & 5 V., c. 25, s. 30, Con. Stats. C., c. 92, s. 33, p. 968. (*One or more Magistrates.*)

DOG, BEAST, OR BIRD.—Killing of instantaneously, by shooting or otherwise. It is doubtful whether the offence could be proceeded against as for "Cruelty to Animals." But the Magistrate in such a case might probably adjudicate under s. 24 of 4 & 5 V., c. 26, Con. Stats. C., c. 93, s. 28, p. 986: "If any person wilfully or maliciously commits any damage, injury, or spoil, upon any real or personal property, either of a public or private nature, for which no remedy is hereinbefore provided," &c. There is no doubt that a "dog" is "property" of such a nature as to be the subject of an action at law for damages commensurate with his value against a person illegally destroying him. So it may be said also of any other beast, or bird, (such as tame pigeons,) ordinarily kept in a state of confinement, not being the subject of larceny at common law.

FISHERIES AND FISHING—Law respecting.—22. V., c. 86, Con. Stats. C., c. 62, p. 704 & seq. (*One or more Magistrates, ibid. s. 37, p. 709.*)

GAME LAWS OF UPPER CANADA.—19 V., c. 94, Con. Stats. U. C., c. 61, p. 701; Keele, 4th Ed. p. 356. (*One or more Magistrates.*)

GUNPOWDER—Law respecting—Its seizure or forfeiture under certain circumstances.—10 & 11 V., c. 4, s. 12 & seq., Con. Stats. C., c. 93, s. 34 & seq., p. 987. Also see Con. Stats. U. C., c. 54, pp. 601, 612, giving power to municipalities of cities, towns incorporated, or police villages, to make bye-laws regulating care of.

HAWKERS AND PEDLARS.—By the "Municipal Institutions" Act, Con. Stats. U. C., c. 54, s. 284, p. 596, the council of any county, city, or town, may pass by-laws regulating and governing. Under this the United Counties of York and Peel have acted by bye-law, imposing a penalty of \$40.00 for contravention thereof. (*One or more Magistrates.*)

INDECENCY, IMMORALITY, OR GROSSLY INSULTING LANGUAGE IN HIGHWAYS AND PUBLIC PLACES—For Preventing.—By the Municipal Institutions' Act, 22 V., c. 54, s. 282, Con. Stats. U. C., c. 54, p. 595, "The council of every county, city, or town, may pass by-laws for prevention of. (Under this the United Counties of York and Peel have acted by passage of by-law No. 69.) (*One or more Magistrates.*)

JUVENILE OFFENDERS—Act respecting the summary trial and punishment of under age of 16 years in matter of simple larceny, &c.—*Two* or more Justices must determine. Any *one* Justice may initiate proceedings.—20 V., c. 9, Con. Stats. C., c. 106, p. 1148.

LANDLORD AND TENANT.—*Fraudulent removal of goods, &c.*, By the 11 G. 2, c. 19, s. 1.—If any tenant for life, years, at will, sufferance, or otherwise, shall fraudulently, or clandestinely, convey off the premises his goods or chattels, to prevent the landlord from distraining, such landlord, or any person by him lawfully empowered, may, in thirty days next after such conveying away, seize the same, wherever they shall be

found, and dispose of them in such manner as if they had been distrained on the premises. Sec. 2.—But no landlord shall distrain any goods sold *bonâ fide*, and for a valuable consideration, before such seizure made, to any person not privy to such fraud. Sec. 3.—And if any tenant shall so fraudulently remove and convey away his goods or chattels, or if any person or persons shall wilfully and knowingly aid or assist him in such fraudulent conveying away or carrying off of any part of his goods or chattels, or in concealing the same, any person so offending shall forfeit to the landlord *double the value* of such goods, to be recovered in any court of record. Sec. 4.—But if the goods and chattels so fraudulently carried off or concealed shall not exceed the value of £50, the landlord, or his agent, may exhibit a complaint, in writing, before *two justices* of the peace of the same county or division, residing near the place where such goods and chattels were removed, or near the place where the same were found, not being interested in the lands or tenements whence such goods were removed; who may summon the parties concerned, examine the fact, and all proper witnesses, upon oath, (or if a Quaker, upon affirmation,) and in a summary way determine whether such person or persons be guilty of the offence with which he or they are charged; and to enquire in like manner of the value of such goods and chattels, and upon full proof of the offence, by order under their hands and seals, the said justices shall adjudge the offender or offenders to pay *double the value* of the said goods and chattels to such landlord, his bailiff, servant, or agent, at such time as the said justices shall appoint; and if the offender or offenders, having notice of such order, shall refuse or neglect so to do, they shall, by their warrant, levy the same by distress; and for want of such distress, may commit the offender or offenders to the house of correction, there to be kept to hard labour, without bail or mainprise, for the space of six months, unless the money

so ordered to be paid as aforesaid shall be sooner satisfied. Sec. 5.—Persons aggrieved by order of such Justices may appeal to the next general or quarter sessions, who may give costs to either party. Sec. 6.—And where the party appealing shall enter into recognizance, with one or two sureties, in double the sum so ordered to be paid, with condition to appear at such sessions, the order of the Justices shall not be executed against him in the mean time. Sec. 7.—Where any goods or chattels, fraudulently or clandestinely conveyed or carried away, shall be put, placed, or kept in any house, barn, stable, out-house, yard, close, or place locked up, fastened, or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent, it shall be lawful for the landlord, or his steward, bailiff, receiver, or other person or persons empowered, to take and seize, as a distress for rent, such goods and chattels (first calling to his assistance the constable, headborough, or other peace officer of the district, &c.); and in case of a dwelling-house, (oath being first made before a *Justice of the Peace*, of a reasonable ground to suspect that such goods or chattels are therein,) in the day time, to break open and enter into such house, barn, stable, out-house, yard, close, or place, and to take and seize such goods and chattels for the said arrears of rent, as he might have done if they had been in any open place. (a)

Costs of distresses for small rents and penalties.—By the 1 V., c. 16, s. 1; Con. Stats. U. C., c. 123, p. 982, no person whatsoever making any distress either for rent or for any penalty imposed by the laws of this province, when the sum demanded shall not exceed the sum of \$80 for and in respect of such rent or penalty, nor any person whatsoever employed in any manner in making such distress, or doing any act whatsoever in the course of

(a) It appears that in order to justify proceedings under this statute, the removal must have taken place *after* the rent became due.—Woodfall, p 327, and cases cited.

such distress, or for carrying the same into effect, shall have, take, or receive, out of the produce of the goods or chattels distrained upon and sold, or from the tenant or other person distrained, or from the landlord, or from any other person whatsoever, any other or more costs and charges for and in respect of such distress, or any matter or thing done therein, than such as are fixed and set forth in the schedule annexed; and no person shall make any charge for any thing mentioned in the schedule not really done. Sec. 2.—Any person offending herein may be summoned by any *one* Justice upon the complaint of the party aggrieved; and if it shall appear to such Justice that the person or persons complained of shall have levied, taken, or received, or had other and greater costs and charges than mentioned in the schedule, or made any charge for any thing mentioned in the schedule not really done, such Justice shall order and adjudge *treble the amount* of the moneys so unlawfully taken to be paid, by the person or persons so having acted, to the complainant, together with full costs; and in case of non-payment such Justice shall issue his warrant to levy the same by distress and sale of the goods and chattels of the offender, and in case of insufficient distress such Justice shall by warrant under his hand commit the party to the common gaol, there to remain until such order or judgment be satisfied. Sec. 3.—Such Justice may summon and examine witnesses on oath touching such complaint, or the defence against it; and in case of non-attendance, without lawful excuse, or refusal to be examined, such person shall forfeit a sum not exceeding \$8, to be enforced by distress or commitment in like manner as aforesaid, except as regards the form of the order, as hereinafter provided. Sec. 4.—Any party preferring an unfounded complaint shall be adjudged to pay costs not exceeding \$4 to the defendant, to be enforced in manner aforesaid. *Provided, always, that no order or judgment be made against the landlord, unless such landlord shall have*

personally levied such distress ; and *provided, further*, that no person aggrieved by any such distress, or any proceedings had in the course thereof, or by any costs or charges levied in respect of the same, shall be barred from any legal remedy, excepting so far as any complaint to be preferred by this act shall have been determined, and such order and judgment may be given in evidence under the plea of the *general issue*. Sec. 5.

—Such orders and judgments on such complaints shall be made in the form in the schedule annexed, and may be proved before any court by proof of the signature of the justice, and such orders as regards witnesses, shall be made in such form as to such justice shall seem fit and convenient. Sec. 6.—Every broker, constable, bailiff, or other person who shall make and levy any distress, shall give a copy of his charges, and of all the costs and charges of any distress whatsoever signed by him to the person or persons on whose goods and chattels any distress shall be levied, although the rent or penalty demanded shall exceed \$80.

Schedule.—Form of the Order and Judgment of the Justice before whom complaint is preferred when the Order and Judgment is for the complaint.—In the matter of complaint of A.B. against C.D. for the breach of the provisions of the Consolidated Statute for Upper Canada, entitled “ An Act respecting the costs of levying distress for small rents and penalties, ‘I, E. F., a Justice of the Peace for the — do order and adjudge, that the said C.D. shall pay to A.B. the sum of —, as a compensation and satisfaction for unlawful charges and costs levied and taken from the said A.B. under a distress for (as the case may be,) and the further sum of — for costs in this complaint.

(Signed) E. F.

Form of the Order and Judgment of the Justice when he dismisses the complaint as unfounded, with or with-

out costs, as the case may be.—In the matter of complaint of A.B. against C.D. for the breach of the provisions of the Consolidated Statute for Upper Canada, entitled, "An Act, &c., (as last above,) 'I, E.F., a justice of the peace in and for the —, do order and adjudge, that the complaint of the said A.B. is unfounded, (if costs are given,) and I do further order and adjudge, that the said A.B. shall pay unto the said C.D. the sum of —.

(Signed) E.F.

Schedule of Costs and Charges on Distresses for small Rents and Penalties.—Levying distresses under \$8, \$1.

Man keeping possession, per diem 75 cents.

Appraisement, whether by one appraiser or more 2 cents in the dollar on the value of the goods.

If any printed advertisement: not to exceed in all \$1. Catalogues, sale and commission, and delivery of goods, 5 cents in the dollar on the net produce of the sale.

By 4 & 5 V., c. 25, s. 37, the stealing of any chattel or fixture by the tenant is made felony.

LICENSES, SHOP AND TAVERN—Law respecting and regulating.—See Municipal Institutions, Con. Stats. U. C., c. 54, pp. 583, 588. Under this act—

Penalty for not exhibiting over door of tavern the words, "Licensed to sell," &c. (*One or more Magistrates.*) S. 251, p. 583.

Penalties incurred by persons illegally reading spiritous liquors. (*Two or more Magistrates.*) S. 252, p. 585.

Selling intoxicating liquors at certain prohibited times. (*One or more Magistrates.*) Ss. 254, 255, 256, pp. 585, 586.

By s. 257, p. 586—One-half of penalty goes to informant, other half to the treasurer of municipality where place complained of situate.

Proceedings against keepers of disorderly inns. (*Reeve of a township or village with any one Justice.*) S. 264, p. 588.

MASTER AND SERVANT OR LABOURER, AND MASTER AND JOURNEYMAN OR SKILLED LABOURER—Law respecting.—10 & 11 V., c. 23; 18 V., c. 136; all in Con. Stats. U. C., c. 75, p. 798. (*One or more Magistrates.*) (a)

PETTY TRESPASSES—To land by person entering or allowing his cattle to enter on the land of another.—22 V., c. 98, Con. Stats. U. C., c. 105, p. 947. (*One or more Magistrates.*)

RELIGIOUS WORSHIP—Disturbing Persons assembled for.—4 & 5 V., c. 27, ss. 31, 32, Con. Stats. C., c. 92, s. 18, p. 964. (*One or more Magistrates.*)

SHIPWRECKED GOODS—Unlawfully possessing or offering for sale.—4 & 5 V., c. 25, ss. 23, 24, Con. Stats. C., c. 92, ss. 30, 31, p. 968. (*One or more Magistrates.*)

STRYCHNINE AND OTHER POISONS—Act respecting the sale of.—12 V., c. 60, Con. Stats. C., c. 98, pp. 1007 1008. (*One or more Magistrates.*)

TRAVELLING ON PUBLIC HIGHWAYS—Drunken Drivers—Racing, Swearing, &c.—Act respecting.—18 V., c. 138, Con. Stats. U. C., c. 56, p. 687 & seq. (*One or more Magistrates*)

WEAPONS—Carrying certain, prohibited.—No person

(a) Magistrates are recommended not to entertain any complaint as for wages, where the arrangement between the parties is by the job or contract or savours of such, as for instance, cutting wood by the cord, splitting rails at so much per 100, working threshing machines, painting, &c., by the job, instead of at so much per day. The relation of master and servant, and the right to wages as such, must exist. In cases not of this nature the parties must resort to the ordinary Civil Courts for redress. In these cases for *non-payment of wages*, in the event of nothing being realised from the master under distress warrant, *imprisonment cannot be ordered.*

shall carry about his person any bowie-knife, dagger or dirk, iron knuckles, skull crackers, slung shot, or other weapon of a like character, or sell or expose the same for sale, under a penalty of not more than \$40 nor less than \$10, or in default imprisonment for not exceeding 30 days.—22 V., c. 26, Con. Stats. C., c. 91, ss. 9, 10, 11, 12, p. 954.

There is an impression that prosecutions under the above statute can be dealt with by an ordinary Justice of the Peace. By a perusal, however, of the above statute and statute 20 V., c. 27, Con. Stats. C., c. 105, p. 1139, it will be found that such is not the case. By s. 10 of the first mentioned statute, charges under that act are to be dealt with pursuant to the provisions of the latter act. By this latter act summary power is only given in Upper Canada to Recorders and Police Magistrates of cities. By s. 18, p. 1143, indeed, a Magistrate may *entertain* a charge, but for the purpose only of remanding for disposal before the Recorder or Police Magistrate of the nearest city.

WEIGHTS AND MEASURES—Acts respecting.—Con. Stats. C., c. 53, p. 642; 12 V., c. 85, or Con. Stats. U. C., c. 58, p. 694. Penalties under these acts recoverable before *any* Justice, &c.—S. 5 of 12 V., s. 21 of Con. Stats. U. C., c. 58, p. 697.

INDICTABLE OFFENCES.

The offences of a higher class over which Magistrates have no summary jurisdiction, but which they are required to refer to a higher tribunal for final adjudication, are more generally, amongst others, *Firstly*—

FELONIES.

A.

Arson, assault with intent to commit murder; attempt

to procure abortion ; assault with intent to rob ; abusing infants under 10 years of age ; attempts to commit crimes.

B.

Bailees fraudulently taking or converting property is larceny ; bestiality, bigamy, burglary. (a)

C.

