THE LEGAL NEWS.

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The Legal News.

Vol. IX. MAY 29, 1886. No. 22.

The Hon. Mr. Power has introduced a bill in the Senate, to amend the law of evidence. The first clause provides for the case of a witness objecting to be sworn, as follows:—"If any person, called as a witness in any court of criminal jurisdiction or in any civil proceeding, in respect of which the Parliament of Canada has jurisdiction in this behalf, or required or desiring to make an affidavit or deposition in the course of any such proceeding, refuses or is unwilling from alleged conscientious motives, to be sworn, it shall be lawful for the court or judge or other presiding officer or person qualified to take affidavits or depositions, upon being satisfied of the sincerity of such objection, to permit such person, instead of being sworn, to make his or her solemn declaration in the words following, that is to say: 'I, A.B., do solemnly, 'sincerely, and truly affirm and declare, that 'the taking of an oath is, according to my 'religious belief unlawful, and I do also 'solemnly, sincerely and truly affirm and 'declare that the evidence to be given by me 'shall be the truth, the whole truth and 'nothing but the truth.'" No objection can be made to the above clause. The bill also provides that judicial notice shall be taken of any provincial statute of which a copy is produced, printed by the authorized printer.

A novel railway question came up recently in England in the case of *Laurie* v. *London & Southwestern Railway Co.* The question was whether a railway company has a right to suspend the ordinary service of trains on occasions of great and exceptional pressure, such as race meetings, and run, for a part, at least, of the day, only special trains at exceptionally high fares. The occasion out of which the case arose was the Ascot race meeting, when the defendants suspended their usual train service between London and Ascot until 2 p. m., and in their place ran special trains at about double the ordinary fares. The plaintiff, who was not going to Ascot races, paid the special fare under protest and brought her action to recover the difference between it and the ordinary fare. The questions on which the opinion of the court was taken were (1) whether the fare charged was not in excess of the maximum allowed by the Companies Acts; and (2) whether the suspension of the regular service was an infringement of the reasonable facilities clause of the Railway and Canal Traffic Act, 1852. "The first point," says the *Law Times*, "has already been decided in favor of railway companies, in an unreported case, apparently on the very intelligible ground that for special trains the companies are empowered to charge special rates. On the second point the difficulty in the way of the plaintiff was, that the provisions of the Cheap Trains Act had been fully complied with by the resumption of the usual traffic after 2 p.m., and that it was found as a fact that the temporary suspension of the ordinary service was necessary for the safety of the public, as it undoubtedly was for the convenience of the 5,000 additional passengers whom the company had to convey to Ascot on the day in question. Strict justice, therefore, as well as law, seems to be on the side of the defendants in this case. It is no doubt a hardship upon the ordinary passengers on any line of railway, to find the usual arrangements for their accommodation set aside on occasions such as we have been alluding to. The responsibility for this, however, rests not with the railway companies, but with the majority of the public who have to be accommodated. For the benefit of this majority the companies have to make special arrangements, in return for which they are entitled to special remuneration; and if a small minority suffers by this, it is because it is utterly impossible to discriminate at such times between ordinary and extraordinary passengers."

CIRCUIT COURT.

PORTAGE DU FORT (DISTRICT OF OTTAWA), 1886.

Before PAPINEAU, J.

PATTISON v. THE CORPORATION OF BRYSON.

Council—Special Session.

A special meeting of the Municipal council of Bryson was duly called for the purpose of

electing a mayor. The meeting was held on the 18th January, 1886, and all the members were present.

A resolution was proposed that inasmuch as one of the councillors, James T. Pattison, was notoriously disqualified, his seat should be declared vacant. No amendment was made thereto, but one of the councillors asked the head of the council whether the matter could be considered at a special meeting called for another purpose. The members present, with the exception of Pattison, voted on the resolution, which was carried upon a division. Pattison was debarred by art. 135, M.C. Pattison applied to have the resolution annulled under the provisions of art. 100 of the Municipal Code.

