MANUAL

FOR

Magistrates in Newfoundland,

BEING A GUIDE TO THEIR ORDINARY DUTIES AS JUSTICES OF THE PEACE,

WITH

APPENDIX OF FORMS;

BY

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ST. JOHN'S, N. F.:

J. C. WITHERS, QUEEN'S PRINTER.

1877.

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PREFACE.

THIS LITTLE WORK was prepared by me under the sanction of the Government. It has been compiled principally from English Text Writers on Magisterial Law, which I have condensed and made applicable to local requirements. My object has been to give to Outport Magistrates as clear and definite instructions and forms for all their ordinary duties as could be condensed within the small space at my disposal. I have endeavoured to be accurate, and in nearly every case I have given my authorities and quoted reported cases. I have to thank His Honor Sir HUGH W. HOYLES, the Chief Justice, for having kindly gone over the whole work, partly in manuscript, and partly in print, and I have his authority for stating that it meets with his entire approval. I also beg to thank Mr. BENNETT'S Government for having authorized me to prepare, and the present Attorney General for having allowed me to publish the work, at the expense of the Government. If the perusal of this Manual should tend to assist my brother Magistrates in the discharge of their onerous duties, and enable them to carry out the Law with more accuracy and efficiency, I shall feel amply repaid for all the labour and thought I have bestowed upon its preparation.

D. W. PROWSE.

St. John's, Newfoundland,
January 10th, 1877.

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ADDENDA.

Page 37.—For the words, "the Jurors *of* our Lady, &c.," read "the Jurors *for* our Lady."

" 104.—For "James S. Grieve," read "James J. Grieve."

" 181, Sec. 23.—For "not exceeding *one* year," read "*two* years."

" 237, Sec. 9.—This dicta has been altered by sec. 15, page 239, taken from Imperial Act 32 & 33 Vic., cap. 68, and on this point see Roscoe, Nisi Prius, Evidence — Edition of 1875, p. 176, where it is laid down "*Promise and Declaration in lieu of Oath.*" Until very recently, persons who from defective education, did not understand the religious obligation of an oath, and also persons who did not acknowledge an absolute Divine Power, or acknowledging such a Power, did not believe it would punish perjury, were equally incapable of giving evidence; but all objections on these grounds have now been removed by the above Statute.

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MANUAL FOR MAGISTRATES

IN NEWFOUNDLAND.

CHAPTER I.

OFFICE OF JUSTICE OF THE PEACE, DUTIES, &C.

SECTIONS

1.—Office of Justice of the Peace.
2.—Justices, how appointed.
3.—Commission of Justice of the Peace.
4.—Oaths to be taken.
5.—Oath of Allegiance.
6.—Old form of Oath of Office.
7.—Old form of Oaths abolished.
8.—Sections of Promissory Oaths' Act, 1874. Form of Official Oath.
9.—Form of Judicial Oath.
10.—Oath of Allegiance, by whom to be taken.
11.—Judicial Oath and Oath of Allegiance, by whom to be taken.
12.—Official Oath, by whom to be taken; proviso, not to apply where Special Oaths provided.

SECTIONS

13.—Officer declining or neglecting to take Oath, disqualified, or to vacate office.
14.—Name of British Sovereign for time being, to be substituted from time to time.
15.—Affirmation may be made in lieu of Oath.
16.—General observations on Oaths, &c. Mandamus, Rule Nisi, of Supreme Court.
17.—Justices not to try cases when interested.
18.—Justice must be impartial.
19.—Quarterly returns of fines, &c.
20.—Bribery.
21.—Warrants must be executed by Constables.

1. The office of Justice of the Peace is one of great antiquity, and has always been considered, both in Great Britain and in the Colonies, a highly honourable position.

2. Justices of the Peace in this Colony are appointed by the Governor, as the Queen's Representative. The Commission is issued under the Great Seal of the Island, and is headed,—"Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, &c." The meaning of this is, that

by the theory of the British Constitution, the Sovereign is the fountain of honor, of office, and of privilege, *(a)* and thus the Sovereign alone (or her Representative, as the Governor for example,) has the power of conferring honours, dignities, or privileges upon Her subjects; it will thus be seen that the office and honourable position of a Justice of the Peace in this Island, given to him by his Commission, is constitutionally as much given and granted to him by *Her Majesty*, as the highest office held under the Crown. Another reason also why the Commission is issued in the name of the Queen, is that Her Majesty is the Fountain of Justice and the General Conservator of the Peace in Her Realms, *(b)* and from the Sovereign alone can any of Her subjects receive authority to administer justice.

3. The form of the Commission, which was revised in the latter part of the Reign of Queen Elizabeth, and was then settled nearly in the form now used both in England and in this Colony, requires the Justice "to keep and cause to be kept all Ordinances and Statutes, for the good of our peace and for the preservation of the same;" "to chastise and punish all persons that offend against the form of those Ordinances and Statutes." The next paragraph refers to the authority of Justices of the Peace to bind over to keep the peace all persons who have threatened violence against the persons or properties of their neighbours; then follows the authority and power to hold Quarter Sessions, the regulating of Public Houses, Weights and Measures, and refers in antiquated language to various other subjects, all of which are now regulated by Statute, and will be referred to hereafter in their proper places. In the concluding portion of the Commission these words are used, "and, therefore, we command you that to keeping the Peace, Ordinances and Statutes, and all and singular other the premises, *you diligently apply yourself.*"

4. On receiving his Commission, a Justice of the Peace has now, by law, to take two Oaths; first, the Oath of Supremacy, which is in the following form:—

(a) Kerrs. Blackstone, p. 65.
(b) Kerrs. Blackstone, p. 64.

5. I, A. B., do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty QUEEN VICTORIA, (Her Heirs and Successors, according to Law,) * so help me GOD.

6. Secondly, the Oath of Office, which *was* in the following form :—

"You shall swear, that, as Justice of the Peace for the —— District of Newfoundland, in all articles in the Queen's Commission to you directed, you shall do equal right to the poor and to the rich, after your cunning wit and power, and after the Laws and Statutes of this Colony thereof made : and you shall not be of Counsel of any quarrel hanging before you : and that you hold your Sessions after the form of the Statutes thereof made : and the issues, fines and amerciaments that shall happen to be made, and all forfeitures that shall fall before you, you shall cause to be entered without any concealment or embezzling, and truly send them to the Receiver General for the use of the Colony. You shall not let for gift or other cause, but well and truly you shall do your office of Justice of the Peace in that behalf : and that you take nothing for your office of Justice of the Peace to be done, but of the Queen, and fees accustomed and costs limited by the Statute ; and you shall not direct or cause to be directed, any Warrant (by you to be made) to the parties, but you shall direct them to the Constables of the said District or other the Queen's Officers, or Ministers, or other indifferent persons, to do execution thereof. So help you GOD."

7. I have given the preceding form of Oath of Office as it has been taken by a large number of Justices, and until 1874 was the Oath required by Law; it has been now abolished by the Promissory Oaths' Act, 1874, and the Oaths required by Law, at present, are in a much shorter form, and are given below ; they are quite as comprehensive as the old Oaths, and are precisely to the same effect :—

SECTIONS OF PROMISSORY OATHS' ACT, 1874.

8. The Oath in this Act referred to as the Official Oath,

* NOTE.—The words "Her Heirs and Successors according to Law," are added in accordance with "The Promissory Oath Act, 1874."

shall be in the form following, that is to say; "I, ————, do swear that I will well and truly serve Her Majesty, QUEEN VICTORIA, in the office of ————, so help me God." (Sec. 3.)

9. The Oath in this Act referred to as the Judicial Oath shall be in the form following, that is to say; "I, ————, do swear that I will well and truly serve our Sovereign Lady QUEEN VICTORIA, *(in the office of Justice of the Peace for the ———— District of Newfoundland,)* and I will do right to all manner of people, after the laws and usages of this Colony, without fear or favor, affection, or ill-will, so help me GOD." (Sec. 4.)

10. The Oath of Allegiance, in the foregoing form, shall hereafter be tendered to, and taken by, all persons who are by Law required to take the Oath of Allegiance. (Sec. 5.)

11. The Judicial Oath and Oath of Allegiance shall be taken by the Chief Justice and Justices of the Supreme Court, Judges of District Courts, and by all Stipendiary Magistrates, Justices of the Peace, or other Persons appointed to any Judicial Office, as soon as may be after his acceptance of Office; and such Oaths shall be tendered and taken in the manner in which the Oath required to be taken by such officer, previously to the passing of this Act, on entering his office, would have been tendered and taken. (Sec. 6.)

12. The Oath of Office shall be tendered to and taken by all persons who are now, or hereafter may be, required by Law to take an Oath of Office; provided that this Section shall not extend to persons holding Offices for which special Oaths have been appointed under Acts of the Legislature. (Sec. 7.)

13. If any Officer required by law to take any of the Oaths hereinbefore mentioned, declines or neglects, when any Oath required to be taken by him under this Act is duly tendered, to take such Oath, he shall, if he has already entered on his Office, vacate the same; and if he has not entered on the same, be disqualified from entering on the same; but no person shall be compelled, in respect of the same appointment to the same Office, to take such Oath or make such Affirmation more times than one. (Sec. 8.)

14. Where, in any Oath under this Act, the name of Her present Majesty is expressed, the name of the British Sovereign,

for the time being, shall be substituted from time to time. (Sec. 9.)

15. When an Oath is required to be taken under this Act, every person for the time being by law permitted to make a solemn Affirmation or Declaration, instead of taking an Oath, may, instead of taking such Oath, make a solemn Affirmation in the form of the Oath hereby appointed, substituting the words "Solemnly, sincerely, and truly, declare and affirm," for the word "swear," and omitting the words, "so help me GOD." (Sec. 10.)

16. A careful consideration of the Commission and Oaths will shew how paramount and binding are the obligations of a Justice of the Peace to be loyal and faithful to his Sovereign, not merely as an ordinary subject, but also as one bound by the solemn sanctity of an Oath to a special obligation, and one on whom the Representative of the Sovereign, reposing confidence in his loyalty, integrity, and ability, has conferred special power and authority. The Commission requires you diligently to apply yourself to do your duty, and as you cannot do it without knowing how to do it, it is to be hoped that a careful study of this little work may in some small degree assist you; for your own credit and honor, and by your Oath, you are required to do your duty whilst you hold the Queen's Commission; and I may add, that if you refuse to do it, you may be compelled by a Writ of Mandamus (*a*) from the Supreme Court, to do what the Law imposes on you as a duty; and in cases where you refuse to do any act relating to your office, you may be compelled to do it by another proceeding called a

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(*a*) "*Mandamus*," from the Latin, means "*we command.*" Whenever a duty is cast upon a Justice, the Law requires that he shall promptly fulfil it; and if being properly requested to perform an act within the scope of his authority as a Justice, he without any sufficient reason declines to do so, the Supreme Court, (*) on application for the purpose, will interpose to compel him to do his duty.

For further information refer to Oke, p. 46 & 47, 48 & 49, where the cases are given where a Mandamus issued and also where a Mandamus was refused, and under title "Mandamus" in this Manual.

(*) See p. 3, Appendix Consol. Stat., where *Sup. Court* has all the authority of Queen's Bench, &c., and Consol. Stat., p. 226.

Rule Nisi *(a)* of the Supreme Court; (*b*) you must not allow any consideration, whether political, sectarian, or personal, to interfere in any way whatever with your Magisterial duties; you must have no regard to any man's position in society, but you must do, as your Oath compels you to do, equal justice to rich and poor. "You shall not be of Counsel of any quarrel hanging before you," means that you must hear *both sides*, not prejudge the case or take up one side of any dispute that may be brought before you.

17. You must also be careful not to try or take any part in the adjudication of any case in which you are *pecuniarily interested*, (*c*) either *directly* or *indirectly*.

18. I know it is a difficult matter for an Outharbor Magistrate to keep clear of all the petty jealousies, quarrels and disputes that naturally arise in all small communities, but if you act with common sense, prudence and good judgment, and are rigidly impartial in your decisions, you will manage it, and gain the confidence and respect of the community in which you reside. You should also specially avoid being a political partizan; you have a perfect right to hold your own individual opinions, both in political and other matters, and you have a right to express them privately as an individual, but you should be specially and particularly careful never to permit your political or your religious bias to interfere in any way whatever with your impartiality and independence as a Magistrate.

19. You must make accurate and regular returns quarterly (*d*) (each quarter ending on first day of January, April, July,

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(*a*) From the Latin word "Nisi," unless, because the Rule concludes with the words, "*unless* cause to the contrary be shewn within —— days."

(*b*) See Chap. 4, Sec. 5, and also Chapter 5 of this Manual, of stating a case for opinion of Supreme Court.

(*c*) No Justice of the Peace, however duly authorized, in all other respects can act judicially in a case wherein he is himself a party, or wherein he has any direct or indirect pecuniary interest (either as principal or agent) however small. The principle of Justice that "*no one can be a Judge in his own cause*," pervades every branch of the Law, and is as ancient as the Law itself. Oke, p. 29, &c.

(*d*) Consol. Stat., p. 44.

and October,) of all (*a*) fines, fees, and other monies you are required by Law to return to the Receiver General, where there is no Clerk of the Peace to do this duty, (*b*) and where there is a Clerk of the Peace, you should revise and certify his returns.

20. The words "you shall not *let* (*c*) for gift, &c.," means you shall not delay or put off a cause for a bribe; *let* is an obsolete word, the original meaning was to retard. For the honour of our Judiciary, both great and small, the crime is now as obsolete as the word.

21. Lastly, all Warrants and other Process must be executed by Constables, &c., never by persons interested.

CHAPTER II.

THE NATURE OF THE DUTIES OF JUSTICES OF THE PEACE.

SECTIONS

1.—Authority, either Ministerial or Judicial.
2.—Judicial functions.
3.—Ordinary Jurisdiction.
4.—Justices to have same jurisdiction as Justices in England.
5.—Jurisdiction in absence of Stipendiary Magistrate.
6.—Criminal jurisdiction of Justices in absence of Stipendiary Magistrate.
7.—Powers of Stipendiary larger than English Stipendiary Magistrates.
8.—Examples of Power in Criminal cases.
9.—Authority in Civil business—one Stipendiary Magistrate may hold Quarter Sessions for Civil business.
10.—Stipendiary Magistrate out of Session, like Jurisdiction.
11.—Civil Jurisdiction of Quarter Sessions.
12.—Authority to attach monies, &c., after judgment.
13.—Power to grant Licenses, &c.
14.—Where no Clerk of the Peace, Justice may act as such.

1. The authority of Justices of the Peace is either *ministerial* or *judicial*; the *ministerial* functions of Justices consist of

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(*a*) Fines—except in some special cases, referred to hereafter, half of the fine is paid to the Informer, the other half to the Receiver General.

(*b*) Consol. Stat., p. 43.—Where there is no Clerk of the Peace, a Justice or Stipendiary Magistrate may perform his duty.

(*c*) See Webster's Dict., word "let."

receiving informations or complaints for indictable offences which can only be tried by a jury in the Supreme Court or the Supreme Court on Circuit, or in some cases in the Quarter Sessions; also, for offences on matters triable in a summary manner, causing the party charged to appear and answer, either by Summons or Warrant; levying rates under the Sheep Killing Act, and many other Acts of the same character;—these are the *ministerial* functions of Justices of the Peace, as distinguished from their *judicial* functions.

2. Their Judicial functions chiefly consist: *first*, of the trial of offenders at Quarter Sessions and under their summary jurisdiction in small Criminal cases; *second*, adjudicating or deciding cases such as between master and servant, in the fishery, and many other cases of a similar character, the first being called their *Criminal* jurisdiction, whilst the second is described as their *Civil* jurisdiction.