Children under ten years of age, decoying or stealing, or harboring when stolen, &c. ; cattle, maiming, &c. ; coin, false and counterfeit, making, uttering or attempting to utter ; compounding felony ; corruptly taking rewards, &c. ; maliciously demolishing or beginning to demolish any church or other building ; cattle stealing.

D.

Destroying hop-binds, &c. ; demanding money or goods, &c., by threatening letters, &c. ; demanding money or goods, &c., by menaces and threats with intent to steal, &c.

E.

Embezzlement by clerks, servants, trustees, &c., is by statute declared a larceny, therefore a felony ; malicious injury by *explosive substances*, or manufacturing or possessing same with illegal intent.

F.

Forgery, uttering forged paper ; falsely and deceitfully personating another person ; falsely accusing or threatening to accuse to extort property, &c.

H.

Horse-stealing, &c.

K.

Killing horses, cattle, &c., with intent to steal carcass, skin, &c.

L.

Larceny, whatever the value of the property stolen, the offence is deemed of the same nature ; letters, post

(a) Burglary consists in breaking and entering into a house to commit a felony, or being therein and committing a felony, in either case breaking out between 9 at night and 6 next morning. This is a *capital* offence when any person in the house is assaulted, beaten or wounded by the burglar.

letters, and post office offences and penalties relating to, felony or misdemeanor according to nature of offence.

M.

Murder, manslaughter, maliciously shooting at or attempting to shoot, or stabbing, cutting or wounding any person with intent to maim, disfigure, disable or do some grievously bodily harm.

P.

Administering or attempting to administer poison with intent to murder.

R.

Rape, robbery, (a) stealing railway passage tickets, maliciously injuring or obstructing railways, maliciously throwing any thing against railway carriage, &c.; receiving stolen goods; rescue or attempt to rescue persons convicted of murder (*capital offence*); rioters to the number of 12 or more remaining together for one hour after proclamation made by Justice to disperse. (b)

S.

Stealing steamboat passage ticket; stealing in a dwelling house with menaces, &c.; sending threatening letters, &c. *Secondly*—

MISDEMEANORS.

Perjury, conspiracy, &c. (c); concealing the birth of children; assault with intent to commit rape; abduction of females under 16; assaulting persons; apprehending offenders in the night; obtaining goods,

(a) Robbery differs from larceny in this, that it consists in the felonious and forcible taking from the *person* of another, or in his presence against his will, of any property to any value, by violence or putting him in bodily fear. It is a *capital* offence when attended with stabbing, cutting or wounding.—4 & 5 V., c. 25, s. 6.

(b) 3 W. IV., c. 3, s. 13—The Riot Act: "Our Sovereign the Lady the Queen chargeth and commandeth all persons being assembled immediately to disperse themselves, and peaceably to depart to their habitations or their lawful business, upon the pains contained in the act relating to high treason, to tumults and riotous assemblies, and to other offences. God save the Queen."—Con. Stats. U. C., c. 97, p. 931; Keele, 4th Ed. 737.

(c) Conspiracy is a combination of *two* or more persons to injure a *third person*, or to injure and prejudice the community, such as a conspiracy to raise the rate of wages, &c.

moneys, &c., under false pretences; obtaining the signature of any person to a bill of exchange, promissory note or valuable security under false pretences; riots; assaults upon officers in the discharge of their duties, or to prevent arrest; forcible entry or detainer; and assaults and batteries of so aggravated a character as to require a greater punishment than a magistrate has power to inflict. Offences and penalties relating to post office and post letters, misdemeanor or felony according to nature of offence.

PROCEEDINGS BEFORE THE MAGISTRATES.

In all indictable offences it is the duty of the Magistrate to send to the Court of Quarter Sessions, or to the Assizes, by committing the accused for trial, or admitting him to bail, as the case may require.

In all cases the first official step to be taken by the Magistrate is to receive an information upon oath from a credible person that an offence has been committed, and stating as near as may be the nature of the offence, the person against whom, and the time when, and the place where the said offence was perpetrated, and naming (if known) the person or persons who committed, or who are suspected to have committed such offence.

Upon receiving this information the Magistrate should immediately issue his warrant or summons to bring the accused before him.

In all cases of treason, felony, or other *indictable* misdemeanor or offences a warrant should be issued. 16 V., c. 179, s. 1; Con. Sts. C. c. 102, s. 1., p. 1043.

In all cases over which the law gives the Magistrate *summary* jurisdiction a summons should issue in the first instance. 16 V., c. 178, s. 1; Con. Sts. C. c. 103, s. 1, p. 1083. To be followed in case of summons not being obeyed by a warrant.—Ib. s. 2; Ib. s. 6.—Or Justice may proceed *ex parte*.—Ib. s. 2; Ib. s. 7.

First official step to be taken by J. P. on complaint made in any case.

Second step, issuing of Warrant or Summons.

The hearing and proceedings thereat. When the accused appears before the bench the accuser and his witnesses should also be present. The information should be read to the accused; and unless he voluntarily admits the charge, the Magistrate is to swear and examine—*First.* The complainant and his witnesses. *Secondly.* The witnesses for the accused, taking the whole of the evidence down in writing as nearly as possible in the words of, and when read over, to be signed by, the witnesses, as also by the acting Justice or Justices.(a).

Counsel, &c. allowed in cases of Summary Conviction. *Observing* that in all cases of *summary* conviction, the *accused* is admitted to make full answer and defence, and to have all witnesses examined and cross-examined by counsel or attorney.—4 & 5 V., c. 24, s. 10; Con. Sts. C., c. 99, s. 57, p. 1021, also p. 1141.

ast. r. 14
See R. v. Brown
3 B. & Ald. 432
Col. v. O'Brien
13. 2. 27
Counsel not allowed, as of right, in Examinations before J. P.'s in Indictable Offences. In *indictable* offences the statutes do not any where give the accused the same privilege, and it is questionable, therefore, although quite usual, and indeed the practice, to permit it, whether the accused can claim such defence by counsel or attorney as a *right*, but *discretionary* with the Magistrate.

Not place of Examination an open Court. It is also to be observed that in this latter class of (*i.e.*, indictable) offences, the place where the examination is taken is not to be deemed an open court. And it is entirely in the discretion of the Justice to prohibit any person being present if it appear that the ends of justice will be best answered by such a course.—16 V., c. 179, s. 11; Con. Stats, C. c. 102, s. 36, page 1051.

Further proceedings at the hearing. After examination of witnesses is completed their depositions are to be read by the Justice to the accused, and then any statement he may make is to be taken down in writing after being first duly cautioned.

Taking statement of Prisoner. The attention of Justices is here particularly called to 16 V., c. 179, s. 10; Con. Stats. C., c. 102, ss. 32,

(a) The necessity and possible great saving of trouble to the Justice by attending to this particular will be seen on reference to 16 V. c. 175, s. 10, Con. Stats. C., c. 102, s. 33, p. 1051. If so signed they would appear to prove themselves when produced on a trial, and thus perhaps save the necessity of the Justice's personal attendance thereat.

34, pp. 1050, 1051, and to the necessity of the *caution and explanations* to be given and made to the accused before the statement made.

The statement thus made should be taken down in the prisoner's very words as nearly as possible, signed by him if he will, as also particularly by the acting Justice or Justices. (See Form N. in above statutes). It is also very requisite that the Justice or Justices should affix his or their signature to the deposition of each witness, such as "Sworn before me, the _____ day of _____, A. D. 186 .

or, the day and year above mentioned.

A. B.,

J. P." (a)

The examination being over, the first question for the Magistrate to determine is, whether the charge is sustained by the evidence, and next, whether the case is one which the law requires to be disposed of summarily, or whether it should be sent to a higher tribunal. If the former, the Magistrate will adjudge the amount of the penalty to be imposed (under the limitations of the statutes), together with the costs, which should be recorded on the proceedings, together with the period of imprisonment to be awarded, in case of non-payment of fine and costs.

If the case is one which requires to be disposed of by a higher tribunal, the Magistrate should commit the prisoner "until the next _____ (Court having jurisdiction,) (b) or until delivered by due course of law;" or in cases of *Misdemeanor*, the Magistrate may admit the accused to bail, in sufficient sureties, the amount of bail to be regulated by the magnitude of the offence charged, and by the abilities of the parties. In cases of *Misdemeanor*, one Magistrate can admit to bail.

In cases of *Felony*, even in Larcenies of the most trifling class, one Magistrate cannot admit the prisoner

(a) See note (a) ante page 24.

(b) 16 V., c. 179, s. 12; Con. Stats. C., c. 102, s. 37, p. 1051.

Question for
J. P.'s con-
sideration
after Exami-
nation over.

In Misdemeanors J. P.'s may bail.

Bailing in Felonies.

to bail. There must be *two*, who may bail the prisoner, but then only where the evidence of guilt is doubtful; where the evidence is clear, the Magistrates are not authorised to admit the prisoner to bail. In this event, the parties must apply on certified copies of the depositions, examinations, &c., to be obtained from the office of the Clerk of the Peace, to one of the Judges of the superior courts, or Judge of the County Court in chambers. No person accused of Treason or Murder can be admitted to bail, except by order of a Judge of the *superior* courts.—Con. Stats. C., c. 102, s. 55, p. 1056.

Necessity of holding witnesses, &c. in Recognizances to prosecute & give evidence.

When a Magistrate commits a prisoner to gaol or holds him to bail, to take his trial, the Magistrate should at once, and before the parties leave his presence, or the proceedings considered as over, bind over the prosecutor and all witnesses to prosecute and give evidence at the "*next court of competent criminal jurisdiction at which the accused is to be tried.*" In which case the Magistrate must, at the same time, give a notice of such binding, signed by him, to the several persons bound.—See 16 V., c. 179, s. 12; Con. Stats. C., c. 102, ss. 37, 38, pp. 1051, 1052. The giving of this notice appears to be imperative, and that without it the recognizance could not be estreated, and would be therefore useless.

Giving notice thereof to parties bound.

Slander, abuse, &c.

Magistrates have no jurisdiction at common law over cases of slander or abuse, however gross, offensive, or false the case may be. The Statute Law, however, delegates authority to the municipalities to pass bye-laws for the suppression of obscene, indecent, or grossly insulting language in the streets and highways. Under this the Municipality of York and Peel have acted, in the passage of Bye-Law No. 69. (See page 13, ante.)

Articles of the Peace.

If, with or without abuse, any person threatens violence or injury to person or property, upon the complainant laying the necessary information, the accused may be arrested and without further enquiry bound over, with sufficient sureties to keep the peace and be of

good behaviour for a specified period, usually for six or twelve months.

Search Warrants to be issued when.—See 16 V., c. ^{Search Warrants.} 179, s. 4; Con. Stats. C., c. 102, s. 11, p. 1045; Keele, 4th Ed., 747.

Any Warrant, search warrant or otherwise, may be ^{Any Warrant may issue on Sunday.} issued on a *Sunday* as well as on any other day.—16 V., c. 179, s. 3; Con. Stats. C., as above, p. 1045.

RETURNS OF SUMMARY CONVICTIONS TO QUARTER SESSIONS.

Magistrates are bound to make to the Clerk of the Peace *Quarterly* Returns of all convictions and fines, forfeitures, penalties and damages, and of the application of the moneys received from defendants. All Magistrates acting in each case to join in such Report, under penalty of \$80.

Form of Return, as per statute :—

“Return of Convictions made by *me (or us)* as the case may be, in the month of _____, 186 .

Name of the prosecutor.	Name of the defendant	Nature of the charge.	Date of conviction.	Name of convicting justice.	Amount of fine, penalty or damage.	Fine,—when paid, or to be paid to said justice.	To whom paid over by the said justice.	If not paid, why not, and general observations.

A. B., Convicting Justice,
or
A. B., C. D., Convicting Justices.”

4 & 5 V., c. 12, s. 1; Con. Stats. U. C., c. 124, s. 1, pp. 985, 986.

(Extract from Upper Canada Law Journal, March, 1860.)

“The office of Justice of the Peace is not free from responsibility, and yet there is one duty which, of all others, appears to be very generally neglected. It is the duty which the law imposes upon every Justice of the peace to make returns of convictions had before him, in the manner prescribed by statute.

To the nature of this duty, and the penalty for neglect of it, we propose in this number to direct attention.

Extensive powers are entrusted to Justices of the Peace, including the power in given cases to fine and imprison. This power is one which, if not placed under check, may be abused in many ways. If abused to the detriment of the liberty of the subject, the subject has his remedy for damages. But as the fines to be imposed do not belong to the convicting Justice, if not called upon to give an account of them, there may be an abuse of much magnitude, though no particular individual suffer wrong thereby. The sufferer would be the Crown—the guardian of the public—which would be defrauded if fines were improperly withheld.

The office of Justice of the Peace is not to be deemed one of profit. Nothing would be more revolting to every principle of British justice than that Magistrates should make a livelihood out of fines imposed in the discharge of official duty. Were this allowed, the frailty of human nature might lead the Justice to impose a fine not so much in proportion to the wrong committed, as in proportion to his own actual wants or sordid craving for gain. Thus the liberty of the subject would be at the mercy of avarice, and the administration of justice would become a subject of scorn.

The Legislature has deemed it prudent to provide certain checks as preventives of these abuses.

On 27th August, 1841, an act was passed, providing that for the more effectual recovery and application of penalties, fines and damages, imposed by Justices of the Peace according to law, it is necessary and expedient that such Justices shall, *together* with the convictions, make a due return thereof to the General Quarter Sessions of the Peace of the district in which such penalties, fines and damages, have accrued.—4 & 5 V., c. 12.

In the case of a conviction, it is very doubtful whether a return of the conviction itself, without the formal return of the particulars rendered necessary by the statute, is sufficient. In *Kelly q. t. v. Cowan*, 18 U. C. Q. B. 104, hereafter noticed, which was the case of a conviction by a single Justice, the Chief Justice of Upper Canada made some observations that appear to favour the affirmative of this proposition; while in *Murphy q. t. v. Harvey*, decided during last term in the Court of Common Pleas, but not yet reported, the Chief Justice of the Common Pleas expressed an adverse opinion—at all events as regards the case of a conviction by two or more Justices, which was the case then before the court.

The only safe course for a Justice to adopt is in the words of the preamble of 4 & 5 V., c. 12, “together with the conviction, to make a due return thereof, &c.”

The act now regulating the returns is chapter 124 of the Consolidated Statutes of Upper Canada.

By section 1, it is provided, “That *every* Justice of the Peace, before whom any trial or hearing is had under any law giving jurisdiction in the premises, and who convicts or imposes any fine, forfeiture, penalty, or damages, upon the defendant, shall make a return thereof in writing under his hand to the *next* ensuing General Quarter Sessions of the Peace for the county in which such conviction takes place, and of the *receipt* and *application* of the moneys received from the defendant.”