Foran, for the respondent, cited *Paris* v. *Couture*, 10 Q. L. R. 1, and *Loiseau* v. *Lacaille*, 2 Rev. Crit. 236, in support of his pretension that all the members being present the proceedings were regular.

McDougall, for the petitioner, referred to the first paragraph of art. 127.

PER CURIAM. Notwithstanding the great respect I entertain for the opinions of Chief Justice Meredith and Justices Caron and Casault, I cannot agree with their decision in the case of *Paris* v. *Couture*. The first paragraph of art. 127 says the subjects mentioned in the notice calling the special meeting can alone be taken into consideration, and I do not see that this enactment is qualified by the remainder of the article. Article 14 of the Civil Code enacts that a prohibitive provision entails nullity, although such nullity be not specially expressed. Art. 16 of the Municipal Code does not apply, inasmuch as an injustice was committed to the prejudice of the petitioner.

Petition maintained with costs.

CIRCUIT COURT.

BEDFORD, May 12, 1886.

Before BUCHANAN, J.

HOGLE v. RACINE.

Costs—Distinct portion of demand unfounded—Difference of Costs.

Held, that where a distinct portion of the demand is wholly unfounded, the plaintiff in such case should be condemned to payment of the difference of costs.

This was an hypothecary action for the recovery of the amount, $133.00, capital of a constituted rent, and for the arrears of such rent.

The defendant pleaded non-exigibility of the capital, and payment of the arrears.

Nothing was alleged in the declaration, nor shown, to entitle the plaintiff to the capital sum. The articles 390, 1789 and 1790, C. C., govern these matters, and no case being presented here as coming within the purview of art. 1790, the plaintiff had clearly no right of action as regards that specific portion of his demand embracing the capital sum. As to the arrears of rent the case was different. The plaintiff had a right of action under that head, and has established it to the amount of $11.92, for which amount judgment went in his favour, with costs as in an action of that class, and condemning him (plaintiff) to pay defendant the difference of costs as between the amount ($160) for which action was brought and the amount recovered.

The Court observed on this point:—As this action should never have been brought for the capital sum, I shall adopt a rule, as to costs, sometimes followed by other judges, and condemn the plaintiff to pay to the defendant the difference of costs, between the action as brought and the amount for which judgment is rendered. I do not adopt this rule (which indiscriminately applied *may* punish the victorious suitor, and contradict the principle laid down in art. 478, C. C. P.) in cases where the plaintiff cannot with some exactitude foresee the amount for which he can obtain judgment, as in actions of damages, and cases of a like nature; but in one like the present, where it was absolutely certain no judgment could be obtained for the capital, it looks like oppression to compel a defendant to go to the expense of defending himself in an action of the class as brought. The only suit open to the plaintiff was that as regards the arrears, and as to that he gets his costs, as to the other head of the demand he will pay the defendant the difference of costs.

SUPREME COURT OF CANADA.

LORD *v.* DAVISON.

Charty party—Deficient cargo—Dead freight—Demurrage.

By charter party the appellants agreed to load the respondent's ship at Montreal with

a cargo of wheat, maize, peas or rye, "as fast as can be received in fine weather," and ten days' demurrage were agreed on over and above lying days, at £40 per day. Penalty for non-performance of the agreement was estimated amount of freight. Should ice set in during loading, so as to endanger the ship, master to be at liberty to sail with part cargo, and to have leave to fill up at any open port on the way homeward for ship's benefit. The ship was ready to receive cargo on the 15th of November, 1880, at 11 a.m., and the appellants began loading at 2 p.m. on the 16th November. After loading a certain quantity of rye in the forward hold, as it would not be safe to load the ship down by the head any further, the captain refused to take any more in the forward hold. No other cargo was ready, as the respondents would not put the rye anywhere except in the forward hold, and they stopped loading. At 8 a.m. on the 19th the loading recommenced, and continued night and day until 6 a.m. on Sunday the 21st. at which time the vessel sailed in consequence of ice beginning to set in. When she sailed, she was 214½ tons short of a full cargo. The respondent sued appellants because the ship had not received a full cargo, and claimed 2½ days (15, 16 and 17 November), and freight on 214½ tons of cargo not shipped. The appellants contended that the delay was not due to them, but to ship in not supplying baggers and sewers to bag the grain; that the time lost on the first week was made up by night work, and that mere delay in loading could not sustain claim for dead freight.