3. The ordinary jurisdiction of Justices of the Peace, under the English Criminal Law, as applied to this Colony, is given to Justices of the Peace in Newfoundland by the Section following:—

4. "Justices of the Peace shall have and exercise, in proceedings of a criminal or other nature, the like powers, authorities, and jurisdiction, where the same shall not be inapplicable, as Justices of the Peace in England may now or hereafter by law exercise there, except as may be otherwise provided by Local enactment."—(Cap. 13, Sec. 8, Consol. Stat.)

5. Justices of the Peace in Newfoundland have, besides this ordinary jurisdiction, special powers conferred on them. In page 43 of the Consolidated Statutes, Chapter 13, Section 10, it is provided that "in all places where there shall be no resident Stipendiary Magistrate, or where he shall be absent, any Justice of the Peace, in or near the locality, shall and may perform and exercise all the functions, powers and authorities which are or might be exercised or performed by a Stipendiary Magistrate, under the provisions of these Consolidated Statutes."

6. At page 42, Section 6, of the same Chapter, it is also provided "Any such Stipendiary Magistrate shall also have and

exercise the like power, authority and jurisdiction, in the hearing and determining of summary proceedings on complaints, and the carrying out of any conviction thereon, as any two or more of Her Majesty's Justices of the Peace now or hereafter may exercise under any Law that may be in force in this Colony, and shall have the same power and authority to require and compel the attendance of witnesses."

7. These last Sections give very large powers to Stipendiary (or paid) Magistrates; larger powers, in some respects, even than are conferred on Stipendiary Magistrates in England; (*a*) for instance, under Section 4 of the same Chapter, (page 42, Consol. Stat.) "The Court of Sessions for the transaction of Civil business may be held by one Stipendiary Magistrate."

8. These large powers, both in Civil and Criminal business, are all conferred on a Justice of the Peace where there is no resident Stipendiary Magistrate, or where he is absent. I will just notice some of the powers thus conferred in Criminal cases. By Consol. Stat., p. 228, he can try and convict persons stealing codfish, of a value not exceeding twenty dollars. Under the Imperial Act, 24 & 25 Vic., C. 100, S. 42, he can give two months' imprisonment for assault, or fine five pounds stg.; and he can give six months' imprisonment and twenty pounds stg. fine for aggravated assaults on boys under fourteen, or females.

9. I will now notice some of the powers conferred by the above 10th Section on Justices of the Peace in Civil business, where the Stipendiary Magistrate is absent, &c.

Sec. 4, same Chapter, provides,—"The Court of Sessions for the transaction of Civil business, may be held by one Stipendiary Magistrate." In the absence, &c., of Stipendiary, the Justice of the Peace in or near the locality, might then hold the Quarter Sessions for the transaction of civil business, in places where such Court was held.

10. Should there be no Court of Sessions, however, the next Section gives all the Civil jurisdiction of that Court to a Stipendiary Magistrate at all times, and this jurisdiction in the

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a. Oke. 15 & 16.

absence, &c., of the Stipendiary, may be exercised by the honorary Justice. "Stipendiary Magistrates, out of Session, may exercise the like jurisdiction in Civil cases, as the Court of General and Quarter Sessions, with the like powers and authorities."

11. The Civil jurisdiction of the Court of Quarter Sessions is given in 3rd Sec. of same Chapter:—"The said Courts, (that is Quarter Sessions), may hear and determine, in a summary way, all Civil Actions for the recovery of debt or damages to the amount of twenty-five dollars, save Actions in which the title to any land or tenement may be in question; and except Actions for libel or slander, replevin, malicious prosecutions, and Actions against any Justice of the Peace, or other Public Officer, for acts done in the execution of his duty; and may hear and determine all disputes, to any amount, concerning the wages of servants in the fishery, the supply of bait and the hiring of boats for the fishery."

12. By the following Section, the Stipendiary Magistrates have authority to attach monies in the hands of third parties, &c. This power may also be exercised by the honorary Justice in the absence, &c., of the Stipendiary:—

Sec. 7, Cap. 13, Consol. Stat.—"Any of the said Courts of Session, or Stipendiary Magistrates, before whom judgment shall be recovered, may attach monies, goods, debts, and effects, in the hands of any third party, and summon and compel by Warrant, if necessary, the attendance of any party for examination, and make and enforce the observance of such order thereon as to the said Courts or Magistrates shall appear just: Provided, that no such Attachment shall affect executory contracts or debts not actually due."

13. A Justice so situated may also grant Licenses for the Sale of Intoxicating Liquors, under License Act, 1875, (*a*) where there is no Quarter Sessions for the District, Town, or Place, where he resides; he may also exercise many other powers, both ministerial and judicial, which will be hereafter noticed.

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a. See Chapter "Of Intoxicating Liquors."

14. By Section 11, "A Stipendiary Magistrate or Justice of the Peace, in any District or Place where there shall be no Clerk of the Peace, or in his absence, may perform the duties of such Officer." A Justice thus acting, would be entitled to receive the fees of the Clerk of the Peace, and also to ten per cent. on all License money received.

CHAPTER III.

JURISDICTION OF JUSTICES OF THE PEACE AS TO LOCALITY, &C.

SECTIONS	SECTIONS
1.—Justice's power confined to his District in certain cases.	7.—Iudictable offences on the High Seas in British Ships.
2.—Central District defined.	8.—Accessories.
3.—Northern District.	9.—Offences in British Ships.
4.—Southern District.	10.—Larceny.
5.—Labrador.	11.—Larceny from wrecks.
6.—Warrant may issue for offence committed within jurisdiction, no matter where offender resides in the Colony.	12.—Where title to land involved.
	13.—In assault, example.
	14.—Under Malicious Injuries' Act.
	15.—Course to be pursued in such cases.

1. A Justice of the Peace is generally appointed for one of the three Judicial Districts into which this Colony is divided, or for the Labrador; and his power and authority, except in special cases, which will be referred to hereafter, is confined within the District named in his Commission; he cannot exercise any coercive or judicial act out of the District for which he has been appointed (*a*); it will be necessary therefore first to define the limits of each Judicial District (*b*).

2. THE CENTRAL DISTRICT includes all settlements in the peninsula of Avalon, lying between an imaginary line drawn from the La Manche River inclusive, to Holyrood in Conception

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(*a*) See Stones' Jus. Manual, p. 477.

(*b*) For fuller information, see notes. E. M. Archibald's Digest, pp. 55 & 56.

Bay, exclusive, and includes Belle Isle, and the adjacent Islands in Conception Bay.

3. The Northern District comprises and includes all that portion of the Island, and the Bays and Rivers of the same, and the Islands in or adjacent thereto, and dependent on the Government thereof, situate and lying between the Northern and Western limits of the Central District, and Cape Norman in the Straits of Belle Isle, inclusive of the Settlements contiguous to the said Cape.

4. The Southern District comprises and includes all that portion of the Island, and the Bays and Rivers of the same, and the Islands in or adjacent thereunto, and dependent on the Government thereof, lying and situate between Cape Norman, aforesaid, and proceeding by the Western, Southern and Eastern shores to the La Manche River, aforesaid.

5. Labrador is thus defined in the Governor's Commission: "All the Coasts of Labrador, from the entrance of Hudson's Straits to a line to be drawn, due North and South, from Anse Sablon on the said Coast to the fifty-second degree of North Latitude, and all the Islands adjacent to that part of the said Coast of Labrador, as also of all forts and garrisons erected and established, or which shall be erected or established within or on the Islands and Coast aforesaid. (*a*)

6. Whilst the general rule holds good that the Justice's jurisdiction is in general confined to the District named in his Commission, (*b*) there are certain cases in which his jurisdiction is more extended; for instance, Justices are authorized to issue

(*a*) The Imperial Act, 49 Geo. 3, C. 27, S. 14, annexes, to the Government of Newfoundland, the Island of Anticosti, and the Coast of Labrador to the River St. John, but by the Imperial Act 6 Geo. 4, C. 59, S. 9, this Island and part of the Labrador is reannexed to Canada, and the boundary of so much of Labrador as remains subject to the Government of Newfoundland, is defined in accordance with the Governor's Commission as given above.

(*b*) Some Stipendiary Magistrates and some Honorary Magistrates are Justices of the Peace for the Island of Newfoundland and its Dependencies: in that case their jurisdiction extends over Newfoundland and Labrador. All the District Judges have such jurisdiction, *ex officio*.

a Warrant (*a*) to apprehend and to commit for trial any person charged on oath before them with having committed an (*b*) indictable offence *within* their jurisdiction, no matter where such person shall reside within the Colony and its Dependencies. (*c*)

7. The Justice is also authorized to issue his Warrant for the arrest of any one who has committed an indictable offence on the high seas, in a British ship, when the offender comes within the Justice's jurisdiction. (*d*)

8. All accessories (*e*) to any felony may be tried in the same manner as the principal criminal.

9. All offences whatsoever, committed in British ships at sea, or by British subjects in a foreign ship, may be taken cog-

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(*a*) See Forms of Warrant in Appendix of Forms.

(*b*) 11 & 12 Victoria, C. 42, S. 1, (Imperial Act), Oke, p. 21. The meaning of the word *Indictable* is explained in a subsequent Chapter; see Index, under head *Indictable*.

(*c*) The course to be pursued, when the offender has left the District, is to send the Warrant by one of your Constables to a Magistrate residing nearest to where you believe offender is; the Constable then can swear to your signature—on proof of your signature the other Magistrate backs your Warrant, (see Backing Warrants), and the Warrant then holds good for all the District over which the Magistrate backing the Warrant has jurisdiction. You would, of course, only send your Constable in important cases, and where it was necessary for him to identify the offender. In ordinary cases of assault, and in bastardy cases, the practice is to send the Warrant by post to the Magistrate residing nearest to where offender is, and generally there is some one who can prove the signature and identify prisoner.

(*d*) A British ship is in law part of the Territory of the United Kingdom, and all on board are at all times and in all places, subject to English Law. This is the general principle. This special power is given by Statute, (see *Arch. Crim.* p. 30 & 31.)

(*e*) Accessories.—An accessory is a person who is not the principal actor in a felony, nor even present at its perpetration; but who is in some way concerned either *before* or *after* the fact. An accessory *before* the fact is one who procures or counsels another to commit a crime, he himself being absent. An accessory *after* the fact is a person who knowing a felony to have been committed, receives, protects, or assists the felon. In sudden unpremeditated crimes, there can be no accessories *before* the fact. There are no accessories in crimes under the degree of felony, and there are no accessories in treason. The word Felony is explained in the Chapter on Criminal Law.

For fuller information about accessories, see *Kerrs. Blac.* 445, 446.

nizance of by a Justice of the Peace residing at any port or place where such vessel shall arrive, in the same manner precisely as if the offence were committed (*a*) within the Justice's District.

10. Larceny (which means stealing) may be dealt with in any District where the offence was committed, or in any District through or into which the stolen property may have been carried by the thief; or if stolen in one District and in the possession of the thief in another, in either District. (*b*)

11. Larceny from wrecks may be *tried* either in the District where the offence was committed, or in the District next adjoining; the word *tried*, all through this Chapter, only means that you are to arrest the guilty parties as soon as you can, and take the examination of the witnesses, &c., as explained in the Chapter on Indictable offences. (*c*)

12. In all cases where property or title to land is in question, Justices of the Peace have no jurisdiction to try and determine the case in a summary manner.

13. This question may arise in a case of assault; for example: John Snow is in possession of land; William Brown putting up a new fence on the land adjoining, comes in on the land Snow claims. Snow tells him not to put up the fence there, and not to come in on the land; Brown persists in coming in on the land and in putting up the fence; Snow forcibly removes him off the land without unnecessary violence, and without committing a breach of the peace, and probably knocks down the fence. (*d*) Now, in this case, if the Justice found that Snow was in *possession* of the land he claimed for some considerable length of time, or had honestly some claim on it, he would be bound to dismiss the case on those facts being shewn to his satisfaction; he could not try the question as to which of the two, Brown or Snow, had the better title to the land.

(*a*) Oke, 851, 852, Notes.

(*b*) Oke, p. 24.

(*c*) For further information on this subject, see *Archibald Crim. Pleading*, from p. 25.

(*d*) See Ouster of Jurisdiction and excess of force or violence, under title, *Practice*, Post.

14. A case of this kind may also arise under the Local (*a*) Malicious Injuries' Act, and under the Imperial Malicious Injuries' Act. For instance, if Snow were to cut down a fence or a gate which Brown had placed on land which Snow claimed; if the same claim were honestly set up as in the former case, he could not be tried by the Justice, either under the Local or Imperial Act. "Whenever this question of title is raised, the Justice must determine from all the facts and circumstances of the cases, whether the Defendant *produces evidence or not*, whether the claim of right set up in himself or those under whom he claims to act is made *bona fide*, that is in good faith, and with a show of reason." (*b*)

15. I would advise the Justice, in all cases where it is practicable, to determine this question, without going further into the facts of the case than is absolutely necessary for him to arrive at a decision whether the question of title is *bona fide raised*, or not—as it would be obviously out of place for him to hear the whole case, and then, after all the time and labour bestowed on it, find at the end that he had no right to deal with the case at all. (*c*)

(*a*) Consol. Stat., 227.

(*b*) Oke, p. 33, 36.

(*c*) I have gone fully into this question of title, and have endeavoured to make it as clear and intelligible as I possibly could in the limits of this small work. I have done so because I am aware that much misapprehension exists concerning the subject, and cases are constantly arising before Outport Magistrates in which this question is involved. The present state of Law on this subject requires some change. Land in England or Ireland is considered almost a sacred thing, and its tenure is complicated. In this country, especially in Outharbors, it is of very small money value generally, and the title to land is simple. A receipt for the purchase money in which the particular land is identified, passes the seller's title to the purchaser, no matter what its value. Generally speaking, 20 years' undisturbed possession is good against all the world, except the Crown. 60 years is good against the Crown. A Government grant is equivalent to 60 years' possession. The Registration Law is simple. Under our present Law an honorary Magistrate might try a wages case that involved any amount, but the smallest dispute about land not worth ten shillings can only be tried before the Supreme Court, either in St. John's or on Circuit, and at such cost that it practically operates as a denial of justice to a poor man.

CHAPTER IV.

ACTIONS AND OTHER PROCEEDINGS AGAINST JUSTICES.

SECTIONS

1.—Observation on Act for protection of Justices.
2.—When Justices liable to an Action.
3.—Acts done with jurisdiction.
4.—Acts done without jurisdiction.
5.—Against whom Action to be brought.
6.—Rule when discretionary power is given to a Justice.
7.—Rule Nisi of Supreme Court when Justices refuse to act.
8.—No Action where conviction or order confirmed on appeal.
9.—Judge may stay proceedings where Action prohibited.
10.—Actions to be commenced in six months.
11.—One months' notice to be given.
12.—Venue not applicable.
13.—Defendant under general issue may give special matters of defence in evidence.
14.—Tender and payment into Court.
15.—Nonsuit.
16.—Damages.
17.—Costs.
18.—Mandamus.
19.—Proper course to state a Case, when Justice's decision erroneous.
20.—Mandamus disused; Rule Nisi instead.

SECTIONS

21.—CERTIORARI.
22.—Certiorari defined.
23.—No special Law required.
24.—Difference between Certiorari and Appeal.
25.—Effect of express words taking away Certiorari; Attorney General's right, &c.
26.—No Certiorari whilst Appeal depending.
27.—Purpose of Writ; getting Justice's defective order quashed.
28.—Not to be quashed for want of form.
29.—When jurisdiction shewn on face of conviction, cannot enquire as to soundness of conclusion.
30.—When conviction good on face, no evidence received to contradict it.
31.—Must be sued out within six months—notice—security.
32.—How return made to Certiorari by Justice.
33.—Words, "nor be removed by Certiorari," does not take away right to state a case.
34.—HABEAS CORPUS.
35.—Rule Nisi for Habeas.
36.—Amendments after issue of Rule Nisi.
37.—Criminal Information or Indictment against Justices.