By the same section it is provided, "That if the conviction takes place before two or more Justices, such *Justices* being present and joining in such conviction shall make an *immediate* return thereof."

All experience proves that it is not enough for the Legislature to enjoin that given things of a public nature shall be done, but must go further, and state that if not done, there shall be a given penalty. So the Legislature has done here.

It is provided by section 2 of the same statute, "That in case the Justice or Justices before whom any such conviction takes place, or who receives any such moneys, *neglect* or *refuse* to make such return thereof, or in case any such Justice or Justices *wilfully* make a false, partial or incorrect return, or *wilfully* receive a larger amount of fees than by law authorised to be received, in every such case such Justice and Justices, and each and every of them, so neglecting or refusing, or wilfully making such false, partial or incorrect return, or wilfully receiving a larger amount of fees as aforesaid, shall forfeit and pay the sum of eighty dollars, together with full costs of suit, to be recovered by *any* person who sues for the same by action of debt or information, in any court of record in Upper Canada; one moiety whereof shall be paid to the party suing, and the other moiety into the hands of her Majesty's Receiver-General, to and for the public uses of the Province."

Every prosecution for any such penalty must be commenced within six months next after the cause of action accrues, and the same is to be tried in the county where-in the penalty was incurred (sec. 3).

The object of the Legislature in passing these enactments is, to compel justices to make a return of whatever fines they impose, in order that their diligence in collecting the fines may be quickened, and in order that it may be known what money they admit themselves to have received, or that they may be made to account for it.—*O'Reilly q. t. v. Allan*, 11 U. C. Q. B. 415.

It seems to be no excuse for neglect to make the return required, that the conviction made was an illegal one. The Court of Queen's Bench expressed the opinion, that if a Justice of the Peace makes a conviction in fact—not an imperfect one, but one upon the face of it good—there must be a return of it. If he, after conviction, discover that the conviction was illegal, and for that reason forbear to enforce the fine, his obvious course would be to make the return as the law directs, and at the same time explain in the return that the fine is not collected, because the Justice doubts the legality of his conviction.—*Ib.* It is proper, however, to observe, that the late Chief Justice Macaulay, in one case, expressed much doubt as to the correctness of this ruling, and inclined to the opinion that an illegal conviction is no conviction, and therefore not necessary to be noticed in a return.—*Spillane v. Wilton*, 4 U. C. C. P. 242.

Some doubt has existed as to whether an appeal from the conviction to General Quarter Sessions is a sufficient excuse for not making the return. The point has recently received a judicial exposition.—*Kelly q. t. v. Cowan*, 8 U. C. Q. B. 110. The better opinion now appears to be, that notwithstanding an appeal, a return of some kind must be made. If the Justice return the conviction alone, and in any way make it appear on the face of the proceedings transmitted that the conviction has been appealed from, it seems he cannot properly be convicted of having either *refused* or *neglected* to make the return required by the statute. The appeal should suspend all proceedings as regards the collection of the fine, but, singular to say, the act regulating the appeals from convictions by Justices makes no provision for giving notice of the appeal to the convicting Justice, or to stay his proceedings to collect any fine imposed by him.—*Murphy q. t. v. Harvey, ubi supra*. If the appeal after the conviction is so returned be abandoned, then it clearly rests with the Justice to proceed and collect the fine; and after having collected it, he would be

bound to make a return, shewing the payment, to the Court of General Quarter Sessions. If the contrary course were adopted, there would be much confusion. One object of the return is, to inform the Court of General Quarter Sessions what has been done by the convicting Justice. If the convicting Justice make no return of any kind, he leaves the Court without information of the fact that there has been a conviction. If the appeal be abandoned, the Court of Sessions would not be in possession of the information that a conviction had taken place, and so would not have the means of calling the Justice to account, in case he afterwards levied the fine and made no return of it.

Where a Justice of the Peace committed and fined the plaintiff for carrying away some cordwood, and, after notice of appeal, the prosecutor, finding that the conviction was improper, went to the Justice, who drew out for him a notice of discontinuance, which was served on the person acting as attorney for the plaintiff, before the then next Court of Sessions, and the Justice made a general return to that Court, including this and another conviction, but ran his pen through the entry of this conviction, leaving, however, the entry quite legible; and made a memorandum at the end of it as follows, "this case withdrawn by plaintiff," the return was held sufficient.—*Ball q. t. v. Fraser*, 18 U. C. Q. B. 100. The facts of this case, it will be observed, so far from disclosing neglect or refusal, shew that the Justice did, under the circumstances, all that he could do to comply with the statute; and it would be well for every Justice, when in a state of perplexity, to follow his example. The courts will not allow a public officer, such as a Justice of the Peace, to be vexatiously sued or needlessly harassed. When it appears that every thing was done that, under the circumstances of the particular case, could be done to comply with the provisions of the statute, the Justice may rely upon receiving all necessary protection against vexation or oppression.

In each return, a Justice may include as many convictions as have, up to the time of the making of the return, been had before him; but for every conviction omitted from the return, he is liable to be sued for the penalty.

Where a Justice at the same time convicted three persons severally, and neglected to make a return of the convictions, he was held liable to a fine of eighty dollars for each one of the three convictions.—*Donagh q. t. v. Longworth*, 8 U. C. C. P. 437. So in the event of habitual neglect, it may become a matter of most serious consequence. Some Magistrates, in the course of three months, make as many as twelve convictions, and, in the event of neglect to make the requisite return to the next Court of General Quarter Sessions, such a Magistrate would be liable to a penalty of \$960! It is to be hoped that these remarks will not be without due effect upon the many Magistrates who, by their inexcusable neglect of plain and known duty, daily lay themselves open to be mulcted almost to ruin.

Another remark, and we have done. It is this: in the case of a conviction by two or more Justices of the Peace, it is the duty of each and all to make the return. By this we mean that though only one return is required, each Justice is liable to a penalty of eighty dollars if that return be neglected. Thus: if three Justices convict of an offence, and no return be made, the penalty, instead of being only \$80, would be \$240, or \$80 from each.—*Metcalf q. t. v. Reeve & Gardner*, 9 U. C. Q. B. 263. The moiety of the penalty is given to any person, that is, to the first person who shall sue for the same. The Justice is not liable to be sued by two or more persons for one and the same penalty. If, however, the person who first sues does so without any intention of proceeding to judgment, so as to collect the penalty, but in fact to protect the Magistrate from being sued by other parties for the same cause, such device will not be allowed to succeed.—*Kelly q. t. v. Cowan*, 18 U. C. Q. B. 104."

COUNTY CROWN ATTORNEYS.—THEIR RELATIONS TO JUSTICES OF THE PEACE.

Although designated in the act as "County Attorneys," these functionaries are not *County Attorneys* as the term might ordinarily import, and as by some they are erroneously supposed to be, but "*Crown Attorneys*," or "*Local Crown Prosecutors*" for their respective counties.

Crown Attorneys can only advise in criminal offences, upon statement in writing.

They are authorised, therefore, only to advise Magistrates in *criminal* offences at certain stages.

"If by any Justice of the Peace, requested in *writing*, containing a statement of the particular case, he (the Crown Attorney) shall advise and instruct such Magistrate in respect to *criminal* offences brought before him for preliminary investigation or for adjudication."—20 V., c. 59, s. 5, (sub-sec. 6); Con. Stats. U. C., c. 106, s. 1, (sub-sec. 6), p. 949.

Not in quasi-civil cases.

In matters, therefore, of servant and master, apprentices and minors, tavern and shop licenses, hawkers and pedlars, municipal by-laws, &c., &c., indeed, in nearly all the cases mentioned hereinbefore, where the law has simply extended to the Magistrate a *civil* jurisdiction, the County Crown Attorney is not authorised by the statute officially to advise, and cannot, therefore, be officially applied to. In such cases the party interested must, if he so desires, seek advice at his own expense; the County Crown Attorney being at the same time equally eligible to be advised with, in his private capacity, as any other solicitor.

By the statute, neither the County Crown Attorney, nor his partner, can act in the defence of persons charged with *criminal* offences.—20 V., c. 59, s. 4; Con. Stats. U. C., c. 37, s. 4, p. 427. This is the only disqualification created by the act; in all things else they are entitled to practise as fully as the remainder of the profession.

It must, therefore, not be deemed a want of courtesy on the part of the Crown Attorneys, should any communication on non-criminal subjects not meet with a satisfactory response. The advice sought might, indeed, in many instances be more readily, and in fewer words given, than the explanation of the reasons why not given; but the Crown Attorney cannot interfere in matters respecting which the Legislature has given him no authority, and by doing which an undue authenticity and weight might, perchance, be erroneously lent.

In matters, however, coming within the clause above quoted, the Crown Attorney is bound to advise, and is responsible for the advice given.

Immediately upon the conclusion of any indictable proceeding before a Justice, he should, *without delay*, deliver all informations, depositions, statements of the prisoner and recognizances, to the Crown Attorney.—J. P.'s immediately to return original informations, &c., to C. A.'s
20 V., c. 59, s. 11; Con. Stats. U. C., c. 106, s. 9, p. 950; Con. Stats. C., c. 102, s. 39, p. 1052. By this is meant the *original* informations and papers as taken, and not *copies*, as erroneously supposed by some. And the statutes are very imperative upon the point of immediate delivery to the Crown Attorney.

INTERFERENCE OF JUSTICES WITH EACH OTHER.—PETTY SESSIONS RECOMMENDED.

Although of very rare occurrence, yet questions have arisen in this Province, as to the right of interference by any other Justice or Justices with the one before whom a proceeding may have been initiated. It is to be observed that all Magistrates have equal powers, and no legal boundaries seem to have been prescribed as to the interference of the one with the duties and proceedings of the other.

Should an improper interference, however, at any

time unhappily occur, it could only be looked upon as extremely impolitic and indecorous, tending to the obstruction of the ends of justice, and to the bringing of justice itself into contumely and contempt.

Amongst a Magistracy, however, as in Upper Canada, characterised by the existence of gentlemanly and patriotic feelings, it is not too sanguine an anticipation that such dangerous, unseemly and discourteous collisions will but rarely, or *except* unwittingly, occur. But, it should be observed, that in one instance, that is to say, *after* a case has been heard and *determined*, the law provides that any one Justice, although *not* the convicting Justice or *one* of the convicting Justices, *may* issue all warrants of distress or commitment.—16 V., c. 178, s. 25; Con. Stats. C., c. 103, ss. 72, 73, p. 1099.

In order to bring about a proper unanimity of action, and feeling of responsibility amongst that most highly important and useful body—the Magistracy of the land, the establishment of Petty Sessions in each Township, or such other defined locality and at such stated periods as may be most convenient, is beginning to be looked upon as of great convenience and expediency; more particularly in consequence of the many summary powers which have been of late years so frequently confided by statute to Magistrates, and the other grave subjects from time to time requiring their attention.

Petty (or *petit*) *Sessions* is the meeting of two or more Justices in the same place for the execution of some power vested in them by law. That in “the multitude of counsel there is wisdom,” is no less an old than true axiom. It will no doubt, therefore, readily suggest itself to the Magistrate to what extent his mind may be relieved, and his onerous duties rendered pleasanter, by the opportunity of consultation with his brothers in the Commission.

More especially in cases to which, although not intricate in themselves, yet perhaps local circumstances of existing or apprehended prejudice attach an imaginary importance, which render them more fit to be discussed in the

presence of several Magistrates, in order that the administration of justice may not only be impartial, but beyond suspicion.

And although any one Justice may have initiated the proceeding, yet here the majority of the bench, as it is right should be the case, will govern the decision.

A clerk to Justices in Petty Sessions, if one appointed, holds his office during pleasure, and may be at any time summarily dismissed by any one of them, without cause assigned.—Dickenson's Qu. Sessions, p. 14, (note R).

MAGISTRATES AND NATURALIZATION OF ALIENS.

The duties of Magistrates in relation to the above subject are fully set forth in 12 V., c. 197, ss. 4, 5, & 11, or 22 V. c. 1 all in Con. Stats. C. c., 8, s. 238, pp. 154, 155, 156, 157; Keele, 4th ed. p. 21. The proceedings are initiated by the applicant before a Justice, and completed on his handing in the papers obtained from the Justice, either to the Court of General Quarter Sessions, (by leaving with the Clerk of the Peace,) or the Recorder's Court, (by leaving with the Clerk thereof,) (*as the case may be,*) on or before the first day of some general sitting of those courts.

MAGISTRATES, AND APPEALS FROM THEIR DECISION IN CASES OF SUMMARY CONVICTION

There appears to be an opinion prevalent with some that it is incumbent upon the Justice to prepare the bond and papers necessary to the completion of an appeal from his decision to the Quarter Sessions. This idea is entirely erroneous, there being no such incumbency, except indeed what may arise from the good will and kind consideration of the Justice.

It is the duty of the person who thinks himself aggrieved to have his papers properly prepared and handed in, in due season.

The *bond* to prosecute the appeal, (unless the party remains in custody,) and the written *notice* to the opposite party are *absolute conditions precedent* to the sustaining, in fact to even the entertaining, of the appeal; to be completed within three days after the conviction in cases under 4 & 5 V., c. 25, s. 65; c. 26, s. 38; c. 27, s. 33; Con. Stats. C. c. 99, s. 117, p. 1034. Within four days, in any matter cognizable by such Justice "*not being a crime*," 13 & 14 V., c. 54, Con. Stats., U. C., c. 114, p. 963.

The bond with two sufficient sureties may be entered into before *any* Justice, but it is more usual to do so before the Justice acting in the case.

SUPPORT OF ILLEGITIMATE CHILDREN.

The father of an illegitimate child is liable for necessities, provided the mother makes a certain affidavit before some Justice of the peace either during pregnancy or within six months after the birth of the child. This affidavit called an "*Oath of Affiliation*," is to be deposited within the time aforesaid, in the office of the Clerk of the Peace of the County, or Clerk of the Council of the City, as case may be.

A Justice therefore upon being applied to has simply to administer the oath in the usual way, if already drawn.

If not already drawn and a Justice in rural parts, where perhaps no one else can be readily resorted to, is required to draw as well as administer the oath: the following form is suggested as proper and safe, under the statute 7 Wm. IV., c. 8, s. 4, Con. Stats. U. C., c. 77, ss. 4, 5, & 6, p. 805:

CANADA.

County of	}	I, Jane Tompkins, of
(one of the United Counties,) &c., to wit:		the township of
		in the county of

one of the united counties of _____, aforesaid, *spinster*, (or) *unmarried woman*, do make oath and say:—

1st. That I am now pregnant and sick with an illegitimate child, and expect to be delivered thereof in about _____ months hence; (or that "I was on or about the _____ day of _____, last past, _____ delivered of an illegitimate *male* or *female* child.)