The Superior Court, Montreal, gave judgment for the respondent for the dead freight, but refused to allow demurrage. This judgment was affirmed by the Court of Queen's Bench. (*Vide* M. L. R., 1 Q.B. 445).

Held, affirming the judgment of the Court below, that as there was evidence that the vessel could have been loaded with a full and complete cargo without nightwork before she left, had the freighters supplied the cargo as agreed by the charter party, the appellants were liable for damages.

2. That the days' demurrage mentioned in the charter party referred to, are over and above the lying days, and have no reference to the loading of the ship.

Appeal dismissed.

Kerr, Q.C., for appellants.
H. Abbott, for respondent.

COLLETTE *v.* LANIER.

Patents — Validity of prior patent — Damages — What proper measure.

In 1877, L., a candle manufacturer, obtained a patent for new and useful improvements in candle-making apparatus. In 1879 C., who was also engaged in the same trade, obtained a patent for a machine to make candles. L. claimed that C.'s patent was a fraudulent imitation of his patent, and prayed that C. be condemned to pay him $13,200, as being the amount of profits alleged to have been realized by C. in making and selling candles with his patented machine, and also $10,000 damages. C. contended that his patent was valid as a combination patent of old elements, and also that L.'s patent was not a new invention.

The Superior Court, Montreal, Jetté, J., 5 Leg. News, 412, on the evidence, found that C.'s patent was a fraudulent imitation of L.'s patent, and granted an injunction, and condemned C. to pay L. $600 damages for the profits he had realized on selling candles made by the patented machine. This judgment was affirmed hy the Court of Queen's Bench, Montreal. At the trial there was evidence that there were other machines known and in use for making candles, and there was no evidence as to the cost of making candles with such machines, or what would have been a fair royalty to pay L. for the use of his patent, and that L.'s trade had been increasing.

Held, (affirming the judgment of the Court below), Henry, J., *diss.*, that L.'s patent had been infringed.

2. (Reversing the judgment of the Court below), that the profits were not a proper measure of damages in this case, and that on the evidence only $100 should be awarded for the infringement.

Judgment modified.

Lacoste, Q. C., for appellant.
Robidoux, Q.C., and *Geoffrion, Q.C.*, for respondent.

WYLIE *v.* THE CITY OF MONTREAL.

C. S. L. C., ch. 15, and 41 Vict. (Q.) ch. 6, s. 26 —Art. 712, M. C.

Held, (reversing the judgment of the Court of Queen's Bench, Montreal, M.L.R., 1 Q. B., 367) Gwynne, J., *diss.*, that property situated

in the city of Montreal, and occupied by its owner exclusively as a boarding and day school for young ladies, and receiving no grant from the municipal corporation, is an "educational establishment" within the meaning of 41 Vict. (Q.) ch. 6, s. 26, and exempt from municipal taxes.

Judgment reversed.

Kerr, Q.C., for appellant,
Roy, Q.C., for respondent.

COUNTY OF OTTAWA *v.* MONTREAL, OTTAWA & WESTERN RY. CO.

Damages—Breach of Contract.

The corporation of the County of Ottawa, under the authority of a by-law, undertook to deliver to the Montreal, Ottawa & Western Railway Company, for stock subscribed by them, 2,000 debentures of the Corporation, of $100 each, payable 25 years from date, and bearing six per cent. interest, and subsequently, without any valid cause or reason, refused and neglected to issue said debentures. In an action for damages, brought by the railway company against the corporation for breach of this covenant,

Held, (affirming the judgment of the court below, M.L.R., 1 Q.B. 46), that the corporation was liable. C. C. 1065, 1070, 1073, 1840 and 1841 reviewed.