1. Whilst Justices of the Peace are obliged by Law to perform the various duties imposed upon them, they are very

properly protected from vexatious actions for acts done by them in the execution of their office. A heavy responsibility is imposed upon them, however, when they either wilfully or negligently transgress the bounds of their authority. The principal Act for the protection of Justices is the Imperial Act, 11 & 12 Victoria, Cap. 44, which has now become part of the Law of this Colony, (*a*) and a summary of all parts of which, applicable to the Colony, is given in this Chapter.

2. "The general rule of Magisterial responsibility is this: if a Justice has *jurisdiction* over the subject matter laid before him, and acts judicially, he is not liable to an action for any act done within it, however erroneous the conclusion at which he arrives may be." The great point, therefore, for a Justice to consider, in all cases, is,—Have I *jurisdiction* in the matter?" "But in cases either in which he has not jurisdiction, or exceeds it, (*b*) he will be liable to an action for damages to the party aggrieved."—Oke. p. 38.

IMPERIAL ACT, 11 & 12 VICTORIA, CAP. 44.

PROTECTION OF JUSTICES FROM VEXATIOUS ACTIONS, &c.

3. ACTS DONE WITH JURISDICTION.—Every action against a Justice for any act done in the execution of his duty with respect to any matter within his jurisdiction, must be by an action on the case, as for a tort, and the declaration expressly allege that the act was done maliciously and without reasonable and probable cause [see *Basebe* v. *Matthews*, 16 *L. T.* (N.) 417]; and if at the trial such allegation be not proved, the plaintiff shall be nonsuit, or a verdict given for the defendant. [11 & 12 Vict., c. 44, s. 1; *Taylor* v. *Nesfield*, 23 *L. J.* 169, and *Walker* v. *S. E. Railway Co.*, 23 *L. T.* (N. S.) 14.]

4. ACTS DONE WITHOUT JURISDICTION.—For any act done by a Justice in a matter of which he has not jurisdiction, or in

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(*a*) Consol. Stat. p. 226.

(*b*) Exceeding jurisdiction in some cases may mean not only where there is an absence of jurisdiction in fact over the case, but also where some Statutable or formal requisite has been omitted, if such requisite be an essential ingredient.—(Oke. p. 39.)

which he has exceeded (*a*) his jurisdiction [see *Ratt* v. *Parkinson*, 20 *L. J.* 208], an action may be maintained without an allegation that the act was done maliciously, and without reasonable and probable cause; but no action shall be brought for anything done under a conviction (*b*) or order until after the same shall have been quashed either upon appeal, or by the Supreme Court; nor for anything done under a Warrant to procure the appearance of a party, and which shall have been followed by a conviction or order, until after the same shall have been (*c*) quashed [see *Bessell* v. *Wilson*, 20 *L. T.* 233]; or if the warrant were not followed by a conviction or order, or if it were a warrant upon an information for an alleged indictable offence, and a summons were previously served and disobeyed, then no action can be maintained against the Justice.—[*Id.* s. 2.]

5. AGAINST WHOM ACTION TO BE BROUGHT.—Where a conviction or order shall be made by one or more Justices, and a warrant of distress or commitment granted thereon by some other Justice, *bona fide* and without collusion, no action to be brought against the Justice who granted such warrant, by reason of any defect in the conviction or order, or for want of jurisdiction in the Justice who made the same, but the action must be

(*a*) Where Justices signed a conviction and commitment in which blanks were left for the costs, the conviction was afterwards quashed on appeal, and an action for false imprisonment commenced, it was held that this was not an excess of jurisdiction, but a mere irregularity. [*Bott* v. *Ackroyd*, 28 *L. J.* 207.]

(*b*) *Conviction* may be amended even after action brought against the Justice. A Defendant is entitled, upon application, to a copy of the conviction from the convicting Justice; but the Justice is not bound by the copy he has delivered. Oke, p. 39.

Conviction is the formal judgment of the Justices, under their summary jurisdiction in Criminal cases, when reduced to writing under their hands and seals: as to the difference between *orders* and *convictions*, see *Paley*, 5th Ed. 159 et. seq.

(*c*) The effect of the 2nd and 8th sections of this Act is, that the conviction must be quashed before the injured party can commence an action, and that the action must be commenced within six months after the act complained of. It may frequently occur that the conviction cannot be quashed in sufficient time to allow of an action being commenced within the prescribed period.

against the Justice or Justices who made the conviction or order. [*Id.* s. 3.]

6. DISCRETIONARY POWER.—In all cases where a discretionary power shall be given to a Justice by any Act, no action shall be brought against him for or by reason of the manner in which he shall have exercised his discretion, in the execution of any such power. (Sec. 4.)

7. REFUSAL OF JUSTICES TO ACT.—In all cases where Justices shall refuse to do any (*a*) act relating to the duties of their office, it shall be lawful for the party requiring such act to be done to apply to the Supreme Court, upon an affidavit of the facts, for a rule calling upon such Justices, and also the party to be affected by such act, to show cause why such act should not be done; and if, after service of such rule, good cause shall not be shown against it, the said Court may make the same absolute, with or without or upon payment of costs, and the said Justices, on being served with such rule absolute, shall obey the same and shall do the act required; and no action shall be commenced or prosecuted against such Justices for having obeyed such rule and done such act so thereby required as aforesaid. [*Id.* s. 5. See *R.* v. *Paynter*, 26 *L. J.* 102; *R.* v. *Dayman*, 26 *L. J.* 128; *R.* v. *Brown*, 26 *L. J.* 183; and *Re Hartley*, 31 *L. J.* 232.]

8. No action to be brought against Justices for anything done under a warrant of distress or commitment upon any conviction or order which shall be confirmed on appeal. (*Id.* sec. 6.)

9. And a Judge may stay the proceedings in any action where such an action is prohibited. (*Id.* s. 7.)

10. Every action must be commenced within six calendar months after the act complained of. (*Id.* s. 8.)

11. One calendar (*b*) month's notice, in writing, must be

(*a*) If Justices have refused to hear an application for a summons for an indictable offence, or if after hearing they refuse to grant it from a mistaken view of their duty, the court will grant a *mandamus*, but not, it seems, where they have heard and determined the application, and on the merits have declined to grant it. [*R.* v. *Fawcet*, 19 *L. T.* (N.) 396, and *re Clee*, 21 *L. J.* (*M. C.*) 112.]

(*b*) Calendar month means from a given date in one month, to a given date in another month.—(Oke. p. 40.)

given to the Justice before an action can be commenced against him. (*Id.* s. 9.)

12. VENUE.—The next Sec., 10, refers to the bringing of Actions in the Court (*a*) within the District of which the act complained of was committed. This would have no reference here, as such Actions would always be taken in the Supreme Court, which has jurisdiction over the Colony. (Sec. 10.)

13. GENERAL ISSUE.—Sec. 10 also provides, that the Defendant may plead the general issue, and give any special matters of defence, excuse or justification, in evidence, under such plea at the trial. (Sec. 10.)

14. TENDER AND PAYMENT INTO COURT.—The Justice may tender a sum of money which he may think fit, as amends for the injury, and may pay money into Court. (Sec. 11.)

15. NONSUIT.—This Section enumerates the various cases under which the Plaintiff will be nonsuited, if action not brought within the six months, or month's notice not given, or if he shall not prove the cause of Action stated in such notice, &c. (Sec. 12.)

16. DAMAGES.—Where the Plaintiff shall be entitled to recover, and shall prove the levying or payment of any penalty or sum of money, under any conviction or order, as parcel of the damages he seeks to recover, or that he was imprisoned under such conviction or order, and seeks to recover damages for such imprisonment, he shall not be entitled to recover the amount of such penalty or sum so levied or paid, or any sum beyond twopence for the imprisonment, or any costs, if it shall be proved that he was actually guilty of the offence of which he was convicted, or that he was liable to pay the sum so ordered, or, with respect to such imprisonment, that he had undergone no greater punishment than that assigned by law for the offence of which he was convicted, or for non-payment of the sum so ordered. [*Id.* s. 13.]

(*a*) This Section also refers to Actions being brought in County Courts, (here District Courts), and to the Justice's power to object to having his case tried there. A similar provision is contained in the District Court Acts, p. 47 & 49, Consol. Stat.; but as a matter of practice such Actions would never be tried in a District Court.

17. Costs.—If the Plaintiff obtain a verdict, or the Defendant (the Justice) allow judgment to pass against him by default, the Plaintiff is entitled to costs as before the act; but if it be stated on the proceedings that the act complained of was done maliciously and without reasonable and probable cause, the Plaintiff is entitled to costs as between Attorney and Client; and in every action, if the Justice obtain judgment upon verdict or otherwise, he is entitled to costs as between Attorney and Client. [*Id.* s. 14.]

18. Mandamus. — This high prerogative Writ, which can issue from the Supreme Court, or the Supreme Court on Circuit, is directed to the Judges of inferior Courts of Judicature, Corporations, Public Bodies, and others, upon whom the Law casts a public duty, alleging that complaint has been made of their refusal to perform that duty upon some particular occasion, and commanding them in the Queen's name to do it. Mandamus applies to every class of duty coming within the scope of the Justice's functions. If a matter is properly brought under the notice of Justices, and they have jurisdiction, they cannot decline to interfere, but must, to the best of their judgment, adjudicate upon it. A mandamus will lie when they decline to enter upon an enquiry, but not when, having entered upon the enquiry, they arrive at a *conclusion*, however erroneous it may be.

19. The proper course to adopt, where their decision is erroneous, is to proceed by Rule to state a case under 20 & 21 Victoria, Cap. 43, Sec. 5, which I shall refer to hereafter.

20. In most of the ordinary cases before Justices, the practice now in England, instead of mandamus, is to proceed under the Imperial Act, 11 & 12 Victoria, Cap. 44, (before noticed), by Sec. 5 of which Act a Rule Nisi can be taken out of the Supreme Court calling upon the Justice, and also the party affected by such act, to shew cause why such act should not be done. (*a*)

21. Certiorari, from the Latin, means *to be certiorated, or more fully and accurately informed of.* The Supreme Court has a general superintending power over all Courts of inferior jurisdiction, and having all the power and authority, not only of

(*a*) p. 19 of this Manual, sec. 7.

the Queen's Bench, but also of the Common Pleas, High Court of Chancery, &c., has this power, both in Civil and Criminal business, and can exercise its jurisdiction, where interference is necessary, to restrain the proceedings of inferior Tribunals, through the Writ of *Certiorari*.

22. CERTIORARI DEFINED.—Certiorari is defined to be an original Writ, directed in the Queen's name to the Judge or Justices, at or out of Sessions, commanding them to *certify* or return the records or proceedings in a *judicial* matter pending before them, to the end that such further may be done thereon as of right, and according to the law and custom of Newfoundland, may seem fit to be done. No Writ of Error lies on summary convictions, and therefore the Writ of *Certiorari* is the only mode by which a revision of these proceedings, by the Supreme Court, can be obtained.

23. No special law is required to authorize this Writ; it is a consequence of all inferior jurisdiction of record to have their proceedings removeable for the purpose of being examined in the Supreme Court by *Certiorari*.

24. *Certiorari* differs from *appeal* in this respect: appeal must be created by express law; *Certiorari* lies, as a matter of course, to all inferior Tribunals, unless taken away by express statutable provision.

25. Even express words taking away the *Certiorari* does not take away the Attorney General's right to a *Certiorari* in all cases; and express words also have no application where there is a want or excess of jurisdiction, or where the Court is illegally constituted, or where the conviction is obtained by fraud. (*a*)

26. Whilst an appeal is depending at the Quarter Sessions, there can be no *Certiorari*, nor where a certain time is fixed for bringing an appeal, and both parties have that privilege, the *Certiorari* is suspended during the time given for the appeal.

27. The proper purpose of *Certiorari*, so far as concerns Justices of the Peace, is that of getting a conviction or order of Justices removed into the Supreme Court, to the end that it may be quashed, from some defect apparent upon its face.

28. It cannot be quashed or set aside from want of form only,

(*a*) Paley, on Convictions, under Title *Certiorari*.

(*a*) it must be for some essential defect; it must be wanting in some essential ingredient, or what Lawyers call "*matters of substance.*" Justices, however, should be particular in following the forms in the precise words; it is the only safe course for them to pursue.

29. When it appears upon the face of the conviction that the Justices had in fact *jurisdiction*, the Supreme Court cannot inquire into the question whether or not the Justices came to a *sound conclusion*; the Supreme Court in those cases is not a Court of *Appeal*, but merely a Tribunal to keep inferior Courts within the limits of their proper functions. (*b*)

30. If the conviction is good upon its face, no evidence can be received by the Supreme Court to contradict the statements contained in such conviction; the only evidence that can be received by affidavit or otherwise, is to shew that the Justices had *not jurisdiction.*

31. The *Certiorari* must be sued out within six months. Six days' notice must be given to the Justice, and security must also be given.

32. When the Writ of *Certiorari* is sent to the Justice he must append to it the conviction or order mentioned in the Writ, with the Information or Complaint, and make a return in the form given in the Appendix under the head of *Certiorari.*

33. Where, in Acts of Parliament, the words only are used "*nor be removed by Certiorari,*" (as in 24 & 25 Vic., C. 100. Offences against the Person); this does not prevent a case being brought before Supreme Court, under 20 & 21 Victoria, C. 43. (The Imperial Act which provides for stating a case for the opinion of Superior Court.) It would have been different if the words had been, *nor be removed by Certiorari or otherwise.* (*c*)

34. Habeas Corpus, (Latin), *Have the body.* There are several Writs of *Habeas Corpus*; the only one, however, with which

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(*a*) Consol. Stat. p. 43.

(*b*) Oke, p. 51.

Oke, p. 53, where fuller information is given; and see Paley, under head *Certiorari.*

(*c*) Greaves' Crim. Law Consolidation p. 92.

Justices of the Peace are likely to be concerned is called *Habeas Corpus ad Subjiciendum*, (Latin), means, that *you have the body to answer*. "When a prisoner is in actual custody, upon a Warrant from a Justice upon a conviction or order, and being desirous to test its validity, he will apply to the Supreme Court by Affidavit for a Writ of *Habeas Corpus*, which, if sufficient ground be shewn to lead the Court to believe that the imprisonment was illegal, will at once be granted."

35. Sometimes a *Rule Nisi* is issued, and the Justices must have notice served on them of the application, and also of the return of the Writ, so as to enable them to support their commitment before the Supreme Court. It is important for them, personally, to attend to it, as an action against them for damages would be the probable result of a successful application for a Writ of *Habeas Corpus*.

36. Where a *Rule Nisi* is issued in the first instance, it appears that an unsealed Warrant may be cured by the substitution of a new Warrant, sealed, after service of a Rule for a *Habeas Corpus*. (*a*) After the Return to the Writ is put in Court, and read, it is said to be *filed*, the Court may still amend it, (the Return) but the commitment cannot be amended. (*b*)

37. Criminal Information or Indictment against Justices.—When the misconduct of Magistrates, besides being productive of private injury to individuals, calls for punishment on public grounds; when they act from private resentment, or interest, or from partial, malicious and corrupt motives, the Supreme Court will, on sufficient grounds being laid before it by Affidavits, cause a proceeding, called a Criminal Information, to be filed by the Clerk of the Court, against them, or they may be proceeded against by Indictment. (*c*)

(*a*) Oke, p. 54. Note.