2nd. I do further declare, make oath and say, that A. B., of the said township of _____, (or as the case may be) Farmer, &c., (describing his occupation, or if a minor, or not in any known occupation, may describe him as A. B., son of A. B., the elder, of &c., &c.) is *really* the father of the said child of which I so expect to be delivered as aforesaid; or (of which I have been so delivered as aforesaid.)

Voluntarily sworn before me, } (*Signature or mark*
at _____ in the county of _____, } *of*
this day of, _____ A.D. 1860.* } *deponent.*)
J. P.

COMPELLING ATTENDANCE OF WITNESSES.

The law gives ample power to the Justice to compel the attendance and evidence of material witnesses, and for their punishment, if contumacious when in attendance. And although a *summons* is usually issued in the first instance, yet a *warrant* may likewise issue in the first instance in certain cases.—See fully 16 V., c. 179, s. 8; Con. Stats. C., c. 102, ss. 26, 27, 28, 29, pp. 1048, 1049; 16 V., c. 178, s. 6; Con. Stats. C., c. 103, ss. 16, 17, 18, 19, pp. 1087, 1088.

Witness refusing to enter into recognizance to prosecute and give evidence, or to give evidence, may be committed by Justice until after the trial of the accused

* If the deponent is illiterate, after the words "1860," add, "And I do hereby certify that the above affidavit was read over to the deponent, who seemed perfectly to understand the same, and made her mark thereto in my presence."

party, unless in the meantime he enters into such recognizance before a Justice.—16 V., c. 179, s. 12; Con. Stats. C., c. 102, s. 40, p. 1052.

This means a *refusal* to enter into his *own* recognizance, and not an inability to procure some other person to join in such recognizance with him; his *own* recognizance is all that can or ought to be required.

A *married woman*, however, is incapable of entering into a recognizance; but if, when before the Justice, she altogether refuses to appear at the trial, and to find sureties for such appearance, when such appearance is essential to the conviction of an offender, she may be committed.—*Bennett v. Watson*, 3 M. & S. 1. The usual course is to bind over her husband or other competent person as surety for her appearance. *Infancy* seems no objection to being thus bound.—*Exp. Williams*, McClell., 493; 13 Price, 670; Dickenson's Q. S., 140.

CONSTABLES.—APPOINTMENT OF.

The Court of General Quarter Sessions of the Peace, at their sittings in the month of March in each year, shall nominate a High Constable and Constables, who are, before entering upon office, to take the following oath before any Justice of the Peace: "You shall well and truly serve our Sovereign Lady the Queen in the office of (High Constable or Constable), for the (United Counties of York and Peel), for the year ensuing, to the best of your skill and knowledge.—So help you God.

Sworn before me _____ at the (Township of _____), in the said (United) Count _____, on the _____ day of _____ one thousand eight hundred and sixty _____.

A. B., J. P."

20 V., c. 58, s. 16; Con. Stats. U. C., c. 17, s. 10, p. 117.

SPECIAL CONSTABLES.—APPOINTMENT OF.

Any two Justices may appoint, in certain cases of threatened or existing riot, apprehension of felony, &c. Householders and other persons not exempt from serving the office of constable, to be appointed. Oath of office. Notice to Provincial Secretary. Justices in sessions to make regulations as to. Penalty for refusing to attend to be sworn; or for refusing to act, obey orders, &c.—10 & 11 V., c. 12; Con. Stats. C., c. 104, p. 1133; Keele, 4th Ed. 186.

 THE ASSIZES.

The Assizes, Oyer and Terminer, and General Gaol Delivery. In the United Counties of York and Peel, the sittings of this the superior criminal tribunal are fixed by statute to be held *three* times a year, commencing on Thursday next after holding the municipal elections in January, on the second Monday in April, and the second Monday in October. In other counties *twice* a year, in spring and fall, at periods fixed by the judges in the term preceding.—20 V., c. 57, s. 30; Con. Stats. U. C., c. 11, s. 1, p. 41.

 RECORDER'S COURT.

In cities where established there are four sittings of this court every year, commencing respectively on the second Monday in January, and on the first Monday in the Months of April, July and November.

 COURTS OF GENERAL QUARTER SESSIONS.

There are four sittings of the Courts of General
F

Quarter Sessions of the Peace in each county or union of counties in Upper Canada, commencing respectively on the second Tuesday in the months of March, June, September and December in each year.—20 V., c. 58, s. 16; Con. Stats. U. C., c. 17, s. 3, p. 116.

JUSTICES SHOULD COMMIT, &c., TO FIRST COURT OF COMPETENT CRIMINAL JURISDICTION.

A great and perhaps deserved outcry having arisen in reference to the duration of the several courts of Assize, and the hardship endured by suitors, jurors, witnesses, &c., by a protracted attendance thereat, every one connected with the administration of criminal justice should be desirous to aid, as far as in his power, in an abatement of the evil.

The Magistrate's part then, of this desirable work, is to keep before his mind the periods of sitting of the Court of Quarter Sessions, (see p. 41 ante,) and if they are found to occur before a sittings of Assize, to be careful to commit or hold to bail, as case may be, at all events in all cases not of an extraordinary or complex nature, to the then *next* ensuing Sessions, (or in cities to the *Recorder's* Court). Justices should bind over to *next* court of competent criminal jurisdiction.—16 V., c. 179, s. 12; Con. Stats. C., c. 102, s. 37, p. 1051. Should, however, by any mistake in the calculation, a sittings of Assize intervene, no possible wrong can be done, as that court being a General Gaol Delivery, the matter would of course be taken up and disposed of there. And although no matter to what court committed, the County Crown Attorney has the control of its disposal, yet it would better conduce to a good understanding amongst all parties, and a prevention perhaps of some misapprehension and confusion were the Magistrate to commit at once to the local criminal court, *i. e.*,

to the Quarter Sessions (or Recorder's Court) having jurisdiction, if it first happens.

Upon the mere question of jurisdiction of the Quarter Sessions (the Recorder's Court possessing the same, Jurisdiction of the Quarter Sessions.), it would seem that in this country that court has jurisdiction although not usual, nor as yet perhaps politic to exercise it in cases of difficulty and importance, over every crime, except perjury and forgery.

The law is with us as it stood in England *before* 5 & 6 V., c. 38, passed there the 30th June, 1842, intituled, "An Act defining jurisdiction of Justices in Sessions." Prior to this the jurisdiction of the court arose from the Commission of the Peace itself, as settled under 18 Ed. 3, c. 2, and 34 Ed. 3, c. 1, and from the express provisions of numerous statutes.

By their Commission, Justices in Session are directed to hear and determine, *inter alia*, "All felonies, trespasses, and all such other crimes and offences of which said Justices may or ought lawfully to enquire."

Before the 30th June, 1842, in England, they had power under the term "*felonies*" to try all capital felonies, *e. g.*, murder, although not specially named. (a) The word "felony," in an ancient act (*e. g.* Mag. ch. ch. 22) means all manner of "*felonies*" punished by death, and not petty larceny, which is, notwithstanding, a "felony."—2 Inst. 37. Felony, *ex vi termini significat quodlibet capitale, cumen felleo animo perpetratum.*—Co. Litt. 391 *a*. In practice it now applies to all offences ranging between treason and misdemeanors.

But they were held to have no jurisdiction over forgery, nor perjury where prosecuted at common law.—Dickenson's Q. S., 6 Ed. 156, 157 and notes.

The term "*trespasses*" includes all "*misdemeanors*," *ibid.* 157 and notes, which are triable as of course at the Quarter Sessions, unless the jurisdiction is specially taken away by statute. Thus the various misdemeanors

(a) Hawk. B. 2, c. 8, s. 33.

created in our statutes 22 V., c. 2, ss. 1, 2, 3, 4, 5, 6, 7, 8, 9; 22 V., c. 33, s. 16; all in Con. Stats. C., c. 92, ss. 51, & seq. p. 973,4,5, being the act relating to frauds by servants, trustees, bankers, agents, &c., are declared by s. 15 of 22 V., and s. 66 of Con. Stats. C., c. 92, *not* triable at any Quarter Sessions.

Upon this subject of jurisdiction is here inserted a communication embodying an opinion of the Hon. John A. Macdonald, Attorney-General for Upper Canada.

CROWN LAW DEPARTMENT, }
UPPER CANADA, }

Toronto, 5th July, 1859.

SIR—I have the honour by desire of the Attorney-General of Upper Canada, to acknowledge your letter of yesterday's date, transmitting one from Mr. Recorder Duggan as to the jurisdiction of the Recorder's Court in capital cases of felony, and awarding capital punishment therefor.

I am in reply to inform you that although the jurisdiction of the court may not be open to question, yet that the Attorney-General is of opinion that at present, and until the introduction of a new practice throughout Upper Canada, the trial of capital felonies should be reserved for the Assizes.

I am to request that you will communicate this letter to the Recorder.

I have the honour to be, Sir,

Your obedient Servant,

H. BERNARD.

R. DEMPSEY, Esq.,

County Crown Attorney, &c.

COSTS.

The Magistrate is entitled to charge the legal costs in all cases punishable by summary jurisdiction, but he *cannot* charge or receive any fees in cases of felony.

The constable's charges in cases of felony are payable by the Province, by account rendered to the County Treasurer as hereinafter stated.

It is usual and is deemed necessary to prevent frivolous complaints, for the Magistrate, in all cases where he is allowed to charge fees to require the preliminary expenses to be paid by the complainant, to wit, *fifty cents* for the information and warrant or summons, which is afterwards returned to the complainant upon the conviction and payment of the same by the accused.

In cases of summary jurisdiction where the complainant fails to sustain his charge, and the case is dismissed by the Magistrate, the complainant must pay all costs if so ordered, and he may in default of distress be committed by the Magistrate for any period not exceeding one month.—16 V., c. 178, ss. 17, 22, Con. Stats. C. c. 103, ss. 54, 64, pp. 1095,8.

The defendant cannot be charged with costs except in cases of conviction. A magistrate, therefore, cannot dismiss a charge and require the accused to pay the costs. It is usual, however, for the magistrate in cases of ordinary assaults, petty trespasses, &c., to allow the parties (after complaint has been lodged) to settle the matter between them if they desire it on payment of the costs already incurred.

In cases where articles of the peace are exhibited against a person requiring said person to give sureties for the peace and good behaviour, the accused may be arrested as already stated and held to bail without any evidence being adduced in proof of the charge. In these cases the usual practice is for the magistrate to require the complainant to pay the costs of the information and warrant and the defendant to pay the subsequent expenses.

TABLE OF MAGISTRATE'S FEES.

The following fees, and no others, shall be taken by

Justices of the Peace in Upper Canada, or by their clerks, for the duties and services hereafter mentioned, that is to say, 14 & 15 V., c. 119, s. 2; Con. Stats. U. C. c. 119, s. 11, p. 973.

For an information and warrant for apprehension, or for an information and summons for assault, trespass or other misdemeanor	0.50
For each copy of summons to be served on de- fendant or defendants.....	0.10
For a subpoena, only one on each side being charged for in each case, and which may con- tain any number of names; and if the justice of the case requires it, additional subpoenas shall be issued without charge.....	0.10
For every recognizance, only one to be charged in each case.....	0.25
For every certificate of recognizance under the act respecting estreats.....	0.25
For information and warrant for surety of the peace for good behaviour to be paid by com- plainant.....	0.50
For warrant of commitment for default of surety to keep peace or good behaviour, to be paid by complainant.....	0.50
The costs to be charged in all cases of convictions where the fees are not expressly prescribed by any statute shall be as follows: that is to say—14 & 15 V., c. 119, s. 3; Con. Stats. U. C., c. 119, s. 12, p. 974.	
For information and warrant for apprehension and summons for service.....	0.50
For every copy of summons to be served upon defendant or defendants	0.10
For every subpoena to a witness (as provided in the eleventh section of this act).....	0.10
For hearing and determining the case	0.50
For warrant to levy penalty	0.25
For making up every record of conviction when the same is ordered to be returned to the ses- sions or on certiorari	1.00

For copy of any other paper connected with any trial, and the minutes of the same if demanded, every folio of one hundred words.....	0.10
Provided always, that in all such cases as admit of a summary proceeding before a single Justice of the Peace, and wherein no higher penalty than \$20 can be imposed <i>there shall be charged only</i> (Con. Stats. U. C. <i>ibid.</i> , s. 13, p. 974), for the conviction.....	0.50
And for the warrant to levy the penalty.....	0.25
Every bill of costs when demanded, to be made out in detail, (<i>ibid.</i> , s. 14.).....	0.10
No fees are allowed to the Justice in cases of <i>felony</i> .	

WITNESS' FEES.

In all cases where persons are *subpoenaed* to give evidence before Justices, in cases of assault, trespass or misdemeanor, such witness shall be entitled, in the discretion of the Magistrate, to receive for every day's attendance, where the distance travelled in coming to, and returning from, such adjudication does not exceed 10 miles 0.50
 And for each mile above 10..... 0.05
Ibid., s. 13, p. 974.

The act does not authorise any claim being made by Justices for fees of any description connected with cases *above* the degree of *misdemeanor*. Nor shall *witnesses* in cases above such degree be allowed any thing for their attendance on trial, except under the order of the *court* before which the trial of the case is had. *Ibid.*, s. 15, p. 974.

TARIFF OF CONSTABLES' FEES.

Tariff of fees to be taken by county constables, estab-

by their
 mentioned,
 stats. U.
 .
 . 0.50
 . 0.10
 .
 . 0.10
 . 0.25
 . 0.25
 . 0.50
 . 0.50
 convictions
 by any
 & 15 V.,
 974.
 . 0.50
 . 0.10
 . 0.10
 . 0.50
 . 0.25
 . 1.00

lished by the judges, under and by virtue of 8 V., c. 38, Con. Stats. U. C., c. 119, p. 971.

This does not include costs of levying distresses for small rents and penalties, which is settled by statute 1 V., c. 16, Con. Stats. U. C., c. 123, p. 982, for which see ante page 15.

Arrest of each individual upon a warrant, (to be paid out of the public funds, or by the party, according to the nature of the case)	\$1.00
Serving Summons or Subpœna, (to be paid out of the public funds or by the party).....	0.25
Mileage in going to serve Summons, Subpœna, or warrant, per mile (to be paid out of the Public Funds or by the party, as the case may be).....	0.10
Attending Assizes or Sessions, per day	1.00
Attending any Justice on trials under the Summary Punishment Acts, or on the examination of prisoners charged with any crime, for each day necessarily employed	1.00
Mileage in going to serve summons or warrant, where the service has not been effected, due diligence having been used, (to be paid out of the public funds, or by the party, as the case may be).....	0.10
Taking prisoners to gaol, per mile, exclusive of disbursements necessarily expended in their conveyance, (to be paid out of the public funds, or by the party as the case may be)	0.07
Summoning jury for coroner's inquest, (public funds)	2.00
Attending inquest, for each day other than the first, do.	1.00
Serving notice of appointment of constables, when personally served, (public funds)..	0.50
Levying upon distress warrant, and returning the same, when charge not provided by law, (by party)	1.00

Advertising and selling under distress warrant,
when charge not provided by law, (by party) 1.00

Travelling to make distress, or to search for
goods to make distress, when no goods are
found, per mile—where charge is not other-
wise provided by law, (payable by county
or party) 0.07

Appraisement, whether by one appraiser or more,
four-pence in the pound on the value of the
goods, (to be paid by the party) 0.07

All accounts for services connected with the adminis-
tration of criminal justice (as in felonies of all classes)
are examined, audited, and allowed quarterly, by a board
of audit, appointed by the government in each county,
instead of being so passed (as they were previous to the
year 1846) by the Justices in session.