Judgment confirmed.

Laflamme, Q.C., for appellant.
De Bellefeuille for respondent.

TREMBLAY *v.* SCHOOL COMMISSIONERS OF ST. VALENTIN.

C. S. L. C. ch. 15—40 Vict. (Q.) ch. 22, s. 11—33 Vict. (Q.) ch. 25, s. 7 — Erection of a School House—Decision of Superintendent—Mandamus.

Under 40 Vict., ch. 22, s. 11, the Superintendent of Education for the Province of Quebec, on an appeal to him from the decision of the School Commissioners of St. Valentin, ordered that the school district of the Municipality of St. Valentin should be divided into two districts with a school house in each.

The School Commissioners subsequently decreed the division, and a few days later, on a petition, presented by ratepayers protesting against the division, they passed another resolution refusing to entertain the petition. Later on, without having taken any steps to put into execution the decision of the Superintendent, they passed a resolution declaring that the district should not be divided as ordered by the Superintendent, but should be re-united into one.

In answer to a peremptory writ of mandamus, granted by the Superior Court, ordering the School Commissioners to put into execution the decision of the Superintendent of Education, the School Commissioners (respondents) contended that they had acted on the decision by approving of it, and that as the law stood, they had power and authority to re-unite the two districts on the petition of a majority of the rate payers, and that their last resolution was valid until set aside by an appeal to the Superintendent.

Held, (reversing the jndgment of the Court of Queen's Bench), that the Commissioners having acted under the authority conferred upon them by C. S. L. C., ch. 15, ss. 31 and 33, and an appeal having been made to the Superintendent of Education, his decision in the matter is final (40 Vict. ch. 22, s. 11), and can only be modified by the Superintendent himself, on an application made to him under 33 Vict. ch. 25, s. 7; and therefore, that the peremptory mandamus, ordering the respondents to execute the Superintendent's decision, should issue.

Judgment reversed.

Trudel, Q.C., and *Geoffrion, Q.C.*, for appellants.
Beaudin for respondent.

APPEAL REGISTER—MONTREAL.

May 15.

Latham & Kennedy.—Motion to have appeal dismissed, for having acquiesced in the judgment appealed from.—Ordered that this motion be heard at the same time as the merits.

Barnard & Molson.—Motion to dismiss appeal; granted for costs.

Blanchard & Canadian Mutual Fire Insurance Co.—Heard on motion for leave to appeal from interlocutory judgment. C. A.V.

Guest & Douglas.—Heard on merits. C.A.V.

Bellemare & Dansereau.—Heard on merits. C. A.V.

May 17.

Blanchard & Canadian Mutual Fire Insurance Co.—Motion for leave to appeal from interlocutory judgment, rejected.

Lawes & Bank of B. N. A.—Heard on motion for leave to appeal from interlocutory judgment. C. A.V.

Mooney & Imperial Fire Insurance Co.—Motion for leave to appeal from interlocutory judgment ordering new trial. Granted.

Cie. du Chemin du Pacifique & Chalifoux.—Petition of respondent for leave to proceed *in forma pauperis*. Granted.

Barnard & Molson.—Heard on motion of respondent for precedence. C. A.V.

Pinkerton & Coté.—Part heard on merits.

May 18.

Exchange Bank of Canada & Canadian Bank of Commerce—Heard on merits. C. A.V.

Normandeau & McDonell.—Heard on merits. C. A.V.

Central Vermont Railroad & Lareau.—Heard on merits. C. A.V.

Canadian Pacific Railway Co. & Goyette.—Heard on merits. C. A.V.

The Same & Tremblay.—Heard on merits. C. A.V.

The Same & Beauchamp.—Heard on merits. C. A.V.

The Same & Payette.—Heard on merits. C. A.V.

May 19.

Barnard & Molson.—Motion for precedence rejected.

Lawes & Bank of B. N. A.—Motion for leave to appeal from interlocutory judgment. Granted.

Pinkerton & Coté.—Hearing on merits concluded. C. A.V.