(*b*) Paley on Convictions, 319. Commitment is the order in writing under the hand and seal of the convicting Justice, directed to a Constable, and to the Keeper of the prison to which the party is to be committed. For further information under head Commitment, see *Paley*.

(*c*) Oke, p. 55, *Paley* on Convictions, 482.

CHAPTER V.

STATING CASE FOR THE OPINION OF THE SUPREME COURT.

SECTIONS

1.—Imperial Act, 20 and 21 Vic., Cap. 43, made part of Local Law.
2.—Must be on point of Law; what case should contain.
3.—Must be on Complaint or Information.
4.—General provision of Act.
5.—Justice may state case.
6.—Security and notice.
7.—When Justices may refuse a case; right of Attorney General.
8.—Supreme Court may order case.
9.—Decision of Supreme Court to be final.
10.—Justice may file Affidavit.
11.—Amendment of case.
12.—Judge at Chambers.
13.—Warrants to enforce decision.
14.—Certiorari not required.
15.—Supreme Court may make Rules.
16.—Sections 13 & 14 not applicable.
17.—Right of appeal to Sessions abandoned.
18.—Schedule A. Fees.
19.—Form of Notice to Justice.
20.—Form of case and observations thereon.
21.—Form of Notice to Respondent; how framed.
22.—Form when Justice refuses case as frivolous.

1. The Imperial Act, 20 & 21 Victoria, Cap. 43, now made part of our local law by the Consolidated Statutes, p. 226, provides for the review of the decisions of Justices on points of law, and affords a ready mode of taking the opinion of the Supreme Court on a case stated by the Justices; as it is a very important Act, I have thought it necessary to explain its provisions fully. This Act affords great protection to Justices, as, after stating a case, they are not liable to any costs in respect or by reason of an appeal against their determination, (sec. 6) and they may, without the risk of an Action, enforce their conviction or order after the decision of the Supreme Court, affirming or amending the same, has been made. (Sec. 9.)

2. The Act only gives the Justices the power of asking the opinion of the Court upon a *point of Law;* and the question for the Court is not whether the Justices came to a right conclusion, but whether there was any evidence in support of that conclu-

sion. In drawing up a special case, care should be taken that it contains every question which it is desired to submit, as the Court has no power to give an opinion on a question asked by the parties, if it is not stated in the case by the Justices. (*a*)

3. It will be seen by the second Section of the Act that the right of having a case stated exists only where the Justices' determination is on a *complaint* or *information* under their *summary* jurisdiction, and ceases to exist where their decision is not founded upon either of these proceedings, as where the decision is upon an application for a license. (*b*)

4. This Act enables either party, if dissatisfied with the determination of Magistrates, as being erroneous in point of Law, to apply to the Justice within three days for a case, stating the facts and grounds of the determination. If the Justice is of opinion that the application is frivolous, and not otherwise, he may refuse to state a case, unless the application be made under the direction of the Attorney General. Justices would do well to act on their own judgment whether applications are frivolous, and cases ought not to be granted unless some doubtful point of law has been raised, fit to be referred to the Court. The case, if imperfectly stated, may be sent back for amendment. If a case be refused by the Justice, the Supreme Court may order it to be stated. The Act requires security for costs to be given by the appellant.

20 & 21 VICTORIA, CAP. 43. (ANALYSIS.)

5. JUSTICES MAY STATE CASE.—After the hearing and determination by a Justice of the Peace of any information or complaint which he has power to determine in a summary way, by any law now in force or hereafter to be made, either party to the proceeding before the said Justice may, if dissatisfied with the said determination, as being erroneous in point of law (*c*) [and the Justices ought not to state a case unless it be *on a point of*

(*a*) Hills v. Hunt, 15 C. B., 1.

(*b*) Saunders, 378.

(*c*) *Point of Law.*—It cannot be stated where the objection is, merely the improper reception of evidence. [*Reg.* v. *Yeomans*, 1 L. T. (N. S.) 369.

law,] apply in writing within three (*a*) days after the same to the said Justice to state and sign a case, (*b*) setting forth the facts and the grounds of such determination, for the opinion thereon of the Superior Court, (*c*) to be named by the party applying, and such party, hereinafter called the "appellant," shall, within (*d*) three days after receiving such case, transmit the same to the Court named in his application, (*e*) first giving [see *Ashdown* v. *Curtis*, 31 *L. J.* 216,] notice in writing of such appeal, with a copy of the case so stated and signed, to the other party to the proceeding [this being a condition precedent, *Gloucester L. B.* v. *Chandler*, 7 *L. T.* (N.) 722] in which the determination was given, hereinafter called the "respondent." [20 & 21 Vic., c. 43, s. 2.]

6. SECURITY AND NOTICE.—The appellant at the time of making such application, and before a case shall be stated and delivered to him by the Justice, shall in every instance enter into a recognizance (*f*) before such Justice, or any other Justice ex-

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(*a*) Although Sunday is the last of the three days, it must be counted; and if the hearing were on Thursday, the application case must be by Saturday. [*Ex parte Simkin*, 29 *L. J.* 23; and *Wynne* v. *Ronaldson*, 12 *L. T.* (N.) 711].

(*b*) The defendant may have a case submitted although he is acquitted. [*Davys* v. *Douglas*, 32 *L. T.* 283.] The death of the respondent will not, it seems, prevent the appellant's right of appeal. [*Garnsworthy* v. *Pyne*, 35 *J. P.* 21.] Justices are not bound to state a case when the application discloses no point on which a case ought to be granted. [*R.* v. *JJ. Rutlandshire*, 13 *L. T.* (N.) 722.]

(*c*) Must be, here, the Supreme Court in St. John's.

(*d*) The provision as to three days is so far directory, and not a condition precedent, that where the party has done all in his power to comply with the statutory requirement, and compliance has been impossible, from the closing of the offices of the court, the appeal will be heard. [*Mayer* v. *Harding*, 2 *L. R.* (*Q. B.*) 410, thus qualifying *Morgan* v. *Edwards*, 29 *L. J.* 108; *Woodhouse* v. *Woods*, 29 *L. J.* 149; and *Pennell* v. *Uxbridge*, 31 *L. J.* 92.]

(*e*) Must be Supreme Court in St. John's, and must be sent to the Chief Clerk and Registrar of the Court there.

(*f*) The recognizance will be in time if entered into within the three days allowed for applying for the case, and it need not be entered into simultaneously with the application [*Chapman* v. *Robinson*, 28 *L. J.* 30], or before the case is stated and delivered, although after the expiration of the three days allowed for applying for the case. [*Stanhope* v. *Thorsby*, 35 *L. J.* 182.] See *Post*, as to the Local Law respecting recognizances.

ercising the same jurisdiction, with or without surety or sureties, and in such sum as to the Justice shall seem meet, conditioned to prosecute without delay such appeal, and to submit to the judgment of the Supreme Court, and pay such costs as may be awarded by the same; and the appellant shall at the same time, and before he shall be entitled to have the case delivered to him, pay to the Clerk of the said Justice his fees for and in respect of the case and recognizances, and any other fees to which such Clerk shall be entitled, which fees, except such as are already provided for by law, shall be according to the schedule to this Act annexed, marked (A), and the appellant, if then in custody, shall be liberated upon the recognizance being further conditioned for his appearance before the same Justice, or if that is impracticable, before some other Justice exercising the same jurisdiction, who shall be then sitting, within ten days after the judgment of the Supreme Court shall have been given to abide such judgment, unless the determination appealed against be reversed.—[*Id.* s. 3.]

7. When Justices may refuse a Case.—If the Justice be of opinion that the application is merely frivolous, but not otherwise, he may (*a*) refuse to state a case, and shall, on the request of the appellant, sign and deliver to him a certificate of such refusal; provided that the Justice shall not refuse to state a case where application for that purpose is made to them by or under the direction of Her Majesty's Attorney General. [*Id.* s. 4.]

8. Supreme Court may order Case.—Where the Justice shall refuse to state a case as aforesaid, it shall be lawful for the appellant to apply to the Supreme Court, upon an affidavit of the facts, for a rule calling upon such Justice, and also upon the respondent, to show cause why such case should not be stated, and the said Court may make the same absolute or discharge it

(*a*) Justices cannot refuse to state a case, although the main point relied on is one which was not noticed by either party, but which goes to the root of their jurisdiction. [*Ex parte Markham*, 34 *J. P.* 150.] The certificate should merely state that the application is frivolous. The Justices cannot refuse a case "in their discretion," as they have no discretion, unless they consider the application to be frivolous. [*West Ham Case*, L. T., 28th Sept., 1872.]

with or without payment of costs, as to the Court shall seem meet; and the Justice, upon being served with such rule absolute, shall state a case accordingly, upon the appellant entering into such recognizance as is hereinbefore provided. [*Id.* s. 5.]

9. DECISIONS TO BE FINAL.—The Court to which a case is transmitted under this Act shall hear (*a*) and determine the question or questions of law arising thereon, and shall thereupon reverse, affirm, or amend the determination in respect of which the case has been stated, or remit the matter to the Justice, with the opinion of the Court thereon, or may make such other order in relation to the matter, and may make such orders as to costs, as to the Court may seem fit; and all such orders shall be final and conclusive on all parties: Provided always, that no Justice of the Peace who shall state and deliver a case in pursuance of this Act shall be liable to any costs in respect or by reason of such appeal against his determination. [*Id.* s. 6.]

10. JUSTICES MAY FILE AFFIDAVIT.—The Imperial Act, 35 & 36 Vic., Cap. 26, is in amendment of this Act, 20 & 21 Vic., Cap. 43, and therefore applicable to the Colony. Its preamble recites that, "whereas *ex parte* proceedings are frequently taken in the Superior Courts to bring under review the decisions of Justices, and there is no fund at the disposal of such Justices to defray the expenses of appearing by Counsel to support their

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(*a*) The Court will not allow objections to be taken which were not raised before the Justices. [*Purkiss* v. *Huxtable*, 28 *L. J.* 221; but see *Ex parte Markham*, p. 36, *ante*.] The affidavits must be entitled in the names of the parties. [*Johnson* v. *Simson*, 23 J. P. 775.] The rule now is, that the appellant shall have the right to begin. [*Gardner* v. *Whitford*, 4 C. B. (N. S.) 665.] Costs, as a general rule, will be given to the successful party, and be paid by the respondent, if unsuccessful, and not by the Magistrates making a wrong conviction. [*Venables* v. *Hardiman*, 28 L. J. 33.] The general rule is, that costs follow the judgment, but when no one appears on behalf of the respondent, that rule is not applied [*Lee* v. *Strain*, 28 L. J. 221]; and the Crown pays costs when unsuccessful. [*Moore* v. *Smith*, 28 L. J. 126.] The costs of preparing the case are allowed beyond the fees of the Justices' Clerk. [*Glover* v. *Booth*, 31 L. J. 270.] The application for costs should be made immediately on the disposal of the case. [*Budenberg* v. *Roberts*, 2 L. R. (C. P.) 292.]

decisions. And whereas it is expedient that such Justices should, without expense to themselves, have an opportunity in such cases of informing the Court of the grounds of their decision and of all material facts bearing upon the same." Sec. 2 provides,—"Whenever the decision of a Justice is called in question by a rule to show cause or other process issued on an *ex parte* application, such Justice may make and file (without fee) in such Court an affidavit, setting forth the grounds of the decision brought under review, and any facts he may consider to have a material bearing upon the question at issue." The affidavit may be sworn before a Commissioner of Supreme Court and forwarded to Chief Clerk Supreme Court, by post, for the purpose of being filed. [Sec. 2.] "The Court, before making the rule absolute or otherwise determining the matter so as to overrule or set aside the acts or decision of the Justice, shall take into consideration the matter set forth in the affidavit, notwithstanding that no Counsel appears on behalf of the Justice." [*Id.* s. 3.]

11. AMENDMENT OF CASE.—The Court for the opinion of which a case is stated shall have power, if they think fit, to cause the case to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended. [20 & 21 Vic., c. 43, s. 7.]

12. JUDGE AT CHAMBERS.—The authority and jurisdiction hereby vested in a Superior Court for the opinion of which a case is stated under this Act, shall and may (subject to any rules and orders of such Court in relation thereto) be exercised by a Judge

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Note to Section 7.—An application to send back for amendment a case on appeal under section 2 may be entertained by the Court before the day of argument, as there is nothing in the Act to take away the ordinary jurisdiction of the Court as to amending special cases. In the particular case it was agreed that the case should go back for amendment, and that each party should be at liberty to submit to the Justices any additions which they might think ought to be made. [*Yorkshire Tire and Axle Company* v. *Rotherham Local Board of Health*, 4 C. B. (N. S.) 362.] The Court, however, will not on a mere suggestion by the appellant in the affidavit that there has been misconduct or negligence in drawing a case, send it back to be amended or restated, though they may do so if they find the materials to be insufficient. [*Townsend*, App. Read Resp. 4 L. T. (N. S.) 447.

of such Court sitting in Chambers; and as well in vacation as in term time. [*Id.* s. 8.] See Note to Sec. 8.

13. WARRANTS TO ENFORCE DECISION.—After the decision of the Supreme Court in relation to any case stated for their opinion under this Act, the Justice in relation to whose determination the case has been stated, or any other Justice of the Peace exercising the same jurisdiction, shall have the same authority to enforce any conviction or order which may have been affirmed, amended, or made by such Supreme Court, as the Justice or Justices who originally decided the case would have had to enforce his or their determination, if the same had not been appealed against; and no action or proceeding whatsoever shall be commenced or had against the Justice or Justices for enforcing such conviction or order, by reason of any defect in the same respectively. [*Id.* s. 9.]

14. CERTIORARI NOT REQUIRED.—No Writ of *Certiorari* or other Writ shall be required for the removal of any conviction, order, or other determination in relation to which a case is stated, under this Act or otherwise, for obtaining the judgment or determi-

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Note to Section 8.—This Section 8 would apply, but for the following Sections of the Consolidated Statutes: the effect of those Sections is that cases can only be stated for the opinion of the Supreme Court in St. John's, not on Circuit, as they must be heard before two Judges. No doubt two Judges could hear such cases in Chambers.

Consol. Statutes, p. 226, Sec. 3.—"Where, by any Act of the Imperial Parliament, any criminal jurisdiction, or authority, by way of appeal, adjudication of reserved points, removal or otherwise, is or shall be vested in the English Courts of Queen's Bench, Common Pleas, and Exchequer, or any of them, or the Justices or Barons thereof, or any number of such Justices or Barons, or in any other Superior Court or Judges, such jurisdiction or authority shall be exercised by the Supreme Court or the Judges thereof, as in the case of appeals provided by the 3rd Section of the 9th Chapter, Consol. Statutes."

Consol. Statutes, p. 30, Sec. 3.—"The Supreme Court may be held by one Judge, who may hear and determine all matters, except cases of Treason and Capital Felony, when three Judges shall be present; and except motions for and hearing of rules for new trials, motions in arrest of judgment, special cases, appeals and re-hearings in Equity, probate, revenue, and other cases, &c., &c., * * * when at least two Judges shall be present." * * * * *

nation of the Supreme Court on such case under this Act. [Id. s. 10.]

15. SUPREME COURT MAY MAKE RULES.—(*a*) The Superior Courts of Law (here Supreme Court) may make and alter Rules and Orders to regulate the practice and proceedings in reference to such cases. (Sec. 11.)

16. Section 12 and Section 13, as to Recognizances, (*b*) not applicable.

17. RIGHT OF APPEAL ABANDONED.—Any person who shall proceed under this Act in cases where he is entitled to appeal to Quarter Sessions, shall be taken to have abandoned such appeal. (Sec. 14.)