Constables, therefore, having claims against counties
for services performed by them relating to the adminis-
tration of criminal justice, are required to render their
accounts (particularly describing in them the nature of
the offence with which the party was charged) to the
COUNTY TREASURER, in conformity with the regulations
adopted by His Excellency the Governor-General in
Council; an extract from which follows, viz:—

“ That all accounts for the payment of which, or any
part of which the province is by act liable, shall be ren-
dered in **DUPLICATE** to the *Treasurer* of each county during
the sittings of the Court of Quarter Sessions, or within
three days thereafter, and shall include all the demands
of the party rendering the same, (payable as aforesaid
by the province,) and refer to the authority of the charge.

“ That such account, before rendered to the Treasurer,
shall be verified by the oath of the party, that it is just
and correct, to the best of his knowledge and belief.
And in cases where mileage is charged, there shall be an
affidavit stating the places to which and from which the
mileage is reckoned, as well as the number of miles; and
that in no case shall more than the actual number of

miles travelled be allowed, nor a greater number of miles than the distance from the court house to the place of service."

Each account must also be verified by a certificate of the Magistrate under whose authority the services were performed.

Constables are distinctly to understand that, as a general rule, their expenses will be paid from the public funds under the above regulations, in cases of *felony* only.

In all cases of *misdemeanor*, such as assault and battery, trespass, non-performance of statute labour and the like, the constable's fees must be paid by the defendant, if convicted, or by the complainant, if the case be dismissed; and in ordinary cases of *misdemeanor*, the magistrate may order the constable's fees to be paid, in the first instance, by the complainant, to be returned upon conviction and payment by the accused, and a constable may refuse to act in such cases unless his expenses be so paid, *though* if the Magistrate, from any peculiarity in the case, should *order* the constable to perform the duty without payment of his expenses, he cannot legally refuse.

There is one instance, however, in which constables may obtain their lawful fees from the county funds, in case of *misdemeanor*, namely, where a party has been convicted of *misdemeanor*, ordered to pay a fine and costs, and committed to gaol in default thereof. In such cases the constable must send in his account to OFFICE OF THE CLERK OF THE PEACE, stating fully the particulars of each case, and have appended thereto a certificate of the Magistrate under whom he acted, vouching for the justness and correctness of the account, and that the party convicted had *no goods or chattels*, out of which the fine and costs could be made.

FORM OF COMMISSION OF THE PEACE.

“[L. S.] EDMUND HEAD:

PROVINCE OF CANADA.

Victoria, by the Grace of God, of the United King-

dom of Great Britain and Ireland, Queen, Defender of the Faith, &c., &c., &c.

To, &c., &c. :—

Know ye, that we have assigned you jointly and severally and every one of you our Justices to keep the peace in our said Count of , in our said Province of Canada, and to keep and to cause to be kept all ordinances and statutes for the good of the peace and for the preservation of the same, and for the quiet rule and government of our people, made in all and singular their articles in our said Count according to the force, form and effect of the same, and to chastise and punish all persons that offend against the form of those ordinances and statutes, or any one of them, in the aforesaid Count , as it ought to be done according to the form of those ordinances and statutes, and to cause to come before you or any one of you, all those who to any one or more of our people concerning their bodies, or the firing of their houses have used threats, and to find sufficient security for the peace or their good behaviour towards us and our people, and if they shall refuse to find such security, then them in our prisons until they shall find such security, to cause to be safely kept. We have also assigned you and every two or more of you, our Justices, to inquire more fully the truth by the oaths of good and lawful men of the Count aforesaid, by whom the truth of the matter may be the better known and inquired of all and all manner of felonies, poisonings, trespassings, regratings, engrossings and extortions whatsoever, and of all and singular the crimes and offences of which the Justices of the Peace may or ought lawfully to inquire by whomsoever, and after what manner soever in the said Count had, done, or perpetrated, or which hereafter shall there happen to be done or attempted; and also of all those who in the aforesaid Count in companies against our peace in disturbance of our people with armed force

have gone or rode, or who hereafter shall presume to go or ride; and also all of those who shall have there lain in wait, or hereafter shall presume to lie in wait to maim or cut, or kill our people; and also of all victuallers and all and singular other persons who in the abuse of weights and measures, or selling victuals against the form of the ordinances and statutes, or any one of them therof made for the common benefit of our people of our said Province have offended or attempted, or hereafter shall presume in our said Count to offend or attempt; and also of all sheriffs, bailiffs, constables, stewards, keepers of gaols, and other officers, who in the execution of their offices about the premises, or any of them have unduly behaved themselves, or hereafter shall presume to behave themselves unduly, or have been, or hereafter shall happen to be careless, remiss or negligent in our aforesaid Count; and of all and singular articles and circumstances and all other things whatsoever that concern the premises, or any of them, by whomsoever and after what manner soever in our aforesaid Count done or perpetrated, or which hereafter shall happen to be done or attempted in what manner soever; and to inspect all indictments whatsoever so before you or any of you taken, or to be taken, or before others late our Justices of the Peace in our aforesaid Count made or taken and not yet determined, and to make and continue process thereupon against all and singular the persons so indicted, or who before you hereafter shall happen to be indicted until they can be taken, surrender themselves, or be outlawed; and to hear and determine all and singular the felonies, poisonings, trespasses, forestallings, regratings, engrossings, extortions, unlawful assemblies, indictments aforesaid, and all and singular other the premises, according to the laws and statutes aforesaid, as it has been accustomed, or ought to be done, and the same offenders for their offences aforesaid, by fines, ransoms, amerciaments, forfeitures or other

means according to the law and custom of that part of our said province called Upper Canada, and form of the ordinances and statutes aforesaid to chastise and punish.

Provided always that if a case of difficulty upon a determination of any of the premises before you, or any two or more of you, should happen to arise, then let judgment in nowise be given before you or any two or more of you, unless in the presence of one of our Justices of our Court of Queen's Bench, or one of our Justices of our Court of Common Pleas, or one of our Justices appointed to hold the Assizes in the said

Count . And therefore we command you and every of you that to keeping the peace, ordinances and statutes, and all and singular the premises you diligently apply yourselves, and that at certain days and places which you or any two or more of you as is aforesaid shall appoint, into the premises you make enquiries and all and singular the premises hear and determine, and perform and fulfil them in the aforesaid form, doing therein what to justice appertains according to the law and custom of that part of our said province called Upper Canada ; saving to us our amerciements, and other things to us thereunto belonging. For we have commanded and do hereby command our Sheriff of our said Count , that at certain days and places which you or any such two or more of you as is aforesaid to him shall make known, he cause to come before you or any such two or more of you as is aforesaid, such and so many good and lawful men of his Count by whom the truth of the matter in the premises shall be the better known and enquired into.

In testimony whereof we have caused these our letters to be made patent, and the great seal of our said province to be hereunto affixed ; witness our right trusty and well beloved, the Right Honorable Sir Edmund Walker Head, Baronet, one of our most Honourable Privy Council, Governor-General of British North America, and Captain-General and Governor-in-Chief in and

over our provinces of Canada, Nova Scotia, New Brunswick, and the Island of Prince Edward, and Vice-Admiral of the same, &c., &c., &c., at Toronto, this seventeenth day of February, in the year of our Lord one thousand eight hundred and fifty-nine, and in the twenty-second year of our reign."

By command.

C. ALLEYN,
Secretary.

The commission as above, under the Great Seal, includes all the names of those intended to be thus honoured by her Majesty, and is transmitted to the department of the Clerk of the Peace for the county, and there filed of record.

JUSTICE'S OATH OF PROPERTY QUALIFICATION.

United Counties of _____ *to wit:*

CANADA.

I, _____ of the _____, in the United Counties of _____, do swear that I truly and bonâ fide, have to and for my own proper use and benefit such an estate in lands and tenements, (being composed of _____,) as doth qualify me to act as Justice of the Peace for the said United Counties of _____, according to the true intent and meaning of an Act of Provincial Parliament, made in the sixth year of the reign of Her Majesty Queen Victoria, and intituled, "an Act for the Qualification of Justices of the Peace,"(a) and that the same is lying and being within the _____ aforesaid.—*To help me God.*

(a) 6 V., c. 3, s. 3—Actual possession to and for his own use and benefit, a real estate either in free and common soccage, or *en fief*, or *en rotâre*, or *en franc alleu*, in absolute property, or for life, or by *emphyteose*, or lease for one or more lives, or *originally* created for a term not less than 21 years, or by usufructuary possession for his life in lands, tenements or other immovable property, lying and being in this Province, of or above the value of \$1,200, over and above what will satisfy and discharge all incumbrances affecting the same, and over and above all rents and charges payable out of, or affecting the same, &c.—Con. Stats. C., c. 100, s. 3, p. 1038.

Sworn before me, at the _____ of _____,
 in the said United Counties of _____ this
 day of _____, A.D. _____,

J. P.

MAGISTRATE'S ROLL.—JUSTICE'S OATHS OF OFFICE.

Under the general commission dated _____ for
 the count of _____,

“ *You shall swear*, that as Justice of the Peace for the
 Count of _____ of the Province of Cana-
 da, in all articles of the Queen's commission to you
 directed, you shall do equal right to the poor and the
 rich, after your cunning wit and power, and after the
 laws and customs of the realm, and statutes thereof
 made; and ye shall not be of council of any quarrel
 hanging before you; and that you hold your sessions
 after the form of the statutes thereof made; and that
 the issues, fines, and amerciaments that shall happen to
 be made, and all forfeitures which shall fall before you,
 ye shall cause to be enforced, without any concealment or
 embezzlement, and truly send them to the *Queen's*
Exchequer. Ye shall not let for gift, or other cause,
 but well and truly ye shall do your office of Justice of
 the Peace in that behalf, and that ye shall take nothing
 for your office of Justice of the Peace to be done but of the
 Queen and fees accustomed and costs limited by statute;
 and ye shall not direct or cause to be directed any
 warrant by you to be made, to the parties, but ye shall
 direct them to the *bailiff* of the said _____ Count _____,
 or other the Queen's officers or ministers, or other inde-
 pendent persons to do execution thereof.”—*So help you*
God.

OATH OF ALLEGIANCE.

“ *You do sincerely promise and swear that you will be*
 faithful and bear true allegiance to *Her Majesty Queen*
Victoria, as lawful sovereign of the United Kingdom of

Great Britain and Ireland, and of this Province depending on, and belonging to, the said kingdom, and that you will defend *Her* to the utmost of your power against all traitorous conspiracies or attempts whatsoever which shall be made against her person, crown or dignity ; and that you will do your utmost endeavours to disclose and make known to *Her Majesty*, her heirs and successors, all treasons and traitorous conspiracies and attempts which you shall know to be against her, or any of them. And all this you do swear, without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any person or power to the contrary.—*So help you God.*”

No.	Signature.	Date of oath.	Place of Residence.	By whom sworn.
-----	------------	---------------	---------------------	----------------

JUSTICES OF THE PEACE—WHO ARE.

Justices of the Peace may be divided into two classes, namely, those who are thus appointed, and whose names should appear on the roll, and those who are so for the time being, merely, *virtute officii*. Of this latter class are 22 V., c. 54, Con. Stats. U. C., p. 637.

362. The head of every council, the aldermen of a city, the Justices of the Peace and the reeve of every town, and the deputy-reeve of every township, town and incorporated village, shall *ex officio* be Justices of the Peace for the whole county or union of counties in which their respective municipalities lie, and shall not be disqualified by being an attorney, solicitor or coroner.

363. Justices of the Peace for any town, shall have the same property qualifications and take the same oaths as other Justices of the Peace ; but no warden, mayor, recorder, police magistrate, alderman, reeve or deputy-reeve, after taking the oaths or making the declarations as such, shall require to have any property

qualification, or to take any further oath to enable him to act as a Justice of the Peace.

364. When a town has been erected into a city, and the council of the city duly organized, every commission of the peace theretofore issued for the town shall cease.

365. Justices of the Peace for a county in which a city lies, shall as such have no jurisdiction over offences committed in the city, and the warrants of county Justices shall require to be endorsed before being executed in a city in the same manner as required by law when to be executed in a separate county; but the general and adjourned Quarter Sessions of the Peace for the county may be held, and the jurisdiction thereof exercised, within the city.

366. Nothing herein contained shall limit the power of the Governor to appoint, under the great seal of the province, any number of Justices of the Peace for a town, or shall interfere with the jurisdiction of Justices of the Peace for the county in which a town is situate over offences committed in the town, except only so far as respects offences against the by-laws of the town and penalties for refusal to accept office, or to make the declaration of office in the town, as to which jurisdiction shall be exercised exclusively by the Police Magistrate, or Mayor, or Justices of the Peace for the town.

367. The Mayor of any city or town may call out the posse to enforce the law within his municipality, should exigencies require it, but only under the same circumstances in which the sheriff of a county may now by law do so.

EXTRADITION OF CERTAIN CRIMINALS.— ASHBURTON TREATY.

The act, respecting the treaty between Her Majesty

and the United States of America, (the ratifications whereof were exchanged in London on the 30th day of October, 1842,) for the apprehension and surrender of certain offenders, provides for the mutual delivery up to justice, as therein set forth, of all persons charged with the seven following classes of crime, namely, murder, assault with intent to commit murder, piracy, arson, robbery, forgery, or the utterance of forged paper.—12 V., c. 19 ; Con. Stats. C., c. 89, p. 943.

TOLLS ON TURNPIKE ROADS—EXEMPTIONS FROM.

Persons going to or returning from Divine Service exempted from toll.

1. All persons going to or returning from Divine Service on any Sunday or obligatory holiday, in or upon and with their own carriages, horses or other beasts of draught, and also their families, and servants being in or upon and with such carriages, horses or other beasts of draught, shall pass toll-free through every turnpike or toll-gate, on any turnpike road, through which they may have occasion to pass, whether such turnpike road and the tolls thereon belong to the Province, or to any local or municipal authority, or body of trustees or commissioners for local purposes, or to any incorporated or unincorporated company, or to any other body or person.—7 V., c. 14, s. 2.

Vehicles—cattle, &c., crossing roads when a farm divided by the road—exempted from toll—when.