Lewis & Osborn.—Part heard on merits.

May 20.

Gadoua & Pigeon.—Motion for new security, granted for costs. Motion for dismissal of appeal in default of return of writ, granted for costs.

Smith & Wheeler.—Petition of respondent for alimentary allowance, and for temporary possession of the children. Rejected.

Lewis & Osborn.—Hearing on merits concluded. C. A.V.

McGreevey & Senécal.—Heard on merits. C. A.V.

Lambert & Scott.—Heard on merits. C. A.V.

Vineberg & Ransom.—Heard on merits. C. A.V.

May 21.

Cadot & Ouimet.—Judgment confirmed.

Waldron & White.—Heard on merits. C. A.V.

Exchange Bank of Canada & Rivard.—The appellant not appearing, the appeal is dismissed.

Brown & Saunders.—Heard on merits. C. A.V.

Schwob & Baker.—Heard on merits. C.A.V.

Nordheimer & Leclaire et al.—Part heard on merits. C. A.V.

May 22.

Breekon & Kane.—Heard on motion for leave to appeal from interlocutory judgment. C. A.V.

Nordheimer & Leclaire et al.—Hearing on merits concluded. C. A.V.

May 25.

Jeffery & Webb.—Heard on merits. C. A.V.

Corporation Episcopale C. R. du D. de St. Hyacinthe & Eastern Townships Bank.—Heard on merits. C. A.V.

Stephen & Banque d'Hochelaga, & Montreal P. & B. Railway Co.—Heard on merits. C. A.V.

Whitehead & Kieffer & White.—Part heard on merits.

Kieffer & Whitehead.—Part heard on merits.

DECISIONS AT QUEBEC. (11 Q.L.R.).

Succession—Héritier—Action pétitoire.

JUGÉ: Qu'un seul de plusieurs héritiers indivis peut porter l'action pétitoire contre le tiers qui n'a aucun droit à la succession, et revendiquer, par elle, la totalité d'un immeuble lui appartenant, que ce tiers détient. —*Bell* v. *Bédard*, C. S., Casault, J., 23 nov. 1885.

Procédure—Exception à la forme.

Après l'émanation du bref et avant le jour de l'entrée, le demandeur a fait changer la date du rapport par le greffier de la Cour. Le défendeur a plaidé à la forme que ce changement rendait le bref nul.

JUGÉ, que le bref étant émané et revêtu de timbres, aucune altération ne peut y être faite, et action renvoyée.—*Lapointe* v. *Dorion*, C. C., Casault, J., 20 janv. 1885.

Election municipale—Faux emprisonnement.

JUGÉ: 1o. Que le président d'une assemblée tenue pour l'élection des conseillers municipaux, en vertu des dispositions du Code Municipal, n'a pas le droit, en vertu de la section 4 de l'article 301, du dit Code, de faire emprisonner par un ordre écrit de sa main les personnes qui troublent l'assemblée par des cris et de menaces de violence au dit président, et que s'il le fait, il est passible de dommages pour faux emprisonnement.

2o. Qu'il ne suffisait pas, dans l'espèce, d'avoir fait préparer sur le champs le mandat d'arrestation contre le demandeur, mais qu'il aurait fallu l'exécuter incontinent.

3o. Que le président de la dite assemblée n'avait le droit de faire emprisonner le demandeur, qu'après conviction sommaire. *Trépanier* v. *Cloutier*, C. S., Stuart, C. J., 1885.

Municipal Taxes—Prescription.

HELD, that the prescription of five years applies to municipal taxes (36 Vict. [Q.] ch. 60, s. 144; C. C. art. 2011.—*Corporation de Lévis* v. *Lagueux*, S. C., Andrews, J.

A LEGAL HERESY.

To the Editor of THE LEGAL NEWS:

Paley, on convictions, (McNamara's Ed. of 1879), p. 78, states:

"*Whenever* the information *is required* by "statute to be in writing, that form must be "preserved; *but*, unless *expressly* directed, it "*is not necessary* that it should *be so*."