18. Schedule A., referred to in Sec. 3, of the foregoing Act.

Fees to be taken by the Clerk of the Peace, (or by the Magistrate, where there is no Clerk of the Peace.)

Drawing case and copy, where the case does not exceed 5 folios, of 90 words each	$2 40
When case exceeds 5 folios, then for every additional folio	0 24
Recognizance	1 20
For every enlargement or renewal thereof	0 60
Certificate of refusal of case	0 48

19. FORM OF NOTICE TO JUSTICE.

To J. S., Esquire, one of Her Majesty's Justices of the Peace for the ——— District of Newfoundland.

In the matter of an information (*or complaint*) wherein the undersigned was (*Informer or Prosecutor or Complainant*) and (*I, the undersigned,*) or A. B., was Defendant, heard before and determined by you at ———, in the said District, on the ——— day of ———. Being dis-

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(*a*) No cases, so far, have come under the notice of the Supreme Court under this Act, and consequently no such rules have been made; but as the case, when it came before the Court, would be argued by Lawyers, the Rules made would more immediately concern them than Justices of the Peace.

(*b*) Sec. 15 provides for the manner in which the Recognizances shall be enforced, but by Chapter 26, Consolidated Statutes, p. 169, provision is there made for the enforcing of such Recognizances, and as this is a case provided for by Local enactment (Consol. Stat., p. 225,) the Local Law would govern it. The safe course, therefore, would be to comply with the Local Act, and make the return according to the Schedule. [p. 170, Consol. Stat.]

satisfied with your determination in the said case, as being erroneous in point of Law, I hereby, pursuant to the Statute, make application to you, to state and sign a case, setting forth the facts and grounds of your determination, in order that I may take the opinion thereon of Her Majesty's Supreme Court of Newfoundland.

This —— day of ——, A. D. 187——.

A. B., (*Compl't. or*, &c.)

Residing at ——, in the said District.

20. FORM OF CASE AND OBSERVATION THEREON.

The Justices, though not bound to grant a case if they are of opinion that the application is frivolous, ought nevertheless to do so when it is shown that the party applying for it was asserting a right, as a disputed right of way, and the proceedings arise out of the assertion of that right.

With regard to the manner in which a case should be stated, it is to be observed that the Court expects such cases to be submitted to the Judges in a complete form; and cases for the consideration of the Judges under that Act are not to be lengthy narratives of the facts.

A case for the opinion of the Supreme Court, may be stated according to the following form:—

NEWFOUNDLAND,

Supreme Court.

Between A. B., Appellant, and C. D., Respondent. } This was an information [*or*, complaint] preferred by —— against ——, for that, [*here state shortly the substance of the information or complaint*], and after hearing the parties and the evidence adduced by them, the undersigned, being one of Her Majesty's Justices of the Peace in and for the District of ——, did thereupon [*set out shortly the adjudication of the Justice*]. And the said Appellant, alleging that he is dissatisfied with the said determination, as being erroneous in point of law, did, within three days thereafter, apply to me, the said Justice, to state and sign a case, setting forth the facts and the grounds of such determination for the opinion thereon of the said Court. Wherefore I, the Justice aforesaid, in compliance with the said request, and in pursuance of the Statute in such case made and provided, do hereby state and sign the following case for the opinion of the said Court.

CASE.

At the hearing of the said information [*or*, complaint], and on the close of the informant's [*or*, complainant's] case, the said —— [*or*, the

attorney for the said ——] was heard in answer to the matter of the said information [*or*, complaint]; and it being proved on the part of the said —— [the informant *or* complainant], that [*here set out the facts which the Justice deems to have been proved, with such objections, &c., of either party, as will raise the point intended to be submitted*], I the said Justice did adjudge and determine [*set out shortly the adjudication of the Justices.*

QUESTION.

The question upon which the opinion of the said Court is desired is, whether I, the said Justice, upon the above statement of facts, came to a correct decision in point of law? and if not, what should be done in the premises? [*Or*, the questions of law arising upon the above statement of facts are ——. Whereupon the opinion of the said Court is asked upon the said questions of law, whether or not I, the said Justice, was correct in my determination as aforesaid? and if not, what should be done or ordered by the said Court in the premises?]

E. F., J. P. for —— District.

The case must be signed by the Justice; and the party applying for the case must enter into a recognizance as directed by stat. 20 & 21 Vict. c. 43, s. 3. If the case be for the opinion of the Court, it must be set down for argument, and copies, with the points intended to be argued, must be delivered to the Judges, as in the ordinary practice upon a special case.

21. See Section 5, whereby (Sec. 2 of the Act) the Appellant must give Respondent notice and copy of the case. The notice is easily framed from the other form of notice to the Justice.

22. When the Justice refuses the case as frivolous, he may follow the notice nearly *verbatim* in the third person. Add—

And I, the said Justice, being of opinion that the said ——— application is merely frivolous, have refused to state such case; and at the request of the said ——— I have given him this certificate of the fact, pursuant to the Statute. [*Id.*]

E. F., J. P. for ———.

CHAPTER VI.

APPLICATION OF THE CRIMINAL LAW OF ENGLAND TO THE COLONY.

SECTIONS

1.—Application of English Criminal Law by Statute.
2. Criminal Law of England only to apply.
3. Local Law had better be followed.
4. Local mode of practice; cumulative remedy.
5. General rules for guidance.
6. English Criminal Law of Local character not applicable.
7. Difficulties in applicaiion of English Criminal Law not arisen.
8. Criminal Law Consolidation Acts; effect of.

1. In the Consolidated Statutes it is provided "That in all cases *not provided for by Local enactment*, the Law of England, as to crimes and offences, shall be the law of this Island and its Dependencies, *so far as the same can be applied*, subject to such amendments, alterations, and further enactments of the Imperial Parliament, as may hereafter be made; and which shall, after twelve months from the passing thereof, respectively, be the Law of this Island and its Dependencies." (*a*)

2. It sometimes happens that a particular Imperial Statute, respecting Criminal Law, applies only to Ireland or to Scotland, and some apply only to England. It is well to bear this in mind, as a good deal of the Criminal Law applied to Ireland *only* is not the Law of this Colony. (*b*) The Law of *England*, as to crimes and offences, being our Law, where it can be applied, must be taken to mean the Acts of the Imperial Parliament in criminal matters, applicable, generally, to England, Ireland, and Scotland, or the British empire, and also the Criminal Law, even when it is applicable to England alone.

3. Where there is a Local Law prescribing the mode of procedure, and the punishment for any offence, the Local Law

(*a*) Consolidated Statutes 225.

(*b*) I refer to this because the Justice may possibly get hold of an Act applicable to Ireland *only*, or to a work on the duties of Justices in Ireland, which would mislead him.

had better be followed, and not the English Law, respecting such offence. For instance, under the Local (*a*) Law, with respect to malicious injuries to property, the Justice trying the case can only adjudge the offender to *pay* a sum of money for the injury, and in default of *payment* to imprison. Under the English Act, the punishment is in the discretion of the Justice, either fine or imprisonment.

4. (*b*) Where any mode of practice is or hereafter may be prescribed by a Local Law, which may or can be applied for the purpose of carrying out the provisions of an Imperial Act, which shall be held to extend to this Colony, such mode of practice may be used, and shall be regarded as a cumulative *(or additionel)* remedy.

5. The first question which a Justice has to ask himself, Is this an offence provided for by Local Law? If it is, he had better follow the Local Law. If it is not, he must find out what the Criminal Law of England is, with respect to this particular offence; and having found it, he has then to ask a third question, "does the English Law apply to this Colony?"

6. As a general Rule all English Criminal Law, of a special local character, such as the Laws with respect to offences against the Game Laws, Fisheries, Stamp Acts, English Customs Laws, Poor Laws, Turnpike Acts, and other kindred subjects, are not applicable here. It has been held that the Tippling Act applies to this Colony,—whilst penal statutes, concerning Horse Racing, 13 Geo. 2, C. 19; 18 Geo. 2, C. 24, were held not to apply. (*c*)

7. The applications of English Criminal Law to this Colony would appear at first sight to present great difficulties, but practically, as Mr. Archibald observes, (*d*) "Scarcely an instance has occurred since the passing of the Act in question, in which any difficulty of this nature in the administration of the Law has arisen in the Superior Courts."

8. It is therefore very improbable that any difficulty of the

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(*a*) Consolidated Statutes, p. 227.
(*b*) Consolidated Statutes, p. 226.
(*c*) Morris v. Berrigan, see Note to E. M. Archibald, Dig. p. 40.
(*d*) E. M. Archibald's Dig., p. 41.

kind will arise before Justices of the Peace, and less so now that the Criminal Law, Consolidation and Amendment Acts, 24 & 25 Victoria, from Cap. 94 to 100, have simplified the Law very much, and made its Local application very clear.

CHAPTER VII.

OF INDICTABLE OFFENCES.

SECTIONS

1.—Division into Indictable offences and Summary Convictions.
2.—Explanation of Indictable offences.
3.—Form of Indictment.
4.—Indictment may be preferred without previous investigation.
5.—Reasons why this rule is not followed.
6.—Prevention of vexatious Indictments.
7.—Perjury.
8.—General observations.

1. The two great divisions into which the work of a Justice of the Peace, in respect of crimes, are divided, are,—

Indictable Offences and
Summary Convictions.

2. Indictable offences here, mean all offences in which a Bill of Indictment must be presented to a Grand Jury, and a True Bill found by them before the prisoner can be put upon his trial.

3. An Indictment commences with heading, *Supreme Court of Newfoundland*, or *Supreme Court on the Northern or Southern Circuit*, and in the left hand corner, *Newfoundland, (place of trial) to wit.* This is called the venue or statement of the place where the crime was committed, or is tried. Next follows the accusation, in the words—"*The Jurors of our Lady the* QUEEN, *upon their oath, present, that* [*here state the offence*]. When the Foreman of the Grand Jury endorses on the Bill "*a True Bill; for self and fellow Jurors,* ——— *Foreman;*" The prisoner is then put upon his trial before another Jury, generally a Petty Jury, and if the Indictment is marked on the back "*Bill ignored,*" or

"*no Bill*," the prisoner is discharged, unless there is another Indictment or other charge against him. (*a*)

4. With the exception of the cases mentioned under the next Section, *prevention of vexatious Indictments*, an Indictment may be preferred for the offence at the Court having jurisdiction to try it, without a previous investigation before Magistrates. (*b*)

5. Whilst this is the Rule of Law, there are many cogent reasons why this course should not be adopted, (and, as a matter of practice, Indictments are rarely so preferred); 1st, because the accused would not be in custody, and might escape; 2nd, witnesses would not be bound over to give evidence; 3rd, there would be no depositions, and the accused would be unable to see what evidence is to be prodnced against him, a circumstance which has ever been deemed one of great hardship, and which would be the cause of drawing down strong animadversions from the Bench. (*c*)

6. PREVENTION OF VEXATIOUS INDICTMENTS.—For certain misdemeanors, hereafter enumerated, it is enacted by Acts 22 & 23 Vic., Cap, 17, and 30 & 31 Vic., Cap. 35, that no Bill of Indictment for any of the following offences :—

Perjury,
Subornation of Perjury,
Conspiracy,
Obtaining money or other property by false pretences,
Keeping a Gambling House,
Keeping a disorderly House,
Any indecent Assault,

shall be presented to or found by a Grand Jury, unless the Prosecutor or other person presenting such Indictment has been bound by Recognizance to prosecute or give evidence against the accused, or the accused is in jail or has been bound by Recognizance to answer an Indictment, or an Indictment is presented by direction or with the consent, in writing, of a Judge of the Supreme

(*a*) For further information respecting proceedings before the Grand Jury, in indictable offences, and also of a trial before a Petty Jury, for same offence, see Chapter on Quarter Sessions. (*Post.*)

(*b*) Oke, p. 822.

(*c*) Saunders, p. 157.

Court, or by the Attorney or Solicitor General; or in case of Indictment for perjury, by direction of the person authorized by Statute to direct a prosecution for perjury (see *Post.*) By second Section, it is enacted, that where any charge or complaint shall be made before a Justice that any person has committed any of the foregoing offences, and such Justice shall refuse to commit or bail the person charged, then, in case the Prosecutor shall desire to prefer an Indictment, the Justice must take the Prosecutor's recognizance, and transmit it, with the information, deposition, &c., if any, to the Court where the Indictment ought to be preferred. Sec. 1, of the 30 & 31 Vic., Cap. 35, amends the foregoing, so as to prevent it extending to the case of joining counts in an Indictment, with the consent of the Court, for any of the above-mentioned offences, founded on the facts disclosed in the deposition taken before Justices.

7. By the 14 & 15 Vic., C. 100, Sec. 19, "Justices in *Special* or *Petty* Sessions, may commit to the next assizes (which would correspond to our Supreme Court on Circuit or in St. John's) any person who shall appear to them to have committed wilful and corrupt perjury, (*a*) in any evidence given or proceeding, taken before them, unless they enter into a recognizance, &c." As Justices here do not meet in Special or Petty Sessions, it is very doubtful whether this Section applies; and in all cases of prosecutions for perjury, there should be a regular preliminary investigation before Justices, and a committal in the ordinary way of dealing with Indictable offences.

8. I have thought it necessary, as this little work is principally intended for Justices of the Peace who have not had much experience about Law, to give these very simple explanations about Indictments, but it will be obvious to any of my readers

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(*a*) *Perjury* is the wilfully false representation on *oath*, of some fact, material to the question at issue, made before some authority legally competent to administer it, and having jurisdiction in the matter. Subornation of perjury is procuring another to take such false oath. Both offences are misdemeanors. [See *Stone*, 388, 389. *Oke*, p. 84, Perjury.]

Perjury.—The offence must be proved by two witnesses, or by one witness, and other evidence in confirmation, as, for instance, a written document.

that before any of these proceedings can be taken, there must be some one to try, and, like Mrs. Glasse's celebrated directions about cooking a hare, "first catch your hare," so as regards criminal proceedings, you must first catch your prisoner, and it is the first and most important duty of the Magistrate, in all cases where a crime is committed, to *secure the offender*.

CHAPTER VIII.

OF ENQUIRIES BEFORE JUSTICES IN INDICTABLE OFFENCES.

SECTIONS

I.—Preferring the Charge.

1.—Preliminary observations; importance and difficulty of Magistrate's duty in respect of.
2.—Law regulated by Jervis Act, &c.
3.—Arrangement of Sections.
4.—Limitation of time.
5.—Jurisdiction as to locality.
6.—The applications for process should be heard in private.
7.—The Offenders.
8.—Infants.
9.—Lunatics.
10.—Wife.
11.—Preamble to Jervis Act.
12.—Power to issue Warrant or Summons.
13.—Offences on the High Seas or abroad.
14.—Justices for adjoining Counties, sections 5, 6 & 7 not applicable.
15.—Information.
16.—No objection allowed for defect in substance or form.

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17.—Any person may lay the information.

II.—The Process to Issue against Offenders.

18.—Summons or Warrant.
19.—Service of Summons.
20.—Non-appearance.
21.—Defect in form; objection not allowed.
22.—Form of Warrant.
23.—Backing Warrants.
24.—Apprehension where an Indictment found.
25.—Apprehension in one District for offence in another.
26.—Sundays — Warrants issued and information taken on.
27.—Apprehension without Warrant.
28.—Search Warrant.
29.—How to obtain a Search Warrant.
30.—Mode of executing Search Warrant.
31.—Importance of obtaining Search Warrant. Forms

SECTIONS

of Information and Search Warrant.

III.—Compelling the Attendance of Witnesses.

32.—Attendance of Witnesses by Summons.

33.—Warrant, when witness does not appear on Summons.