2. No vehicle laden or unladen, and no horses or cattle belonging to the proprietor or occupier of any lands divided by any turnpike road, shall be liable to toll on passing through any toll-gate on such road (at whatever distance the same may be from any city or town) for the sole purpose of going from one part of the lands of such proprietor or occupier to another part of the same ; provided such vehicle, horses or cattle do not proceed more than half a mile along such turnpike road, either in going or in returning, and for farming or domestic purposes only.—7 V., c. 14, s. 3.

3. Every vehicle laden solely with manure, brought from any city in Lower Canada, or any city or incorporated town in Upper Canada, and employed to carry the same into the country parts for the purposes of agriculture, and the horse or horses, or other beast of draught, drawing such vehicle, shall pass toll-free through every turnpike gate or toll-gate on any turnpike road within twenty miles of such city or town, as well as in going from such city or town, as returning thereto, if then empty.—7 V., c. 14, s. 1.

Vehicles, &c., laden with manure passing from cities and towns exempt from toll.

4. This act shall not extend to any toll-bridge, the tolls on which are vested in any party other than the Crown.—7 V., c. 14, s. 4; Con. Stats. C., c. 86, p. 938.

This act not to apply to bridges.

ARTICLES OF THE PEACE.

Recognizance for Keeping the Peace may be taken by a Single Justice for an indefinite Period.—It was once contended that a recognizance taken by a single Justice to keep the peace, or be of good behaviour, for any certain period, or for life, or without expressing any specific time, and without fixing any certain period for the offender's appearance, was not legal and sufficient; (a) but it appears on all hands to have been the ancient practice, (b) and is supported by the greatest authorities. (c) It is true that it has of late been the more usual, and is considered as the better way, except under very special circumstances, to bind the party against whom the peace is required, to keep the peace to the Queen and all her liege people, especially to the party claiming the security, for a period of, say six or twelve months. If the party refuses to be bound, it seems he may be committed to gaol till he shall comply, (d) or till the next session.

This right, however, in an individual Magistrate to require securities without restriction as to time, and the

(a) Even Hawkins speaks doubtfully, B. 1, c. 60; *R. v. Bowes*, 1 T. R. 696. (b) *Dalt.* c. 119; 2 *Haie*, c. 136. (c) 4 *Bla. Com.* 253. (d) 2 *Hawk.* c. 16, s. 2.

other circumstances above referred to, received the most decided confirmation from a decision of the Court of King's Bench, (a) in an action against the defendant, a Justice of the Peace for the County of Sussex, for falsely imprisoning the plaintiff under a warrant of commitment (on failure of finding sureties) to the house of correction, which directed the gaoler the plaintiff "safely to keep for the space of two years, unless he shall in the mean time find sureties, &c., for keeping the peace towards our lord the King, and all his liege people, and especially towards the party demanding sureties, for the space of two years from the date hereof." *Abbott, C. J.*, (with whom the other Judges concurred,) delivered his opinion to the following effect—

"The authority of a Justice of the Peace to require, upon due complaint made to him in his judicial character, sureties for the keeping of the peace, and to commit a person to prison for want of such sureties, is not, nor could it be, denied; but it is contended for the plaintiff, that surety can only be required for appearance at the next Session, and for keeping the peace in the mean time, &c.; whereas the warrant under which the plaintiff was committed, commands his imprisonment for two years, unless in the meantime he shall find sureties for two years from the date of the warrant. The arguments in support of the limited power of Justices to bind are principally founded upon stat. 3 H. VII., c. 1, at the close of which, after several enactments relating to the duty of coroners, &c., it is ordained that every Justice of the Peace who shall take any recognizance for the keeping of the peace, do certify, send, or bring the said recognizance to the next Session of the Peace, that so the party bound may be called, &c. But the authority of a Justice to take surety for the peace, existed long before this statute, and is derived from the Commission of the Peace, which appears to have had its origin in the statute 1 Ed. III., c. 16; the authority under which

(a) *Willis v. Bridger*, 2 B. & Ald. 278; 1 Chit. Rep. 273, S. C.

is more fully set forth in 34 Ed. III., c. 1, by which they are to have power to restrain offenders, to arrest and chastise them, and cause them to be imprisoned, &c., according to law; to arrest all that they *may find by indictment or suspicion*, and to put them in prison; and to take of *all them that be not of good fame, sufficient surety and mainprize* of their good behaviour towards the King and his people, &c. These two clauses are perfectly distinct; the former of them relating to persons charged with the actual commission of some offence, when the recognizance is only in the nature of bail to appear at the Session, and answer to any charge that may be preferred against them, and *in the meantime* to keep the peace; but the latter is for taking sureties for such time, and in such sum, as the Justice (in the exercise of a sound and legal, and not a wilful and arbitrary, discretion) shall think fit and proper." (a)

For what Cause to be granted.—By the Commission of the Peace, one or more Justices have power "to cause to come before them all those who, to any of the King's people concerning their bodies, or the firing of their houses, have used threats, to find sufficient security for the peace, or their good behaviour, towards the King and his people; and, if they shall refuse to find such security, to cause them in the King's prisons to be safely kept, until they shall find such security."

Fear of Corporal Hurt, or Burning the House of Applicant.—It seems clear that wherever a person has just cause to fear that another will burn his house, or do him a corporal hurt, or that he will procure others to do so, he may demand the surety of the peace against such person, and that every Justice of the Peace is bound to grant it, upon the party's giving him satisfaction upon oath that he is actually under such fear, and that he

(a) *R. v. Tregarthen*, 5 B. & Adol. 678; 2 Nev. & Man. 379.

has just cause to be so, and that he does not require it out of malice or vexation. (a)

Where demanded through Malice or Vexation.—But if the Justice shall perceive that surety is demanded merely of malice, or for vexation only, without any just cause of fear, it seems he may safely deny it; here, however, the Justice shall do well to persuade him, and to show him the danger of his oath which he is to take; but yet if he will not be persuaded, but will take his oath that he is in fear, where indeed he neither doth fear, nor hath cause to fear, this oath shall discharge the Justice, and the fault shall remain on such complainant.

If a man require the peace, merely because he is *at variance* or *in suit* with his neighbour, it shall not be granted. (b)

But this fact must appear directly from the declarations of the party, for otherwise the Justice, collecting such motives inferentially, will take on himself a responsibility not justified by the cases just cited.

Wife, Child, Servants, Goods, or Cattle.—All the authorities agree that fear lest another will hurt a man's servants, or his cattle, or goods, is not sufficient ground for requiring surety of the peace. But it is otherwise as to his *wife* or *child*, for he may crave the peace for their protection at the Justice's hands, by the words of the Commission, and the Justice ought to grant it. (c)

If the children be under the age of discretion, there can be no doubt respecting the parent's claim on the authority of the Justice for protection, on his (the father's) oath.

Pardon.—After the condition of a recognizance for keeping the peace is broken, the King may pardon the

(a) Hawk. B. 1, c. 60, s. 6. See *Reg. v. Dunn*, 12 Ad. & E. 599.

(b) Dalt. c. 116. (c) Dalt. c. 116.

forfeiture; but the King cannot release the condition before it is broken; because the person upon whose complaint the recognizance was entered into, has a kind of interest in the condition. (*)

Recognizances how and when may be Forfeited.—There is no doubt that the recognizances taken may be forfeited by any actual violence to the person of another, whether it be done by the party himself, or by others through his procurement, as manslaughter, rape, robbery, unlawful imprisonment, and the like. (a) And even by threatening to do any act of violence against another *in his presence*; and it is said, in *his absence* also, if accompanied by lying in wait to execute it; (b) but not by mere words of anger or abuse. (c)

And the Justices cannot in any case proceed against the party for a forfeiture of his recognizance, either in respect of his not appearing, or of his breaking the peace; but the recognizance itself, with the record, on default of appearance, ought to be removed into the Court of Queen's Bench, who shall proceed by *scire facias* upon such recognizance, and not by indictment. (d) And so it ought to be, if it be presented by the jury, or grand inquest, that the party hath forfeited his recognizance by breach of the peace. (e) Even where a party so bound is subsequently convicted at Petty Sessions of an assault, and the conviction is returned to the Quarter Sessions, the Justices there cannot order an estreat of the recognizance under 3 G. IV., c. 46, and the proceeding must be by *scire facias*, as before that statute. (f)

Costs of exhibiting Articles of the Peace.—The attorney for a wife who exhibits Articles of the Peace

(*) 1 Hawk. c. 60, s. 17.

(a) Hawk. B. 1, c. 60, s. 20. (b) *Id.* s. 21; *R. v. Mendez*, 1 Stra. 473. (c) Hawk. B. 1, c. 60, s. 22. (d) *Id.* s. 18. (e) Dalt. c. 119. (f) *Reg. v. Yorkshire (West Riding Justices, in re Thornton)*, 7 Ad. & E. 583; and an order of Quarter Sessions for such estreat will be quashed on *certiorari*; but *qu.*—see 7 G. IV., c. 64, s. 31, in the text above, not there cited.

against her husband, may recover the costs of so doing from him, though he allows her a separate maintenance.

(a).—*Dickenson's Q. S.*

Where a person has caused another to be held in Recognizance of the Peace, and before the expiration of the period specified, is willing or desirous of relieving him from his responsibility thereunder, there would appear to be no legal objection to its being done; this willingness, however, should be expressed in writing and endorsed on the bond if still in the Magistrate's possession, or transmitted to the office of the Clerk of the Peace, if bond has been transmitted as it *should* be immediately upon being taken, to that office.

CONTEMPT—POWER OF JUSTICES TO COMMIT FOR.

A contempt is, in legal meaning, either an open resistance or insult to the power of a court of record, committed by any person in the face of the court; or a disobedience to its rules, orders or process, by a party who is not present in court. 4 Bl. Com. 283. So where abusive words are spoken to a Justice of the Peace, in the execution of his office, whilst sitting as a Magistrate, he may commit for the contempt; but if the words are spoken of him behind his back, the party can then only be indicted.—*R. v. Revel*, Str. 420. A commitment by the sessions, or other court of record, need not be under seal, as the memorial thereof, which may at any time be entered of record, is sufficient without any warrant.—1 Hale, 583, 584. But a Justice cannot commit for a contempt, except by warrant in writing.—*Mayhew v. Locke*, 7 Taunton, 63. And, unless the words be spoken under circumstances which render it probable they may prevent the due administration of justice, it will be safer for the Magistrate to abstain from summary punishment

(a) *Turner v. Rooks*, 10 Ad. & E. 47; 2 P. & D. 294; 3 Campb. 326.

and proceed by indictment, which will certainly lie for words addressed to him while in the discharge of his duty.—Dickenson's Q. S., 6th ed. p. 392. If, however, the party be imprisoned instanter, the commitment must be for a time certain; and a commitment, until the defendant is discharged by due course of law, is bad.—*Rex. v. James*, 5 B. & A. 894. It has been held, that a commitment which charged the party, generally, with having insulted Justices of the Peace in the execution of their office, without specifying what he said or did, is sufficient.—2 Barnard, 155. It is, however, in general advisable to describe the offence concisely, but in substance as in an indictment.—Chitty, C. L. p. 112. A Justice of the Peace may commit for contempt while in the execution of his office out of sessions, but the commitment must be by warrant in writing, and for a specified period.—*Jones v. Glarford*, Michs. 2 V. Cameron's Digest, 544. It seems the Justice has no power to *fine*, but only to commit.

COMMITMENT FOR CONTEMPT.

To the keeper of _____,
 County of _____, } Receive into your custody the body
 to wit. } of C. D. herewith sent you by me
 A. W. Esquire, one of her Majesty's Justices of the
 Peace in and for the said County, and (convicted or
 charged, as the case may be) by me, the said Justice,
 with contempt and indecent behaviour in my presence,
 by insulting and obstructing me, the said Justice, in the
 due execution of my office, as such Justice as aforesaid,
 (and for saying, &c., in the presence and hearing of me,
 the said Justice, here set forth the particulars, if the
 Justice shall think it necessary,) and him the said C. D.
 detain in your custody, in the gaol aforesaid, for the
 space of _____ hours, to be computed from the hour of
 o'clock, in the forenoon of this present _____ day of
 instant, for his contempt aforesaid, (or until he find two
 sufficient sureties for his appearance at the next general

Quarter Sessions of the peace for the said County, to answer to the charge aforesaid, or be otherwise discharged by due course of law.) Given under my hand and seal, at Toronto, in the said County, the day of .

[L. S.]

Scandalous aspersions of a Magistrate *in the execution of his office* are regarded as criminal, and subject the offender to punishment, in the discretion of the Court in which he is convicted.—Holt on Lib. 153; 1 Russell, C. M. 328. And to these the rule is strictly confined, for, if the language, however opprobrious, apply only to the Justice in his *private* capacity, no indictment can be supported; so that if a man at a parish meeting, apply to an *absent* Magistrate abusive names, as if he says, “if he is a sworn Justice he is a rogue and a foresworn rogue,” or if he apply to him the names of fool, coxcomb or blockhead, no indictable offence will have been committed.—2 Str. 1157-8; 2 Salk. 698; 2 Camb. 142. And it seems that to render *any* words thus indictable they must be spoken *to* the Magistrate and not in his absence.—2 Camb. 142; 2 Str. 1157. *R. v. Read*, 1 Str. 420-1.—*Dickenson's Q.-S.*, 6 *Ed.*

DANGEROUS LUNATICS.

The following is the “Act respecting the Confinement of Lunatics whose being at large may be dangerous to the public.”—Con. Stats. C. c. 109, p. 1159. It will be observed that the *Magistrate's* duties and powers commence with section 7.

Jury acquit-
ting prisoner
on ground of
insanity to
state so in
their verdict.

1. In all cases where it is given in evidence upon the trial of any person charged with any offence, whether the same be treason, felony, or misdemeanor, that such person was insane at the time of the commission of such offence, and such person is acquitted, the jury shall be required to find especially whether such person was

insane at the time of the commission of such offence, and to declare whether he is acquitted by them on account of such insanity; and if they find that such person was insane at the time of committing such offence, the court before whom such trial is had, shall order such person to be kept in strict custody in such place and in such manner as to the court seems fit, until her Majesty's pleasure be known.—14 & 15 V., c. 83, s. 1.

2. The Governor may thereupon give such order for the safe custody of such person during her Majesty's pleasure, in such place and in such manner as to the Governor seems fit.—14 & 15 V., c. 83, s. 1.

Governor may order such person to be kept in safe custody.

3. In all cases where any person before the passing of this act has been acquitted of any such offence on the ground of insanity at the time of the commission thereof, and has been detained in custody as a dangerous person by order of the court before whom such person was tried, and still remains in custody, the Governor may give the like order for the safe custody of such person during the pleasure of her Majesty as he is hereby enabled to give in the cases of persons acquitted under the first section of this act, on the ground of insanity.—14 & 15 V., c. 83, s. 1.