The *very reverse* of that statement is a *correct* exposition of what, for centuries past, the law has been, and what it now is as to the necessity of an information; an information has ever been the first step necessary to give jurisdiction to the J. P., as showing the commission of an offence, which he has jurisdiction to try in a summary way. The defendant cannot be tried for any other offence than the one described in the information. It need not be sworn to, unless the statute creating, or referring to, the offence, or the prosecutor, require it to be so, in order to obtain a warrant of arrest.

To that rule, as to every other man-made rule, there is an exception; that exception is, when the statute *expressly* dispenses with an information, as, for instance, whenever power is given to the justices to *convict* ON VIEW.

In support of his statement, Paley, in note *r*, refers to the following cases:

—Per *Parke*, B., *R.* v. *Millard*,—17 Jurist, 400.

—*R.* v. *Shaw*, 34 L. J., M. C. 169.

—*R.* v. *Bedringham*, 5 Q. B., 653.

—*Ex parte Perham*, 29 L. J., M. C., 33.

—*Turner and another* and *The Postmaster General*, 34 L J., M. C., 10.

—*R.* v. *Rawlins*, 8 C. & P., 439.

Let us examine *seriatim* the reports of these cases.

In that case *R.* v. *Millard*, no such decision took place. In the course of the argument, *Baron Parke* interrupted the prisoner's counsel, with this statement, *personal* to himself:

"No magistrate can proceed without an "information; but, unless the statute requires "that the information should *be in writiny*, "*or upon oath*, it need not be so."

In support of his inconsiderate opinion, he cites the case of *Basten* v. *Carew*, 3 B. & C. 649. Let us examine the report of that case, in order to see if it bears out his *ipse dixit*. That was a case, in which the act, 11 Geo. 2, ch. 19, section 16, gave power to two justices, in petty session, to grant to a landlord possession of his property, if the tenant did not pay the overdue rent, within the time prescribed by a notice of the J. P.'s, served on the tenant, and this, on the verbal request, of the landlord. In that case, there was no question of a "precedent" information. The question was, whether or not, before making an order of possession in favor of the landlord, the justices were obliged to inquire *under oath*, whether the rent had been, or had not been, paid. The court decided that it was not necessary to make that inquiry *under oath*, because the statute *did not require* it to be so.

So much for the case of *Basten* v. *Carew*, 3 B. & C. 649, and for Baron Parke's inconsiderate opinion.

In the case of *R.* v. *Millard*, perjury was assigned against him, upon an oath, taken by him, in a prosecution, based on an information *in writing*, but not *under oath*, and wherein the defendant, appearing on a summons, took no objection whatever to the proceedings against him and merely defended himself on the merits of the case. There was in that case a *written* information; and

the defendant, having failed to object to the jurisdiction, there was a judicial issue pending, in which a false oath, on a matter pertinent to that issue, would be perjury.

So much for the case of *R.* v. *Millard*, 17 Jurist, 400.

The case of *R.* v. *Shaw*, 34 L. J., M. C., 169, was a reserved Crown case. The facts are that, on a written report, made by a policeman to his superintendent, and placed before a magistrate, to the effect that the beershop of one S. K. had been open, between 3 and 5 p. m., on a Sunday, that magistrate issued a summons, ordering that S. K. should appear and answer that charge. S. K. appeared, took no objection to the want of a *written* complaint, pleaded not guilty. On the trial, the prisoner *Shaw* swore that he had not been in that beershop, between 3 and 5 o'clock of that afternoon. There was, therefore, a pending issue in that case. It was, therefore, *held:*

"That production of further proof of an in-
"formation, *as the basis* of the summons, was
"not necessary on the trial of the prisoner,
"as the *magistrates had jurisdiction*, on S. K.
"appearing before them, to convict him of
"the charge, though there had been *no* in-
"formation or summons."

So much for the case of *R.* v. *Shaw*, 34 L. J., M. C., 169.