34.—Warrant in first instance.

35.—Refusing to be examined.

IV.—The Hearing and Examination of Prosecutor's Witnesses.

36.—The Court—Place of examination.

37.—Examination of Witnesses for Prosecution.

38.—Witnesses unable to travel, &c.

39.—Examination for offence in another jurisdiction.

V.—Statement of Accused and Examination of his Witnesses.

40.—Reading over Depositions in presence of Accused.

41.—Caution to Accused.

42.—What Accused says to be taken down.

43.—Second caution.

44.—Prosecutor not prevented giving evidence of admissions.

45.—Observations on 30 & 31 Vic., Cap. 35; application to Colony.

46.—Witnesses of Accused — examination of

47.—Expenses of such Witnesses.

VI.—Binding over Prosecutor and Witnesses by Recognizances.

48.—Recognizance.

49.—Witness refusing to enter into Recognizance.

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VII.—Remand.

50.—General Rules for Remand—verbal, 3 days; in writing, 8 days.

51.—Prisoner may be released on bail during remand.

52.—Return, when Recognizance forfeited.

53.—Form of Return.

VIII.—Bail.

54.—Bail in Felony and other misdemeanors.

55.—Bail in other misdemeanors.

56.—Observations on bail; not taken in murder, &c.

57.—Taking bail; judicial duty.

58.—General Rule; object to secure Prisoner's presence at trial.

59.—Circumstances to be considered.

60.—Refusing bail; criminal offence.

61.—When Prisoner has right to bail, Justice not to dissuade bail.

62.—Two Sureties, generally.

63.—Ability of bail; how determined; questions.

64.—Amount of bail.

65.—Prisoner may apply to Supreme Court, when refused by Justice.

66.—Surrender of Accused by his bail.

67.—Liberate to Gaoler, on Prisoner's admission to bail.

IX.—Discharge or Committal of Prisoner for Trial.

68.—Prisoner when to be discharged.

69.—When Committed.

70.—Conveying Prisoner to jail.

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X.—Miscellaneous.
71.—Copies of Depositions.
72.—Forms in Schedule.
73.—Stipendiary Magistrates.
74.—Deposition of person dangerously ill.
75.—Prisoner's presence.
76.—Money found on Prisoner.
77.—Removal of Prisoner without Habeas Corpus.
78.—Resume of the order of the various steps in an enquiry.

I.—PREFERRING THE CHARGE.

1. The duties of Justices of the Peace, with respect to Indictable offences, are the most important and difficult duties Magistrates have to perform; and as all their proceedings have to come before the Supreme Court, or in some few instances before the Quarter Sessions, and are liable to be reviewed by the Judges, Law Officers of the Crown, and prisoner's Counsel; Justices, for their own credit sake, should endeavour to perform these duties according to Law. And it is because of their importance that I have gone into every particular, and endeavoured to give plain and clear directions about all that is necessary in ordinary cases.

2. The Law regulating proceedings before Justices, with respect to Indictable offences, is regulated principally by two Acts, 11 & 12 Vic., Cap. 42, known as Jervis's Act, and made part of the Law of this Colony, by Chapter 30, Consolidated Statutes, Sec. 4; and another Act, 30 & 31 Vic., Cap. 35, which is also undoubtedly part of our Criminal Law, as it is in *amendment*, and a *further enactment* on the same subject; it is therefore absolutely necessary that the Justices of the Peace in all such proceedings should follow strictly the directions contained in these Acts. I have, therefore, compiled, from English works, an analysis of all parts of the Acts which have any reference to this Colony.

3. For convenience, and to follow the order of the Act, this part of the Justice's work may be conveniently divided into the following heads:—

I.—Preferring the Charge.

II.—The Process to issue against offenders.

III.—Compelling the attendance of Witnesses.

IV.—The hearing and examination of Prosecutor's Witnesses.

V.—Statement of accused, and examination of his witnesses.

VI.—Binding over Prosecutor and Witnesses by Recognizances.

VII.—Remand.

VIII.—Bail.

IX.—Discharge or Committal of Prisoner for trial.

X.—Miscellaneous provisions of the Act not falling under either of those heads.

4. There is only one Indictable offence applicable to this Colony, in which the time for prosecution is limited, viz.: the Riot Act, 1 Geo. 1st., 2 c. 5, s. 8. Prosecutions must be commenced within twelve calendar months.

5. As to the place where the offence was committed. The Justice's jurisdiction. [See Chapter III., on Jurisdiction, p. 10 to 14.]

6. APPLICATIONS SHOULD BE HEARD PRIVATELY.—It is recommended that all applications for a Summons or Warrant against any person for an offence or cause of complaint, should not be permitted to be made in open Court; and where the application is for an indictable offence, an information in writing and on oath should be required from the Prosecutor and his witnesses. The reasons for this course are, that persons sometimes, from malicious or revengeful feelings, or for some private object, go before the Magistrates to make complaints, in order to have them published to the world, and without any intention of proceeding further with them. This plan is also strictly in accordance with law.

7. THE OFFENDERS.—The general rule is that all persons are responsible for their acts done in violation of the law; but to this rule there are exceptions in favour of infants, insane persons, persons under coercion, as married women and others, and irresponsible agents; in some cases also the accused, although interested in the property in respect to which the offence was committed, (as in the case of a man setting fire to his own house), is liable to be convicted.

8. INFANTS.—An *infant* under seven years of age is not criminally responsible, the law considering the mental capacity of a child of such tender years to be too immature to enable it to form a sufficient judgment of right and wrong; but above seven and under fourteen they are criminally responsible for their acts, if it appear they had sufficient discretion. (*a*)

9. LUNATICS.—In the case of a lunatic, the Law presumes the offence to have been committed in a lucid interval, unless it appears to have been committed in the time of his distemper; and where persons supposed to be lunatics are charged before a Justice with an indictable offence, the course to take is to secure their appearance at the trial, in order that, if they are insane, they may be confined in the Asylum and taken care of.

10. WIFE.—A wife cannot be convicted of any larceny, burglary, wounding, forgery, or uttering forged notes, if the offence be committed in the presence of her husband, and with his coercion and participation; but in treason, murder, perjury and robbery, and, according to the authorities, in misdemeanors generally, except perhaps conspiracy, the presence and coercion of her husband will not avail her; or where the wife was the more active party, or her husband was incapable of constraining her to commit the offence. A wife is not guilty of larceny, with respect to her husband's goods; but if her adulterer receive them, *knowingly*, he would be guilty, and likewise if he took them in company with the wife, not if the property were the wearing apparel of the wife. (*b*) [Oke, pp. 828, 829.]

(*a*) For exceptions to this rule, see *R.* v. *Phillips*, 8 C. & P. 736; and *R.* v. *Jordan*, 9 C. & P., 118, where an infant may be found guilty of a felonious assault. Under the summary jurisdiction in larceny, (*Post*) persons under and above sixteen may be punished summarily for simple larceny and other felonies.

(*b*) ON SUMMARY CONVICTIONS.—A husband and wife may be jointly convicted and punished for every offence, punishable under summary conviction, of which they have been jointly guilty; and if they are jointly prosecuted, the wife alone may be found guilty, and if neither she nor her husband pay the penalty, she must undergo the imprisonment awarded, as the penalty cannot be levied on the goods of the husband; and if she be prosecuted alone and found guilty, the mode of proceeding must be the same; and she may be pro-

11. Jervis Act, 11 & 12 Victoria, Cap. 42, "An Act to facilitate the performance of the duties of Justices of the Peace out of Sessions, within England and Wales, with respect to persons charged with indictable offences." The Preamble sets forth "that it would conduce much to the improvement of the administration of criminal justice if the several Statutes relating to the duties of Justices of the Peace, with respect to indictable offences, were consolidated, with such additions and alterations as may be deemed necessary, and that such duties should be clearly defined by positive enactment."

12. Power to issue Warrant or Summons.—It is provided in Section I., that,—In all cases where a *charge* (*a*) or complaint (A) shall be made before a Justice that any person has committed or is suspected to have committed any treason, felony, or indictable misdemeanor, or other indictable offence whatsoever, within the limits of such Justices, or has committed or is suspected to have committed any such crime or offence out of the Justice's jurisdiction, and the said accused or suspected person is residing

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secuted alone, under the summary jurisdiction, for any offence of which she alone has been guilty. [3 J. P. 46.]

Inconsistency of Protection.—The absurdity of the law throwing its protecting shield over a woman, who, in the presence of her husband, commits a crime of deep moral turpitude, and withdrawing it in those offences which imply a less degree of deliberation and criminality, requires only to be stated in order to be felt and acknowledged. If a husband and wife break their neighbour's windows, the wife must undergo the punishment for such an offence equally with the husband; if the same persons, after long premeditation, break at midnight into their neighbour's house and steal a thousand pounds, the law, "out of tenderness," excuses the wife; but if these persons should, whilst committing burglary, murder the inmates, in the hope of preventing detection, the law, forgetting its tenderness, orders the wife to be executed. [*Stone*, p. 600.]

Note.—Under some of our Local Acts, such as the License Act, 1875, Sec. 36, and also Game Act, Cap. 116, Consol. Stat., Sec. 12, married women are liable, as unmarried women or principals.

(*a*) Charge.—The most approved course under this Act, *in all cases*, is to take an information in *writing* and *on oath*, whatever process is issued against the accused. [See *Oke*, p. 839.]

The letters A, B, C, refer to the forms under this Act, in the Appendix of Forms; some of the forms will be found in Chapter 9.

or is suspected to reside within the jurisdiction of the Justice, the Justice may issue his *Warrant* (B) to apprehend, or may issue a *Summons* (C) in the first instance, directed to such person, requiring him to attend, and in case he shall fail to appear in obedience to the Summons, the Justice may issue his Warrant: (*a*) Provided that nothing herein contained shall prevent the Justice from issuing the Warrant at any time *before* or *after* the time mentioned in the Summons for the appearance of the accused. [Sec. 1.]

13. OFFENCES ON THE HIGH SEAS OR ABROAD.—In all cases of indictable offences, committed on the High Seas, or in any harbour or place where the Admiralty of England have jurisdiction, (*or on land beyond the Seas, for which an indictment may be preferred in England,*) (*b*) any Justice of any District in which any person charged with or suspected to have committed any such offence shall reside or be, may issue a Warrant (E) to apprehend such person, and to cause him to be brought before him or some other Justice to answer the charge. [Sec. 2.]

14. JUSTICES FOR ADJOINING COUNTIES, &c., may act as such for one County, whilst residing in another. Here it would be District. (Sec. 5.) This Section and the two following Sections 6 and 7, refer to the County jurisdiction in England, and have no reference to this Colony.

Warrant.—No Warrant can be issued to apprehend an offender, except on an information, in writing, and on oath made before a Justice.

Summons.—May issue without information in writing and on oath, but for the Justice's own protection, and in order to prevent needless litigation and the trial of frivolous complaints, the Justice should, in all indictable offences, require the party laying the information to substantiate it on oath. Experience in the Police Office, in St. John's, has taught us the expediency of this Rule, which should always be followed.

(*a*) A case might arise where, after issuing the Summons, the Justice found that the accused would not appear and might be trying to escape, the course then to adopt would be to take a written information, on oath, and to apprehend the accused at once, even before the time mentioned for the accused's appearance under the Summons, had expired. This Section under the words *before, &c.*, giving this power.

(*b*) It is doubtful whether this part of the Section, in italics, applies. See Imperial Act, 12 & 13 Vic., Cap. 96, as to Admiralty jurisdiction, and Archibald, Crim. Pleading, p. 31 to 33.

15. INFORMATION.—In all cases of charges for indictable offences, where any Justice intends to issue a Warrant in the first instance, an information and complaint, in writing, must be made on the *oath or affirmation* (*a*) of the informant or of some witness; but where it is intended to issue a Summons in the first instance, the information and complaint need not be in writing or on oath, but by parole only. (Sec. 8.)

16. No OBJECTION shall be allowed to any such information or complaint, for any alleged defect in substance or form, or for any variance between the information and the evidence. (*b*) (Sec. 8.)

17. ANY PERSON MAY LAY THE INFORMATION for an indictable offence; the most usual course is to take the information in the form of a deposition, stating shortly the facts, and not an information of the offence, couched in the technical and formal language necessary in an indictment or commitment. [*Glen*, p. 16.] The reason of this is, because it is a preliminary proceeding when, however the accused is brought before the Justice for the examination of witnesses, the charge against him must be stated with precision, and it should be read as recommended from the caption to the depositions.

II.—THE PROCESS TO ISSUE AGAINST OFFENDERS.

18. SUMMONS OR WARRANT.—Upon such information and complaint (A) being laid, the Justice receiving the same may issue a Summons or Warrant (B) to cause the person to appear before him, or some other Justice; and every such Summons (C) shall be directed to the party charged, and shall state, shortly, the matter of the information, and require the party to whom it

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(*a*) *Affirmation*, see p. 4, Consol. Stat., and p. 154, sec. 27, and 155, sec. 29.

(*b*) An objection may be made if the evidence prove a *different* offence from that stated in the Summons or Warrant, this not being a mere variance. [*Martin* v. *Pridgeon*, 28 L. J. 179; and *R.* v. *Brickhall*, 33 L. J. 156.] *Stone*, p. 4.

The information is merely for the guidance of the Justice in issuing his Warrant, and is in fact no portion of the proceedings so far as the Defendant is concerned in his defence; any objection to the form or substance of the information is absolutely prohibited by proviso. [*Glen*, p. 16.]

is directed to appear at a time and place therein mentioned, before the Justice issuing the Summons, or before some other Justice or Justices.

19. SERVICE OF SUMMONS.—Every such Summons shall be served by a Constable, or other Peace Officer, on the person to whom it is directed, either personally, or if he cannot conveniently be met with, then by leaving the same with some person for him at his last or most usual place of abode; (*a*) and the Constable or Peace Officer serving the same, shall attend at the time and place mentioned in the Summons, to depose, if necessary, to the service thereof.

20.—NON-APPEARANCE.—If the party summoned do not appear according to the Summons, a Warrant (D) may be issued to apprehend and bring him before any Justice (*b*) to answer the charge.

21.—DEFECT IN FORM.—No objection shall be allowed to any Summons or Warrant for any alleged defect therein, in substance or in form, or for any variance (*c*) between it and the evidence; but if the variance appear to such Justice to be such that the party charged has been deceived or misled, he may, at the request of the party charged, adjourn the hearing of the case to some future day, and in the meantime remand the party charged, or admit him to bail. (Sec. 9.)

22.—FORM OF WARRANT.—Every such Warrant (B) shall be under the hand and seal of the Justice issuing the same, and may

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(*a*) The Summons should be left with some one likely to give it to the accused; it should, therefore, be left with his wife, servant or parent, and not with any one who will be indifferent about giving it to him.

(*b*) Where the Justice is only Justice of the Peace for one of the three Districts, his Warrant must only be directed to the Constables of that District only. Where the Justice is a Justice for the Colony, after the words, "To the Constables of the ——— District," may be added, "and to any other Constables of the Colony." The word *Colony* would include Labrador and every other place under the Colonial Government of Newfoundland. The word "*Island of Newfoundland*," without adding "*and its Dependencies*," might be held not to include Labrador.

(*c*) If the evidence prove a *different offence* from that stated in the Summons or Warrant, this is not a *mere variance*; when this is the case, a fresh Information and a fresh Warrant should be issued as soon as possible.

be directed either to any Constable or other person by name, or generally to the Constable of the District over which the Justice has jurisdiction, and shall state, shortly, the offence, and shall name or otherwise describe the offender; and it shall order the person to whom it is directed, to apprehend the offender and bring him before the Justice issuing the Warrant, or some other Justice, to answer the charge; and it shall not be necessary to make such Warrant returnable at any particular time, but it may remain in force *until it is executed.* (*a*) (Sec. 10.)