Governor may give like order—in what other cases.

4. If any person indicted for any offence be insane, and upon arraignment be so found by a jury empannelled for that purpose, so that such person cannot be tried upon such indictment, or if, upon the trial of any person so indicted, such person appears to the jury charged with the indictment, to be insane, the court before whom such person is brought to be arraigned, or is tried as aforesaid, may direct such finding to be recorded, and thereupon may order such person to be kept in strict custody until her Majesty's pleasure be known.—14 & 15 V., c. 83, s. 2.

Similar provisions with respect to persons indicted for any offence and found to be insane by a Jury.

If Jury find
insane, Court
may direct
such person
to be kept in
safe custody.

5. If any person charged with an offence be brought before any court to be discharged for want of prosecution, and such person appears to be insane, the court shall order a jury to be empannelled to try the sanity of such person; and if the jury so empannelled find him to be insane, the court shall order such person to be kept in strict custody in such place and in such manner as to the court seems fit, until her Majesty's pleasure be known.—14 & 15 V., c. 83, s. 2.

In such cases
of insanity
Governor
may give order,
&c.

6. In all cases of insanity so found, the Governor may give such order for the safe custody, during her Majesty's pleasure, of the person so found to be insane, in such place and in such manner as to him seems fit.—14 & 15 V., c. 83, s. 2.

Persons committed
by J. P. as insane,
how bailable.

7. If any person has been discovered and apprehended under circumstances that denote a derangement of mind, and a purpose of committing some crime, for which, if committed, such person would be liable to be indicted, and any of her Majesty's *Justices of the Peace* before whom such person may be brought, thinks fit to issue a warrant for committing him as a dangerous person suspected to be insane, such cause of commitment being plainly expressed in the warrant, the person so committed shall not be bailed except by *two* Justices of the Peace, one whereof shall be the Justice who has issued such warrant, or by the Court of General Quarter Sessions, or in Lower Canada by one of the Judges of her Majesty's Court of Queen's Bench, or one of the Judges of her Majesty's Superior Court for that section of the Province, or in Upper Canada by one of the Judges of her Majesty's Superior Courts of law or equity at Toronto.—14 & 15 V., c. 83, s. 3.

8. If any person, while imprisoned in any prison or other place of confinement, under sentence of death, or of imprisonment, or under a charge of any offence, or

for not finding bail for good behaviour or to keep the peace, or to answer a criminal charge, or in consequence of any summary conviction or order of any Justice or Justices of the Peace, or under any other than civil process, appears to be insane, any *two* Justices of the Peace of the district, county, city, town or place where such person is imprisoned, of whom the chairman of the Quarter Sessions for the County, if in Upper Canada, or a Judge of the Superior Court if in Lower Canada, shall be one, shall inquire with the aid of two physicians or surgeons, as to the insanity of such person; and if it be duly certified by such Justice and such physicians or surgeons that such person is insane, the Governor, upon receipt of such certificate through the Provincial Secretary, may direct by warrant under his hand and privy seal, that such persons shall be removed to such public lunatic asylum, or other proper receptacle for insane persons, as he may judge proper and appoint in that behalf.—14 & 15 V., c. 83, s. 4.

Two J. P.s., with medical aid, may inquire into case of prisoner becoming insane.

On their certificate of his insanity, the Governor may order his removal to a Lunatic Asylum.

9. Every person so removed under this act, or already removed, or in custody, by authority of the Governor, shall remain under confinement in such asylum or other proper receptacle as aforesaid, or in any other public lunatic asylum, or other proper receptacle to which such person may be removed, or in which he may be in custody by virtue of any like order, until it has been duly certified to the Governor through the Provincial Secretary, by two physicians or surgeons, that such person has become of sound mind, whereupon the Governor, if such person still remains subject to be continued in custody, may issue his warrant under his privy seal to the keeper or other person having the care of any such public asylum or receptacle as aforesaid, directing that such person shall be removed from thence back to the prison or other place of confinement from whence he was taken, or if the period of imprisonment or custody of such person has expired, that he shall be discharged.—14 & 15 V., c. 83, s. 4.

There to remain until duly certified to be sane.

Dangerous Lunatics to be confined by warrant of J. P.

10. Any *two* or more Justices of the Peace, residing in the city, town, village, township, parish, or place where such lunatic or mad person may be found, of whom the chairman of the Quarter Sessions for the County, if in Upper Canada, or a Judge of the Superior Court if in Lower Canada, shall be one, may, by warrant under their hands and seals, directed to the constables, or some of them, of any such city, town, village, township, parish or place, cause such person to be apprehended and kept safely locked up in some secure place within the district or the county where such city, town, village, township, parish or place lies, as such Justices under their hands and seals may direct and appoint.—14 & 15 V., c. 83, s. 5.

And if necessary sent to place of settlement.

11. If the last legal settlement of such person was in any parish, town, or place within such district or county, and if such person be not then there, such person shall be sent to the place of his last legal settlement, and shall be locked up in manner aforesaid, by warrant of *two* Justices of the district or county to which such person is so sent, of whom the chairman of the Quarter Sessions for such last-mentioned county, if in Upper Canada, or a Judge of the Superior Courts, if in Lower Canada, shall be one, and the reasonable charges of removing, and of keeping, maintaining and curing of such person during such restraint (which shall be for and during such time only as such lunacy or madness continues) shall be satisfied and paid, (such charges being proved upon oath,) by order of *two* or more Justices of the Peace, directing the treasurer of the municipal corporation of the city, town, village, township, parish, or place where any goods, chattels, lands or tenements of such person may be, to seize and sell so much of the goods and chattels, or receive so much of the annual rents of the lands and tenements as may be necessary to pay the same, and to account for what is so seized, sold or received, to the next Quarter Sessions; but if

Goods and lands of such lunatics how disposed of.

such person hath not an estate to pay and satisfy the same, over and above what is sufficient to maintain his family, then such charges shall be satisfied and paid by the city, town, village, township, parish or place to which such person belongs, by order of *two* Justices, directed to the treasurer of the Municipal Corporation thereof for that purpose.—14 & 15 V., c. 83, s. 5.

12. The last preceding section of this act, shall not extend to restrain or abridge the prerogative of the Queen, or the power or authority of the Court of Chancery in Upper Canada, or the Superior and Circuit Courts in Lower Canada, or of any Master or Judge thereof, or of any committee or curator appointed by or under the authority of the same, touching or concerning such last-mentioned lunatics, or to restrain or prevent any such committee or curator, or any friend or relation of such last-mentioned lunatics, from taking them under their own care and protection.—14 & 15 V., c. 83, s. 6.

Section 11
not to re-
strain or
abridge the
prerogative
of the Queen,
&c.

13. In all cases where any person is, by virtue of the first, second, third, fourth, fifth and sixth sections of this act, kept in custody as a lunatic or insane person by order of any court, or by order of the Governor subsequent thereto, any *two* Justices of the Peace of the district or county where such person is so kept in custody, of whom the chairman of the Quarter Sessions for the county, if in Upper Canada, or a Judge of the Superior Court of Lower Canada, shall be one, may by the best legal evidence that can be procured, enquire into and ascertain the circumstances of personal legal disability of such lunatic, the place of the last legal settlement, and the circumstances of such person, and if it does not appear that he is possessed of sufficient property which can be applied to his maintenance, may make an order upon such city, town, village, township, parish or place where they adjudge him to be legally

Justices to
enquire into
circumstances
of insane
persons and
make order
for their
maintenance

settled, to pay such weekly sum for his maintenance while in the place of custody which the court or Governor has appointed, as shall from time to time be fixed upon by the Governor and by him directed in writing, through the Provincial Secretary.—14 & 15 V., c. 83, s. 7.

In certain cases allowance to be paid by the Treasurer.

14. When such place of settlement cannot be ascertained, such allowance shall be paid by the treasurer of the Municipal Corporation of the city, town, village, township, parish or place where such person has been apprehended.—14 & 15 V., c. 83, s. 7.

If person has sufficient property to pay his own expenses.

15. If it appears that such person is possessed of sufficient property as aforesaid, then such Justices shall order and direct the same to be applied to pay and satisfy the expense of the maintenance of such person, in the manner directed, in the case of lunatics and mad persons, by the eleventh section of this act.—14 & 15 V., c. 83, s. 7.

Municipal Corporations may appeal against order of J. Ps., &c.

16. The Municipal Corporation of the city, town, village, township, parish or place in which the said Justices adjudge any lunatic to be legally settled, may appeal against such order to the general Quarter Sessions of the peace, to be holden for the district or county where such order has been made, in like manner and under like restrictions and regulations as against any other judgment, order or decision of a Justice or Justices, giving reasonable notice thereof to the Clerk of the Peace of such district or county, who shall be respondent in such appeal, which said appeal the Justices of the Peace, assembled at the said general Quarter Sessions, are hereby authorised and empowered to hear and determine, in the same manner as other appeals to Courts of Quarter Sessions are now heard and determined in Upper and Lower Canada respectively.—14 & 15 V., c. 83, s. 7.

17. Every person of full age who has been a resident Persons to be deemed settled. and inhabitant of any city, town, village, township, parish or place for one year, and the members of his family who have not gained a separate settlement, shall, for the purposes of this act, be deemed settled in such city, town, village, township or place.—14 & 15 V., c. 83, s. 8.

18. A minor may be emancipated from his father, and Settlement how gained. may gain a settlement in one or more of the following ways, viz.: First.—If a female, by being married, and living for one year with her husband, in which case the husband's settlement shall determine that of the wife. Second.—If a male, by being married, and residing for one year separately from the family of his father. Third.—By being bound as an apprentice, and serving one year as such under indentures of apprenticeship. Fourth.—By being hired and actually serving for one year for wages to be paid to such minor; and a woman of full age, by marrying shall acquire the settlement of her husband, if he have any; and until a person has gained a settlement in his own right, his settlement shall be deemed that of his father or mother.—14 & 15 V., c. 83, s. 8.

19. No child born in any hospital, lunatic or other asylum, gaol, or house of correction, or other like place When the place of birth or residence shall not constitute a settlement. of reception or involuntary residence, and no child born while its mother is restrained of her liberty in virtue of this act, shall gain any settlement, merely by reason of the place of such birth; nor shall any residence of any person as a lunatic in any such place of reception or involuntary residence as aforesaid operate to give such lunatic a settlement in the city, town, village, township, parish or place where such actual residence may be had.—14 & 15 V., c. 83, s. 8.

DEADLY POISONS—SALE OF.

Our attention has been directed to this subject, and

we would refer to the Consolidated Statute of Canada, c. 98, p. 1007, the provisions of which are not generally known. At all events, they are violated in every part of the country. This law, before the Consolidation, was by many persons supposed not to apply to Upper Canada, and the question, whether it did or did not, was in truth somewhat complex. The Commissioners for revising the Statutes appear, judging from the schedule, to have arrived at the conclusion that it did, on the strength of Stat. 14 & 15 V., ch. 61, sec. 5, 19 V., ch. 103.

There is no doubt now that the law is in force in Upper, as well as Lower Canada, and the Consolidated Statutes not yet being generally distributed, persons may go on ignorantly violating the law, in the absence of a timely warning. We, therefore, give the substance of the enactment.

Sec. 1. Prohibits Apothecaries, Chemists, Druggists, Vendors of Medicine *and other persons*, from selling or delivering "any arsenic, corrosive sublimate, strychnine, or other poison, mineral, or vegetable, simple or composite, commonly known as deadly poisons, &c.," to any person who does not then produce and deliver a certificate from a legally authorised Physician or Surgeon, or from some Priest or Minister resident in the locality, addressed to the person selling, and mentioning the name, residence, and business of the person requiring the poison, and stating the purpose for which it is required, and that it ought to be sold. And this certificate or note is required to be kept by the person selling for his justification.

The second section imposes a penalty of \$40 on any person contravening the foregoing provision, and in default of payment, authorises committal for three months to the Common Gaol.

And section three, authorises prosecutions by a common informer, (who gets half the penalty,) before a Justice of the Peace.

We will endeavour to procure from some medical friend, and publish in our next number, a list of the poisons that would, in a medical point of view, come within the first section, which is most extensive in its range. In the meantime, we recommend those who sell Drugs and Medicines to act with caution, and require the note or certificate in every case where there is any doubt, whatever, as to whether the article sold is a deadly poison.

The certificate may be in the following form :

To Mr. A. B., Chemist and Druggist, (*or as the case may be,*) (state residence.)

Mr. C. D. of the (*state residence,*) requires [*one pound of arsenic for manufacturing purposes in his business of (as the case may be,)*] and in accordance with cap. 98 of the Consolidated Statute of Upper Canada, I certify that it ought to be sold to the said C. D.

Date, &c.

E. F.,

Church of England Minister, (*or as the case may be.*)

Residing at _____, in the county of _____.

The foregoing form may be varied according to the circumstances of each case. The seller of the poison ought in all cases to make a note of the sale upon this certificate for reference, in case of an after judicial investigation.—*U. C. Law Journal, April, 1860, p. 75.*

LOCK-UP HOUSES.

The Council of every County may establish a Lock-up House or Lock-up Houses within the County, and may establish and provide for the salary or fees to be paid to the Constable to be placed in charge of every such Lock-up House, and may direct the payment of the salary out of the funds of the County.

Every Lock-up House shall be placed in the charge

of a Constable specially appointed for that purpose, by the Magistrates of the County at any General Quarter Sessions of the Peace therefor.

Any Justice of the Peace of the County may direct by warrant in writing under his hand and seal, the confinement in a Lock-up House within his County, for a period not exceeding two days, of any person charged on oath with a criminal offence, whom it may be necessary to detain until examined and either dismissed or fully committed for trial to the Common Gaol, and until such person can be conveyed to such Gaol; also the confinement in such Lock-up House, not exceeding twenty-four hours, of any person found in a public street or highway in a state of intoxication, or any person convicted of desecrating the Sabbath, and generally may commit to a Lock-up House instead of to the Common Gaol or other House of Correction, any person convicted on view of the Justice, or summarily convicted before any Justice or Justices of the Peace of any offence cognizable by him or them, and liable to imprisonment therefor under any Statute or Municipal By-Law.

The expense of conveying any prisoner to, and of keeping him in a Lock-up House shall be defrayed in the same manner as the expense of conveying him to and keeping him in the Common Gaol of the County.

Nothing herein contained shall affect any Lock-up House heretofore lawfully established, but the same shall continue to be a Lock-up House as if established under this Act.

The Council of every City, Town and Incorporated Village may, by by-laws establish, maintain and regulate Lock-up Houses for the detention and imprisonment of persons sentenced to imprisonment for not more than ten days under any by-law of the Council; and of persons detained for examination on a charge of having committed any offence; and of persons detained for transmission to any Common Gaol or House of Correction either for trial or in the execution of any sentence.—*Municipal*

Institutions Act, 22 V., c. 54, secs. 409, 410, 411, 412, 413, 414; Con. Stats. U. C., pp. 645-6.