In the case, not of *Ex parte Bedringham*, but of *The Queen* v. *The Inhabitants of Bedringham*, it was an appeal, to the Quarter Sessions, from an "order" of two Justices of the Peace, made upon a written COMPLAINT *on oath* of John Smith, of the parish of *Bedringham*, one of the overseers of the poor of that parish, for the removal of the PAUPERS, Peter Quantril, his wife and children, from that parish to *Earsham*, another parish in the same county. On evidence, before the Quarter sessions, that the paupers had never obtained a settlement (that is to say, a settled domicile) in *Earsham*, the order was quashed, *not*, on the ground of an *insufficient* complaint, but, on the ground that the settlement of the paupers in question had always been in the parish of *Bedringham*. On a reserved case, by the Chairman of the Quarter Sessions, as to the validity of the judgment of that Court, one of the reserved questions was:

"Whether there had been a *sufficient com-*
"*plaint* to give the magistrates jurisdiction to
"make the order."

The Court of Queen's Bench, composed of LORD DENMAN, CH. J., and PATTESON, WILLIAMS and WIGHTMAN, JJ. held that the complaint *was* sufficient.

"LORD DENMAN, CH. J. It appears to me
"that the sessions have decided rightly on
"both the questions, which we have to con-
"sider. The first is, whether there was a
"*sufficient complaint* to the removing justices.
"I think there was; it was made *by the au-*
"*thority of all the parish-overseers of the poor.*"

Thus it appears that, even in the case of these helpless paupers, who had not a word to say in the matter, *complaint* was necessary.

So much for the case of *R.* v. *Bedringham* (and not *Ex parte Bedringham*), 5 Q. B. 653.

In the case *Ex parte Perham*, 29 L. J., M. C., 33 to 35, *there was* a sworn written complaint. The objections taken were not as to the absence of an information in writing and on oath, but that the offence charged in the conviction was different from that laid in the sworn to information. The difference was as to the *threats*, used as a *means* of intimidation of workmen. The Exchequer Court, agreeing with the Court of Queen's Bench, rejected an application for *Habeas Corpus*, made on behalf of *Perham*, which the Court of Queen's Bench (29 L. J., M. C., 31) had already rejected, on the ground that the offence, being that of an attempt to intimidate, a *variance*, as to the means of intimidation used, was *immaterial*. There is not, in that report, the least indication, on the part of either of the courts, that an information in writing is unnecessary.

In the case of *Turner et al.* appellants, and *The Postmaster General*, respondent, (34 L. J., M. C., 10), the accused were arrested, on a charge of having set fire to letters in a pillar letter-box. There had been no previous complaint of any sort; the attorneys of the accused *cross-examined* the witnesses for the prosecution; and when the case had been closed, the evidence clearly showing the prisoners' guilt, the attorneys for the prisoners *objected* that there had been *no preceding complaint*. The Justices overruled that objection; their attorneys then argued the case on its merits. The Justices in petty sessions found the prisoners guilty.

In rejecting the appeal of the prisoners from that conviction, it was stated by

"Cockburn, Ch. J. There must be judg-
"ment for the Crown. The case was fairly
"heard upon the merits, with the assent of
"the attorneys, who appeared for the appel-
"lants. They could not have asked for any-
"thing more than that the charge should be
"made as a misdemeanor, and that the
"evidence should be taken in support of that
"charge; but they did not even do that; and
"they assented to the charge being gone into.
"The facts, which were found, were the
"same; the statute, under which the charge
"arose was the same; and the only question
"that arose upon this—was that the charge
"was for a *misdemeanor*, instead of a *felony*,
"as it was originally supposed to be. The
"attorneys appeared to the charge of mis-
"demeanor, cross-examined the witnesses
"and took their chance of getting a decision
"in their favor. After doing this, they *cannot*
"*object* that the Justices had no jurisdiction
"to convict the appellants on the ground
"suggested."

Cromptor, Mellor and Shee, JJ., concurred.

So much for the case of *Turner et al.* and *The Postmaster General*, (34 L. J., M. C., 10).