23.—Backing Warrants.—If the person against whom any such Warrant has been issued be not found within the jurisdiction of the Justice by whom it is issued, or if he shall escape, go into, reside, or be, or be supposed or suspected to be, in any place (within the Colony) out of the jurisdiction of the Justice issuing the Warrant, any Justice of the District into which such person shall escape, or be suspected to be as aforesaid, upon proof alone on oath of the handwriting of the Justice issuing the Warrant, may make an indorsement (K) on it, signed with his name, authorizing the execution of the Warrant within his jurisdiction, and such indorsement shall be a sufficient authority to the person bringing the Warrant, and to all other persons to whom it was originally directed, and to all Constables of the District where the indorsement is made, to execute the same in such other District, and to carry the offender, when apprehended, before the Justice who first issued the Warrant, or some other

(*a*) When executed, the Constable cannot discharge himself of the offender, otherwise than by taking him before a Justice of the Peace. The Warrant to apprehend has been held to remain in force during the lifetime of the Magistrate who granted it; and it is now maintained that, under the words "*may remain in force until executed*," a Warrant of *apprehension*, not of *commitment*, may be acted upon even after the death of the Magistrate who signed it, 34 J. P., 509, quoted in *Stone*, 430. Where a Justice granting a Warrant of Commitment, in execution, dies before it is executed, from the Defendant having absconded, or other cause, the safe course would be to summon the Defendant, requiring him to shew cause why he should not pay the penalty, and in default be committed, as it is very doubtful whether the Warrant of Commitment of a deceased Justice can be safely executed. [*Stone*, p. 430.

Justice for the same District, or before some Justice of the place where the offence appears by the Warrant to have been committed; but if the prosecutor, or any of the witnesses for the prosecution, shall then be in the place where the person shall have been so apprehended, he may be taken, *if so directed* by the Justice backing the Warrant, before him or some other Justice having the same jurisdiction, who may take the examination of the prosecutor or witnesses, and proceed in manner hereinafter directed, &c. (Sec. 11.) Sections 12, 13, 14 & 15, refer to the Backing of Warrants in Jersey, &c., not applicable. (*a*)

FORM (K.)

Warrant (Backing a).

NEWFOUNDLAND.

NORTHERN DISTRICT, *Island Cove*, to wit. } WHEREAS proof upon oath hath this day been made before me, one of Her Majesty's Justices of the Peace in and for the said [District] that the name of J. S. to the within Warrant subscribed is of the handwriting of the Justice of the Peace within mentioned: I do, therefore, hereby authorize W. T., who bringeth to me this Warrant, and all other persons to whom this Warrant was originally directed, and also all Constables of the said [District] to execute the same within the said last-mentioned [District] (*b*)* and to bring the said A. B., if apprehended within the same

(*a*) The directions as to backing Warrants given in this Section, (No. 11 of the Act), are clear and well defined. The Justice who issues the Warrant should always send full particulars about the case, the witnesses' residence, &c., to the Justice who is to back, so as to guide him as to the course he is to pursue, with respect to the prisoner. Generally, in St. John's, the Magistrates back the Warrant to have the prisoner brought before them, whether there are or are not witnesses to be examined in St. John's, as it is not always possible to send him back to the Justice issuing the Warrant at once; in such case, the prisoner is remanded from time to time, until the opportunity offers for sending him on. Of course whatever evidence can be procured is taken, and he is forwarded to the Justice who issued the Warrant, without any unnecessary delay.

(*b*) The words following this asterisk are to be used only where the Justice backing the Warrant shall think fit, and may be used in such cases as before referred to, in St. John's, or where the witnesses were in the District of the Justice who backs the Warrant, and before whom the case could, with the greatest convenience to all parties, be dealt with. When the witnesses are in the District of the Justice who issued the Warrant, and the prisoner

[District] before me, or before some other Justice or Justices of the Peace of the same [District], to be dealt with according to law.

Given under my hand, this —— day of ——, 18—.

J. L.

24. APPREHENSION WHERE AN INDICTMENT IS FOUND.—Upon production to the Justice of a certificate (F) from one of the Chief Clerks of the Supreme Court, either in St. John's or on Circuit, or from a Clerk of the Peace, that an indictment has been found against a person, being either within the Justice's jurisdiction or suspected to be so, the Justice must issue his Warrant (G) to cause him to be brought before him or some other Justice, and upon proof (which, of course, must be on oath,) that the person apprehended is the same person named in the indictment, the Justice shall, without further enquiry, commit (H) the prisoner for trial, or admit him to bail; and if the person so indicted be already in prison for some other offence, such Justice is required upon proof on oath that the person indicted and the person in prison are one and the same person, to issue a Warrant (I) to the Keeper of the Prison, commanding him to be detained until he shall be removed by *Habeas Corpus* or otherwise. (Sec. 3.)

25. APPREHENSION IN ONE DISTRICT FOR OFFENCE IN ANOTHER.—Whenever a person shall be brought before a Justice charged with an offence alleged to have been committed in any place wherein such Justice shall not have jurisdiction, he shall examine such witnesses, and receive such evidence in proof of the charge as shall be produced before him within his jurisdiction; and if, in his opinion, the evidence shall be sufficient proof of

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can be brought on at once, the words following the asterisk are omitted, and the prisoner, when arrested, is brought at once back before the Justice who issued the Warrant. This latter course, however, is not usual, and would not be found convenient. See note to Sec. 6, Cap. 3, p. 13; and, also, Sec. 22 of this Act, with respect to the duties of the Justice backing Warrant, when the backing directs the prisoner to be brought before him as in the above form after the asterisk.

Sec. 3.—In practice, this Section will not often be put in operation. The usual course, when an Indictment is found, is to issue a *Bench Warrant* from the Supreme Court; this applies over the whole Colony.

the charge, he shall commit the accused to the gaol or the place where the offence is alleged to have been committed, or admit him to bail, and shall bind over the prosecutor (if he have appeared before him) and the witnesses by recognizance. If the evidence shall not be deemed sufficient to put the accused party upon his trial, the Justice shall bind over the witnesses to give evidence, and shall by warrant order the accused to be taken before some Justice of the District or place where the offence is alleged to have been committed, and at the same time deliver the information and complaint, and the depositions and recognizances to the Constable who has the execution of the last-mentioned warrant, to be by him delivered to the Justice before whom he shall take the accused in obedience to such warrant, and which depositions and recognizances shall be treated as if they had been taken before the last-mentioned Justice; and the Constable or other person who shall have conveyed such accused party under the warrant shall be entitled to be paid his costs of conveying him before such Justice. On producing the accused before such Justice and delivering to him the warrant, information, (if any), depositions, and recognizances aforesaid, and proving by oath the handwriting of the Justice subscribing the same, the Justice before whom the accused shall be produced shall forthwith ascertain the sum which ought to be paid to such Constable or other person for conveying the accused, and also his reasonable expenses of returning, and shall thereupon make an order for payment thereof; and if such last-mentioned Justice shall not think the evidence sufficient to put the accused on his trial, and shall discharge him without holding him to bail, the recognizance taken by the first-mentioned Justice shall be void. [*Id.* s. 22.]

26. SUNDAYS.—Justices may take information and grant or issue any Warrant or any Search Warrant for an *indictable* offence, on Sunday as well as on any other day. (Sec. 4.)

NOTE.—This Section does not in words authorize the *execution* of a Warrant on Sunday, but it has been held that the 29 Car. 2, Cap. 7, Sec. 6, authorizes the arrest, on Sunday, of all persons who have been guilty of indictable offences; therefore, a person guilty of an indictable offence, may be appre-

27. APPREHENSION WITHOUT A WARRANT.—Any person who is present when a felony is committed, may at once apprehend the party, and take him before a Magistrate to be dealt with according to Law; in case of a *private individual*, however, it is his duty, if no Justice can at once be found, to hand the offender over to a Constable. [3 *Hawk*, 156.] But when the offence is not committed in the *presence* of the party, this distinction exists between the powers of a Constable and a private individual. A Constable may not only apprehend a person against whom a reasonable charge of felony is made by another person, although it may afterwards turn out that no felony has, in fact, been committed, but he may apprehend a person upon his own suspicion alone, of having committed a felony, though in the result it appear that no crime has been committed, but he should act with becoming caution, and on a reasonable ground of suspicion; and if, after the apprehension, the Constable is guilty of any unnecessary delay in taking the party before a Justice, or is guilty of any excess or abuse of power, he will still be liable to an action. But with regard to the arrest by private persons, without a Warrant, although they are bound to capture, if possible, a party committing a felony in their presence, [2 *Hawk*, c. 12, s. 1,] yet, if a man choose to apprehend another without a Warrant, upon *suspicion* alone, of felony, he will do so at his peril, for should no felony in point of fact have been committed, an action will lie against him for false imprisonment. A *suspicion* alone is not enough to justify a private person in making an arrest, and where the party be not detected in the actual commission of the offence, and there is no fear of his absconding before a Warrant can be obtained. The proper course is to get a Warrant. (*a*)

28. SEARCH WARRANT.—It not unfrequently occurs that with-

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hended on Sunday, whether such offence involves an actual or only a constructive breach of the peace. [*Rawlins* v. *Ellis*, 16 L. J. (N. S.) *Exch.* v. 16 M. & W. 172.

NOTE.—The arrest of persons under Malicious Injuries' Acts, Local and Imperial, and under Local Telegraph Protection Act, and Imperial Coinage Act, are referred to in Chapter on Summary Convictions.

(*a*) *Saunders*, pp. 159 & 160.

out any direct proof of guilt existing against a party, there is, nevertheless, evidence of his possession of stolen goods, which the owner is in a condition to identify. In such a case, criminal proceedings are often initiated by an application to a Justice for a *Search Warrant*, which being granted, the suspected premises are searched by a Constable, when, should the goods be discovered, they are taken possession of, and the occupier of the premises whereon they are found is himself apprehended, and brought before the Magistrate to answer the charge, either of having stolen, or received them, knowing them to have been stolen.

29. How to obtain a Search Warrant.—When, therefore, a party whose goods have been stolen, has reasonable grounds for suspecting that they are upon the premises of some particular person, he should go before a Justice having jurisdiction in the District where the premises are situated, and make oath, by himself or his witnesses, of the facts on which he founds his application; and upon satisfying the Justice either that the goods were stolen, or that there is reason to suspect they are stolen, and that there is also reason to believe they are upon the premises indicated, he will grant his Warrant, not only to search the premises, and seize the goods, but to *apprehend the party in whose possession they may be found.* (*a*) Under the Larceny Consolida-

(*a*) There are cases where a Search Warrant may be issued, and the articles found under it, and yet the party in whose possession they are found be guilty of no offence. For instance, a forged instrument may be in the possession of a party who neither forged it nor intends to utter it; or goods may have been left in the house by the thief, without the knowledge of the owner of the house. In such cases there can be no lawful authority to apprehend, and therefore the Search Warrant ought not to direct the Constable to apprehend the person in whose possession the articles mentioned in the Warrant may be found. In every case, therefore, where a Search Warrant is applied for, the Justice should be satisfied that if the articles are found in the possession of the person suspected to have them, there is reasonable cause to believe that he has been guilty of some offence in connection with the stolen goods, either as receiver or thief, before he grants a Search Warrant authorizing his apprehension; and in case of doubt, it will be much wiser to leave out the authority to arrest. If the articles be found, and the facts warrant it, an ordinary Warrant for the apprehension of the party in whose possession they were found may be afterwards issued, and the case dealt with in the ordinary course. [*Greaves*, p. 401.]

tion Acts, (24 & 25 Vic., Cap. 96, Sec. 108), it is enacted, "that if any credible witness shall prove upon oath, before a Justice of the Peace, a reasonable cause to suspect that any person has in his possession, or on his premises, any property whatsoever, on or with respect to which any offence, punishable either upon indictment or upon summary conviction by that Act, shall have been committed, the Justice may grant a Warrant to search for such property as in the case of stolen goods."

30. Mode of executing Search Warrant.—Great caution should be observed in executing this Warrant; the Constable to whom it is directed will be the party intrusted with it, but he should be accompanied to the premises by the owner of the property or some other person who is enabled to point out and swear to the goods in question. If the premises are closed, and the Constable is denied admission after demand, and disclosing his authority and the object of his visit, they may be forced open by him. In making the search, care must be observed that no other goods than those designated in the Warrant, or such as have been actually stolen, be seized. Should the goods sought for be found, the Constable will seize and keep them in his possession, and he will then also, by virtue of his Warrant, apprehend the person upon whose premises they have been found, and take him before the Magistrate to answer the charge that shall then be preferred against him.

31. Importance of obtaining Search Warrant.—In very many cases, particularly where a charge is likely to mould itself into one of receiving goods, knowing them to have been stolen, the obtaining of a Search Warrant, in the first instance, will be the most advisable course, since the prosecutor is thereby enabled, at the same time, both to seize the goods upon the premises before they are made away with (and so obtain cogent evidence in support of his case,) and apprehend the party suspected of guilt in the transaction; whereas, if a Warrant to *apprehend* merely be obtained in the first instance, great, if not insurmountable, difficulties may afterwards be experienced in getting at the property, and thus a case otherwise almost *conclusive*, may entirely fail for want of the necessary evidence for its support. (*a*)

(*a*) *Saunders*, p. 169 to 171.

FORMS OF SEARCH WARRANT AND INFORMATION.

FORM OF INFORMATION.

NEWFOUNDLAND.

——— DISTRICT, } BE it remembered that on the —— day of ——,
——To Wit. } A. D. 187—, at ——, in the said [*District*] C. D., of ——, in the said [*District*] *labourer*, a credible witness, comes before me, the undersigned, one of Her Majesty's Justices of the Peace in and for the said [*District*], and upon his [*oath*] now duly made by him before me the said Justice, informs me the said Justice that on the —— day of ——, [*or within —— days last past, as the case may be*] divers goods and chattels of him the said C. D., to wit [*two coats, twelve silver spoons, &c., describe the articles stolen accurately*], were feloniously stolen from [*the dwelling house or as the case may be*] of the said C. D., situate at ——, in the said District, and that he, this informant, hath probable and reasonable cause to suspect, and doth verily suspect, that the said goods and chattels are concealed in the Dwelling House of E. D., of ——, in the said —— District, *Fisherman*, and therefore the said C. D. prays that justice may be done in the premises.

(Sd.) C. D.

Exhibited and sworn before me, at the time and place aforesaid, }
(Sd.) T. WILLS, J. P.

FORM OF SEARCH WARRANT.

NEWFOUNDLAND, }
———District, }
—— To Wit. }

To ——, the Constable at ——, and to all others, the Constables, for the said District (or Island.)

WHEREAS it appears to me, the undersigned, one of Her Majesty's Justices of the Peace in and for the said District, [or Island of Newfoundland and its Dependencies,] by the information, on oath, of C. D., of —— in the said District, a credible witness, that on the —— day of ——, divers goods and chattels, &c., [here copy the information.]

These are, therefore, in the name of our said Lady the Queen, to authorize and require you, with necessary and proper assistants, to enter in the day time into the said [*dwelling-house*] of the said E. F., at ——, in the [*District*] aforesaid [*this description must accord with the Informa-*

tion], and there diligently to search for the said goods [*as in the Information*], and if the same, or any part thereof, shall be found upon such search, that you bring the same (*a*) * and also the body of the said E. F.* before me or some other of Her Majesty's Justices of the Peace in and for the said [*District*], to be dealt with according to law.

Given under my Hand and Seal, at ——, in the said [*District*] this —— day of ——, A. D. 187—.