LORD'S DAY.

“Act to prevent the profanation of the Lord's Day in Upper Canada.”—22 V., c. 104, Con. Stats. U. C., p. 943.

1. It is not lawful for any Merchant, Tradesman, No sale to take place on Sunday. Artificer, Mechanic, Workman, Labourer or other person whatsoever, on the Lord's Day to sell or publicly shew forth, or expose, or offer for sale, or to purchase, any goods, chattels, or other personal property, or any real estate whatsoever, or to do or exercise any worldly labour, business or work of his ordinary calling, (conveying Travellers or Her Majesty's Mail by land, or by water, selling Drugs and Medicines, and other works of necessity, and works of charity, only excepted.)—8 V., c. 45, s. 1.

2. It is not lawful for any person on that day to hold, convene, or to attend any public political meeting, or to tipple, or to allow or permit tippling in any Inn, Tavern, Political meetings, tippling, &c., prohibited on Sunday. Grocery, or House of Public Entertainment, or to revel, or publicly exhibit himself in a state of intoxication, or to brawl or use profane language in the public streets or open air, so as to create any riot or disturbance, or annoyance to Her Majesty's peaceable subjects.

3. It is not lawful for any person on that day to play Games and amusements prohibited. at skittles, ball, foot-ball, racket, or any other noisy game, or to gamble with dice or otherwise, or to run races on foot, or on horseback, or in carriages, or in vehicles of any sort.—8 V., c. 45, s. 1.

4. Except in defence of his property, from any wolf Exception. or other ravenous beast or a bird of prey, it is not law-

Hunting and shooting. ful for any person on that day to go out hunting or shooting, or in quest of, or to take, kill or destroy, any deer or other game, or any wild animal, or any wild fowl or bird, or to use any dog, gun, rifle or other engine, net or trap, for the above mentioned purpose.—8 V. c. 45, s. 1.

Fishing. 5. It is not lawful for any person on that day to go out fishing, or to take, kill or destroy any fish, or to use any gun, fishing rod, net or other engine for that purpose.—8 V. c. 45, s. 1.

Bathing. 6. It is not lawful for any person on that day to bathe in any exposed situation in any water within the limits of any incorporated City or Town, or within view of any place of Public Worship, or private residence.—8 V. c. 45, s. 1.

Penalty. 7. Any person convicted before a Justice of the Peace of any act hereinbefore declared not to be lawful, upon the oath or affirmation of one or more than one credible witness, or upon view had of the offence by the said Justice himself, shall, for every such offence be fined in a sum not exceeding forty dollars, nor less than one dollar, together with the costs and charges attending the proceedings and conviction.—8 V., c. 45, sec. 3.

Sales and agreements made on Sunday to be void. 8. All sales and purchases, and all contracts and agreements for sale or purchase, of any real or personal property whatsoever, made by any person or persons on the Lord's Day, shall be utterly null and void.—8 V. c. 45, s. 2.

Justice to summon accused party. 9. When any person has been charged upon oath or otherwise in writing, before *any* Justice of the Peace, with any offence against this act, the said Justice shall summon the person so charged to appear before him, at a time and place to be named in such summons, and if such person fails or neglects to appear accordingly, then

(upon proof of due service of the summons upon such person, by delivering or leaving a copy thereof at his house, or usual or last place of abode, or by reading the same over to him personally,) the said Justice may either proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending such person, and bringing him before himself, or some other Justice of the Peace having jurisdiction within the same County or Municipality; and the Justice before whom the person charged appears or is brought, shall proceed to hear and determine the case, or the said Justice, on view of the offence, may verbally order, or if on the complaint of a third party, then may, in writing, order the offender to be at once committed (although it be on the Lord's Day) to the Common Gaol of the place, or into other safe custody, there to remain until the morrow, or some other day, according to circumstances, until the case be heard and disposed of.—8 V. c. 45 s. 4.

10. The Justice before whom any person is convicted of any offence against this act, may cause the conviction to be drawn up in the following form, or in any other form of words to the same effect, as the case may require, that is to say:—8 V. c. 45, s. 5.

Be it remembered, that on the day of ,
 in the year of our Lord, eighteen , at ,
 in the County of , (or at the City of ,
as the case may be,) A. B., of , is convicted
 before me, C. D., one of Her Majesty's Justices of the
 Peace for the said County, (or City, *as the case may be*),
 for that he the said A. B. did (*specify the offence, and
 the time and place when and where the same was com-
 mitted, or as the case may be*;) and I, the said C. D.,
 adjudge the said A. B., for his offence to pay (immedi-
 ately,) or on or before the day of , the sum of
 , and also the sum of , for costs; and
 in default of payment of the said sums respectively, to
 be imprisoned in the Common Gaol of the said County

(or City, as the case may be,) for the space of months, unless the said sums be sooner paid; and I direct that the said sum of *(the penalty)* shall be paid as follows, that is to say: one moiety thereof to the party charging the offence, and the other moiety to the Treasurer of the County, (*naming the one in which the offence was committed, or Chamberlain of the said City, as the case may be,*) to be by him applied according to the provisions of the act, (*insert the title of this act.*)

Given under my hand and seal, the day and year first above mentioned.

C. D., J. P. [L. S.]

Conviction and commitment not to be void for want of form. 11. A conviction under this act shall not be quashed for want of form; nor shall any warrant of commitment be held void by reason of any defect therein, if it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the commitment.—8 V. ch. 45, s. 6.

In default, may levy fine. 12. In default of payment of any fine imposed under this act, together with the costs attending the same, within the period by the Justice of the Peace before whom such conviction takes place, specified for the payment thereof at the time of conviction, such Justice of the Peace (if he deems it expedient so to do) may issue his warrant directed to any Constable to levy the amount of such fine and costs within a certain time, to be in said warrant expressed; and in case no distress sufficient to satisfy the amount be found, he may commit the offender to the Common Gaol of the County wherein the offence was committed, for any term not exceeding three months, unless the fine and costs be sooner paid.—8 V. c. 45, s. 7.

Limitation of time for prosecution. 13. The prosecution for any offence punishable under this act, must be commenced within *one month* after the commission of the offence, and not afterwards; and the evidence of any inhabitant of the County or Municipality in which the offence has been committed, shall be ad-

mitted and receivable, notwithstanding the fine incurred by the offence may be payable for the benefit of such Municipality; *but the party who makes the charge in writing before the Justice, shall not be admitted as a witness in the case.*—8 V., c. 45, s. 8. Who may be witnesses.

14. In case a person thinks himself aggrieved by any conviction or decision under this act, then, in case such person, within six days after such conviction or decision, and ten days at least before the first Court of General Quarter Sessions of the Peace, or in Cities before the first Recorder's Court, (if there be a Recorder's Court,) to be held not sooner than twelve days next after such conviction or decision, may appeal in the manner provided in and subject to the provisions of the act respecting Appeals in cases of Summary Conviction.—8 V. c. 45, s. 9. Appeal to the Quarter Sessions.

15. Every Justice of the Peace before whom any person is convicted of any offence against this act, shall transmit the conviction to the next Court of General Quarter Sessions, or Recorder's Court (as the case may be) to be holden for the County or City wherein the offence was committed, there to be kept by the proper officer among the records of the Court.—8 V. c. 45, s. 10. Justices to transmit the conviction to the Quarter Sessions.

16. All actions and prosecutions to be commenced against any person for any thing done in pursuance of this act, shall be laid and tried in the County where the fact was committed, and must be commenced within six months after the fact committed, and not afterwards; and notice in writing of such action, and of the cause thereof, must be given to the defendant one month at least before the action; and in any such action the defendant may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon.—8 V. c. 45, s. 11. Where actions, &c., are to be tried. Defendant may plead general issue.

17. No plaintiff shall recover in such action, if tender

**Tender of
amends, &c.** of sufficient amends be made before such action brought, or if a sufficient sum of money be paid into Court after such action brought, by or on behalf of the defendant; and if a verdict passes for the defendant, or the plaintiff becomes non-suit, or discontinues any such action after issue joined, or if upon demurrer or otherwise judgment be given against the plaintiff, the defendant may recover his full costs, as between attorney and client, and have the like remedy for the same as any defendant hath by law in other cases.—8 V. c. 45, s. 11.

**Defendant if
successful to
have full
costs.**

**Distribution
of penalties.** 18. All sums of money awarded or imposed as fines or penalties, by virtue of this act, shall be paid as follows, that is to say: one moiety thereof shall be paid to the party charging the offence in writing before the Justice, and the other moiety to the Treasurer of the County or City wherein the offence was committed, to be by him accounted for in the same manner as for other moneys deposited with or paid over to him.—8 V. c. 45, s. 12.

**Not to extend
to Indians.** 19. This Act is not to extend to the people called Indians.—8 V. c. 45, s. 14.

TABLE OF CONTENTS.

A.	PAGE.	D.	PAGE.
Aliens, Naturalization of	37	Division Courts	11
Allegiance, Oath of.....	55	_____ Bailiff to exercise duty	11
Animals, Cruelty to	9	of Constable during	11
Apprentices and Minors	9	the holding of court	11
Appeals from decisions of J. Ps.....	37	_____ Bailiff if assaulted in	11
Articles of the Peace, Exhibiting of, 26 & 59	57	the execution of his	11
Ashburton Treaty	41	duty	64
Assizes, the	7	Dangerous Lunatics	19 & 73
Assault and Battery	24	Deadly Poisons, sale of	15
Attorney or Counsel allowed accused on	24	Distresses for small rents and penal-	12
cases of summary conviction	24	ties, costs of.....	12
_____ not allowed in Ex-	34	Dog, Beast or Bird, Stealing of	12
aminations in Indictable Offences	34	_____, Killing of	12
_____ County Crown, his relation	34	E.	
to Justices of the Peace	34	Extradition of certain Criminals	57
B.		Exemptions from Tolls, &c.	58
Bailing or Committing of Prisoner, to	42	F.	
what court	25	Fisheries and Fishing.....	12
Bail, admitting to, in misdemeanors	25	Fraudulent removal of Goods by Ten-	13
_____, in felonies	12	ant	20, 21, & 22
Bird, Beast, or Dog, Killing of.....	12	Felonies, enumerated.....	20, 21, & 22
_____, Stealing of.....	12	_____, Proceedings before J. Ps. in,	20, 21, & 22
C.		on information laid, 23, 24, 25, 26	44 to 47
Carrying certain unlawful weapons...	19	Fees to Magistrates.....	47
Common Schools.....	10	_____ Witnesses	47 to 50
Constables, appointment of	40	_____ Constables	15
_____, Special, appointment of	41	_____ on levying distresses for small	15
Costs of distresses for small rents and	15	rents and penalties.....	15
County Crown Attorneys, their relation	34	G.	
to Justices of the Peace.....	34	Game Laws of Upper Canada.....	13
Counsel, right of to be present in all	24	Gunpowder	13
cases of summary conviction	24	H.	
_____, No right to be present in Ex-	24	Hawkers and Pedlars.....	13
amination in Indictable	24	Highways, Public, travelling on regu-	19
Offences	42	lated	19
Committing or Bailing of Prisoner, to	42	I.	
what court	64	Indecency, Immorality, &c.	13
Contempt, Power of Justice to Com-	64	Insulting language	13
mit for	64		

I.	PAGE.	Q.	PAGE.
Indictable Offences enumerated... 20 to 23	20 to 23	Quarterly Returns, form of.....	27
-----, proceedings on examination before J. Ps., in, 23 to 27	23 to 27	Quarter Sessions, Court of General ...	41
----- Counsel or attorney not allowed as of right in.....	24	-----, Jurisdiction of	43
Illegitimate Children, support of	38	R.	
Interference of Justices with each other.....	36	Religious Worship, disturbing persons assembled for	19
J.		Returns of Summary Convictions should be made quarterly by J. Ps.	27
Justices of the Peace, who are.....	56	Returns of Summary Convictions, form of	27
-----, Form of Commission to ...	50	Recorder's Court.....	41
-----, Oath of property qualification	54	-----, Jurisdiction of	43
-----, Oath of office	55	S.	
-----, ----- Allegiance	55	Summary Jurisdiction, proceedings before J.Ps. in cases of, 23 to 27	27
-----, Interference of with each other	35	-----, Right of counsel or attorney to be present at.....	24
Juvenile offenders	13	----- Convictions, returns of to be made quarterly by J. P's	27
L.		Search Warrant may issue on a Sunday ..	27
Landlord and Tenant, fraudulent removal of goods by Tenant, &c....	13	Shipwrecked goods, unlawful possession of, or offering for sale	19
Licenses, shop and tavern.....	18	Sunday, profanation of	77
Lunatics, da zerous	66	Strychnine & other deadly poisons 19 & 73	38
Lock-up-houses	75	Support of illegitimate children	41
Lord's day, profanation of.....	77	Special Constables, appointment of... 41	26
M.		Slander, abuse, &c	26
Malicious injuries to property, with intent to steal.....	8	T.	
Malicious injuries to property, but without the intent to steal	9	Travelling on Public Highways regulated	19
Master and Servant, &c.	19	Tolls on Turnpike Roads, exemptions from.....	58
Misdemeanours enumerated 22 and 23	22 and 23	U.	
-----, proceedings before J. Ps. in, on information laid.....	23 to 27	Unlawful Weapons	19
P.		W.	
Peace, binding over to keep ... 26 and 59	26 and 59	Weapons, carrying certain prohibited	19
Petty trespasses to land	19	Weights and Measures	20
Poisons, deadly	19	Witnesses, compelling attendance of	39
Petty Sessions, what	36	-----, Binding over to prosecute and give evidence... 26 and 40	26
Power of J.Ps. to commit for contempt	64	-----, to what court to be bound	26
Proceedings before J. Ps. on complaint made in any case, 23, 24, 25, 26, 27	23, 24, 25, 26, 27	-----, as to binding over married female	40
Profanation of the Lord's day	77	----- infant ...	40
Q.		-----, fees, to	47
Quarterly returns by J. Ps. of summary convictions, necessity of making	27	Warrant of any kind may issue on a Sunday.....	27

ii.

PAGE.

.....	27
General ...	41
on of	43
g persons	
.....	19
ctions	
by J. Ps.	27
ctions,	
.....	27
.....	41
n of	43
ceedings	
es of, 23 to	27
of counsel	
ney to be	
at.....	24
s of to be	
.....	27
a Sun-	
.....	27
l posses-	
.....	19
.....	77
isons 19 & 73	
en	38
ent of...	41
.....	26
ys regu-	
.....	19
ptions	
.....	58
.....	19
hibited	19
.....	20
ance of	39
osecute	
.. 26 and 40	
b bound	26
married	
.....	40
fant ...	40
.....	47
ie on a	
.....	27