Now, for the last quotation of Paley, which *is not* a decision. It is only the *then present inclination of opinion* of a judge, who had not studied the question. It is the case of *R.* v. *Rawlins*, 8 C. & P. 439. It was, on an indictment for perjury, alleged to have been committed by the prisoner, on an information against the prosecutor for having sold beer at improper hours. The conviction came up before the Central Criminal Court, at London. The statute stated that all penalties shall and may be "recovered upon the *information* of "any person whomsoever before *two Justices* "*acting in Petty session.*" There *was not any information* IN WRITING, except so far as it was contained in a printed summons delivered to the accused.

The report of this case then states:

"*Bodkin*, for the defence,—The *principal* "objection was that any person, proposing to "make a *complaint*, could only recover the "penalty before Justices in Petty session, "and the indictment stated that the proceed- "ing was before two Justices, but not that "they were assembled in Petty sessions, nor "that *they were acting* for the *division*, in which "the house was *situated.*"

Parke and Patteson, JJ., were of opinion that the *indictment was defective*, for want of an allegation that the justices were acting for the division in which the house was situated.

"Patteson, J., further said that *he had* "*not* given particular consideration to the "question of a *written* information; *but* the "*present* inclination of his opinion was that "it 'was *not* necessary.'"

Mr. Justice Parke did not evidently share the opinion of his colleague. No weight can be attached to such mere opinion of a judge, who admits that he had not studied the question.

The law cannot possibly tolerate the existence of "contradictory" rules of procedure. I shall, moreover, presently show that the Court of Queen's Bench, in England, *held* that the law "does not tolerate" such contradictory rules of procedure. That course, which the law has prescribed for the guidance of a judge of the superior court, must also govern the judge of the inferior court. The justice of the peace, in the summary trial of cases, exercises the double function of the jury and of the judge, in the higher court. On the person, accused before him, he pronounces a verdict of "guilty," or "not guilty," thereby acting as the jury; the guilty person, he condemns to "punishment," thereby acting as the judge.

The information is the basis, the indispensable corner-stone, of the summary trial; the indictment, or the information, as the case may be, is the basis, the indispensable corner-stone, of the more solemn trial.

Since the verdict of the jury and the consequent sentence by the judge, are exclusively confined to the charge preferred in the indictment, or in the information, it necessarily follows that the conviction, by the justice of the peace, must be exclusively confined to the charge preferred in the *written* information received by him.

It is in the interest of the defendant that the law requires that such an information must be in writing. The description of the offence, charged in that information, must be averred with the same precision as is required to be made in an indictment, or in an information. The reason of the strictness so required in pleading, is to enable the defendant to properly defend himself against the specific charge made against him, and to protect him against a second trial for the same offence.

It is, by such a written information alone, that one can ascertain, whether or not, *ab initio*, the justice had jurisdiction to cause the defendant, either to be summoned to appear and answer the charge set forth in the written information, or to be arrested. In order to justify the issue of a warrant of arrest, it is necessary that the written information should have been previously sworn to. In either case, that written information must disclose an offence triable in a summary manner and triable by him.

I shall now quote the case previously referred to by me, as deciding that there are no contradictory rules of proceeding in our law. It is the case of *Christie* v. *Unwin*, 11 Ad. & E., 373.

In that case, it was held that the Lord Chancellor, in exercising a power conferred on him by statute, must state, in his judgment, all the facts required to give him such statutory jurisdiction.

"Coleridge, J.—I am of the same opinion. "We cannot intend for or against the order; "but we must decide according to the words. "However *high* the authority may be, where "a 'special statutory power' is exercised, the "person who acts must take care to bring "himself within the terms of the statute. "*Whether* the order be made by the Lord "Chancellor, or by a justice of the Peace, the "facts, which give the authority, must be stated."

I have frequently found like erroneous statements of judicial rulings, in the works of eminent law-writers. The source of their errors in that respect has been an unsafe reliance on the statements of others as to the actual question settled. It is better that the advocate should, by personally examining the report, be quite certain as to the nature of the decision.

J. O'FARRELL.

Quebec, May 24.

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