T. WILLS, J. P. (L. S.)

III.—COMPELLING THE ATTENDANCE OF WITNESSES.

32.—ATTENDANCE OF WITNESSES BY SUMMONS.—If it appear to any Justice, by the oath or affirmation of any creditable person, that any person, within the jurisdiction of such Justice, is likely to give material evidence for the prosecution, and will not voluntarily appear as a witness, such Justice is required to issue a Summons (L 1) to such person, under his hand and seal, requiring him to appear as a witness at a time and place therein mentioned.

33.—If the person so summoned shall, without just excuse, refuse or neglect to appear, then (after proof on oath or affirmation of the service of the summons, either personally, or by leaving the same for him with some person at his last or most usual place of abode), the Justice before whom he ought to have appeared may issue a (L 2) Warrant to bring such person, at a time and place therein mentioned, before the Justice issuing the Summons, or some other Justice, and which Warrant may be backed as before mentioned.

34. WARRANT IN FIRST INSTANCE.—Or if the Justice be satisfied by evidence, upon oath or affirmation, that it is probable such person will not attend to give evidence without being compelled to do so, then instead of issuing such Summons, a Warrant (L 3) may be issued in the first instance, and such War-

(*a*) Omit the part between the asterisks wherever the person in possession of the things would be guilty of no offence. [See *ante*, note to sec. 28.]

Backing Warrants, see *ante*, p. 49 & 50.

rant may also be *backed* in order to its execution in another jurisdiction. (*a*)

85. Refusing to be Examined, Sec. 16.—If on the appearance of such person, either in obedience to the Summons or by Warrant, he shall refuse to be examined on oath, or, having taken such oath, shall refuse without just cause to answer such questions as are put to him, any Justice present and having jurisdiction, may, by Warrant, (L 4) commit the person so refusing to jail, for not exceeding seven days, unless he shall in the meantime consent to be examined, and to answer concerning the premises. (*b*)

IV. THE HEARING AND EXAMINATION OF PROSECUTOR'S WITNESSES.

86. The Court—Place of Examination.—The room or building where the examinations are taken shall not be deemed an *open Court* for that purpose, and the Justices, in their discretion, may order that no such person shall have access to or remain in such place without their permission, if it appear to them that the ends of justice will be best answered by so doing. (Sec. 19.) (*c*)

(*a*) A witness cannot demand his expenses in the first instance in *indictable* offences; he cannot refuse to attend upon being served with a Summons or Subpœna, until his expenses are paid. [*R.* v. *James*, 1 C. & P. 222.]

(*b*) Any witness who is in Court without being subpœned, is bound to be sworn and give evidence, but as it appears doubtful whether he could be committed under this Section, it will therefore be the most prudent course to serve such refractory witness with a Summons on the spot. *Stone*, p. 7, 28 J. P. 783; but see Consol. Stat., p. 153, where any person present in Court or before a Judicial Officer may be required to testify in the same manner as if he were in attendance upon subpœna issued by such Court or Officer.

(*c*) This section only applies to the taking of the depositions, &c., against a prisoner, upon which occasion the Justice may, if he deem it necessary to secure the ends of justice, exclude all strangers from the room. A Justice of the Peace acting under this statute, does not act as a Court of Justice to determine the guilt or innocence of a Defendant, but as an officer deputed by the law to enter upon a preliminary inquiry whether the Defendant ought to be committed for trial or not. Therefore a prisoner when examined before a Magistrate on a charge of felony, is not entitled as of right to have a person skilled in the law present as an advocate. It is in the discretion of the Ma-

37. EXAMINATION OF WITNESSES FOR THE PROSECUTION, Sec. 17.—In all cases where any person shall be brought before any Justice, charged with any indictable offence, whether he appear voluntarily upon Summons, (*a*) or shall have been apprehended with or without Warrant, or be in custody for the same or any other offence, such Justice, before committing the prisoner for trial or admitting him to bail, shall, in the presence of the accused, (who shall be at liberty to put questions to any witness against him,) take the statement in the form prescribed in the Schedule to the Act (M), on oath or affirmation, of those who shall know the facts and circumstances of the case, and shall put the same into writing, and such depositions shall be read over to and signed respectively by the witnesses and by the Justice taking the same; and such Justice shall, before any witness is examined, administer to him the usual oath or affirmation. (*b*)

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gistrates in each particular case whether they will admit or exclude an advocate for the accused. *Cox* v. *Coleridge*, 2 D. & R. 86; 1 B. & C. 37. *Rex* v. *Borrow*, 3 B. & A. 432. *Rex* v. *Staffordshire*, JJ., 1 Chit. 218. *Collier* v. *Hicks*, 2 B. & Ad. 663. Upon other occasions, when the Justice acts judicially, as in hearing a charge for an offence punishable upon summary conviction, he does so in public, and in open Court, to which every person has a right to resort. [See 11 & 12 Vic., c. 43, s. 12.] It is a very unusual thing to exclude the prisoner's Counsel, and is not recommended. The legality of such a course is doubted also.

(*a*) A person attending before a Magistrate as a witness, on a charge of felony, after a remand, is privileged from arrest on civil process, EUNDO MORANDO ET REDEUNDO, though he was under Recognizance or Summons to appear; eundo, &c., means going, staying, and returning *witness in jail.* By 16 & 17 Vic., c. 30, s. 9, a Judge of the Supreme Court, upon application, by affidavit, may issue a Warrant or Order for bringing up any prisoner confined in jail, &c., under any sentence or under commitment for trial, or otherwise, (except under process in a civil action, suit, or proceeding,) before any Court or Justice, to be examined as a witness in any cause or matter, civil or criminal.

(*b*) There is only one way, and only one safe way, of taking depositions. There should be a charge made explaining to the prisoner what he is accused of. It is always best to have this charge in writing, and to read it for the caption. The witnesses should be sworn in his, the prisoner's, presence, and in the presence of the Magistrate, and every word of evidence they give should be taken down in the presence of the accused and the Magistrate, and the prisoner should be asked to cross-examine. No hurry of business, or any other matter, should

38. WITNESSES UNABLE TO TRAVEL.—If, upon the trial of the person so accused, it shall be proved by the oath or affirmation of any credible witness that any person whose deposition shall have been taken as aforesaid, is dead, or is so ill as not to be able to travel, (*a*) and if it also be proved that such deposition was taken in the presence of the accused, and that he or his Counsel or Attorney had a full opportunity of cross-examining the witness, then, if such deposition purport to be signed by the Justice before whom the same purports to have been taken, it shall be lawful to read such deposition as evidence in such prosecution, without further proof thereof, unless it shall be proved that such deposition was not, in fact, signed by the Justice purporting to sign the same. (Sec. 17.) (*b*)

39. EXAMINATION FOR OFFENCE IN ANOTHER JURISDICTION.—

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prevent the Magistrate or the Clerk of the Peace from always following this rule. The prisoner must hear the words come from the lips of the witness. He must be present when the words are written down, and must be offered the opportunity of cross-examining. This rule, and all other directions contained in this Chapter, must be rigidly complied with; and a failure to comply with these rules will probably render the deposition inadmissible in evidence. And should the witness die, or cannot be found, when the trial proceeds, may be fatal to the prosecution, and subject the Magistrate to much blame. As soon as the accused is in custody, and the witnesses are forthcoming, the depositions should be taken as speedily as possible, for the convenience of all parties. "Delays are dangerous."

(*a*) Deposition can be read as evidence if the witness can travel but cannot give evidence from paralysis, [*R.* v. *Cockburn*, 26 L. J. 13] but not if the witness is absent and resident in a foreign country. [*R.* v. *Austin*, 25 *L.*J. 48.] It will be for the Judge to decide whether the proof of inability to travel is sufficient. [*R.* v. *Stephenson*, 31 L. J. 147.] The deposition may be read before the Grand Jury as well as the Petty Jury. [See *R.* v. *Clements*, 20 L. J. 193, and *R.* v. *Scaife*, 15 J. P. 581, on the trial of the prisoner. *Stone*, p. 8.]

(*b*) The deposition of a witness taken on one charge may be used in an indictment for another, as in *Reg.* v. *Beeston*, 24 L. J. R., M. C. (N. S.) 5, where the prisoner was charged before a Magistrate with wounding A, with intent, &c., and A's deposition was taken. A afterwards died of the wound, and the prisoner was indicted for his murder; when it was held that on the trial for the murder the deposition of A might be read in evidence, as although it was not on the same technical charge it was taken in the same case, and the prisoner had had a full opportunity of cross-examination. (*Glen*, p. 32.)

Whenever a person shall appear or shall be brought before a Justice, charged with an offence alleged to have been committed by him in any District wherein such Justice shall not have jurisdiction, he shall examine such witnesses, and receive such evidence in proof of such charge, as shall be produced before him, within his jurisdiction; and if in his opinion such evidence shall be sufficient proof of the charge he shall commit him to the common gaol for the place where the offence is alleged to have been committed, or shall admit him to bail, and shall bind over the prosecutor (if he have appeared before him) and the witnesses by recognizances; but if such testimony and evidence shall not in the opinion of such Justice be sufficient to put the accused party upon his trial for the offence with which he is so charged, then such Justice shall bind over such witnesses as he shall have examined, by recognizance, to give evidence, and such Justice, by warrant, (R 1) order such accused party to be taken before some Justice in and for the District or place where and near unto the place where the offence is alleged to have been committed, and at the same time deliver the information and complaint, and also the depositions and recognizances so taken by him, to the Constable who shall have the execution of such last-mentioned warrant, to be by him delivered to the Justice before whom he shall take the accused in obedience to the said warrant, and which said depositions and recognizances shall be deemed to be taken in the case, and shall be treated to all intents and purposes as if they had been taken by or before the said last-mentioned Justice, and shall, together with such depositions and recognizances, as such last-mentioned Justice shall take in the matter of such charge against the said accused party, be transmitted to the Clerk of the Court where the said accused party is to be tried, if such accused party shall be committed for trial upon the said charge, or shall be admitted to bail; and in case such accused party shall be taken before the Justice last aforesaid by virtue of the said last-mentioned warrant, the Constable to whom the said warrant shall have been directed, and who shall have conveyed such accused party before such last-mentioned Justice, shall be entitled to be paid his costs and ex-

penses of conveying the said accused party before the said Justice; and upon the said Constable producing the said accused party before such Justice, and delivering him into the custody of such person as the said Justice shall direct or name in that behalf; and upon the said Constable delivering to the said Justice the warrant, information (if any), depositions, and recognizances aforesaid, and proving by oath the handwriting of the Justice who shall have subscribed the same, such Justice to whom the said accused party is so produced shall thereupon forthwith ascertain the sum which ought to be paid to such Constable or other person for conveying such accused party and taking him before such Justice, as also his reasonable costs and expenses of returning; and thereupon such Justice shall make an order (R 2) if such last-mentioned Justice shall not think the evidence against such accused party sufficient to put him upon his trial, and shall discharge him without holding him to bail, every such recognizance so taken by the said first-mentioned Justice, as aforesaid, shall be null and void.

V.—STATEMENT OF THE ACCUSED AND EXAMINATION OF HIS WITNESSES.

40. Reading over Depositions.—After the examination of all the witnesses for the prosecution, the Justice or one of the Justices before whom the examination has been completed, shall, without requiring the attendance of the witnesses, read or cause to be read to the accused, the depositions taken against him, and say to him these words, or words to the like effect:

41. Caution to Accused.—"Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you on your trial."

42. And whatever the prisoner shall say in answer thereto, shall be taken down in writing, and read over to him, and be signed by the Justice and kept with the depositions of the witnesses, and transmitted with them, as after-mentioned; and on the trial such deposition may be given in evidence against the

accused unless it appear that the Justice (*a*) did not, in fact, sign the same.

43. THE SECOND CAUTION.—Provided always, that the Justice, before the accused shall make any statement, shall state to him and give him clearly to understand that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been holden out to induce him to make any admission or confession of guilt, but that whatever he shall then say may be given in evidence against him upon his trial, notwithstanding such promise or threat. (*b*)

44. PROVIDED, nevertheless, that nothing herein contained shall prevent the prosecutor, in any case, from giving in evidence any admission or confession, or other statement of the person accused or charged, made at any time, which by law would be admissible as evidence against such person.

45. OBSERVATIONS.—The Act of 30 & 31 Vic., Cap. 35, was passed to remedy certain defects and difficulties in the administration of justice, especially with respect to witnesses for the accused, and the perpetuation of the testimony of persons dangerously ill. It contains a few other amendments of the law. As it is applicable to the Colony (*c*) I have given an analysis of it.

(*a*) The Magistrate should always sign his name to the deposition, immediately after the witness has signed it and been sworn.

(*b*) The statement of a prisoner may be read if the caution were given, and there be no evidence that any threat or promise has been held out, to induce a confession, although the Justice did not give him to understand that he had nothing to hope or fear; the words in the proviso are directory, and not a condition precedent to the admissibility of the prisoner's statement. [*R.* v. *Sansome*, 19 L. J. 143.] Justices are, however, recommended by the Chief Justice, in all cases, to address the accused in the words of the proviso, besides giving the printed caution in the imaginary case, Chapter 9, to nullify the effect of any promise or threat of which the Justice of the Peace may not be aware.

Prisoner's Witnesses.—After the directions contained in this Section have been complied with, the Justices must proceed as to witnesses for the accused in the mode directed by 3rd, 4th, and 5th Sections of 30 & 31 Vict., Cap. 35, *Post*. A case of Rape occurred lately, in which it was clearly shewn that if the Magistrate had examined the prisoner's witnesses he would never have been committed for trial, the evidence for the defence having established the most conclusive evidence of the prisoner's innocence.

(*c*) This Act, having direct reference to the operation and execution of

ANALYSIS OF ACT.

46. WITNESSES OF ACCUSED PERSON.—In all cases where any person shall appear or be brought before any Justice, charged with any indictable offence, whether committed within this realm or upon the high seas, or upon land beyond the sea, and whether such person appear voluntarily upon summons, or has been apprehended with or without warrant, or be in custody for the same or any other offence, such Justice, before he shall commit such accused person for trial or admit him to bail, shall immediately after obeying the directions of the 18th section of 11 & 12 Vic., Cap. 42, demand and require of the accused person whether he (*a*) desires to call any witness; and if the accused person shall, in answer to such demand, call or desire to call any witness or witnesses, such Justice shall, in the presence of such accused person, take the statement on oath or affirmation, both examination and cross-examination, of those who shall be so called as witnesses by such accused person, and who shall know anything relating to the facts and circumstances of the case or anything tending to prove the innocence of such accused person, and shall put the same into writing; and such deposition of such witnesses shall be read over to and signed respectively by the witnesses who shall have been so examined, and shall be signed also by the Justice taking the same, and transmitted in due course of law with the depositions; and such witnesses, not being witnesses merely to the character of the accused, as shall in the opinion of the Justice give evidence in any way material to the case or tending to prove the innocence of the accused person, shall be bound by recognizance to appear and give evidence at the said trial; and afterwards, upon the trial of such accused person, all the laws now in force relating to the depositions of witnesses for the prosecution shall extend and be applicable to the depositions of witnesses hereby directed to be taken [30 & 31 Vic., Cap. 35, Sec. 8]; and all the provisions of the 11 & 12 Vict., Cap. 42, re-

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11 & 12 Vic., Cap. 42, is made to apply to this Colony, under latter part sec. 4, p. 226, Consol. Stat.

(*a*) If the Justice neglects to make this enquiry, the commitment might possibly be quashed on *Certiorari*.

lating to the summoning and enforcing the attendance and committal of witnesses, and binding them by recognizance and committal in default, and for giving the accused person copies of the examinations, and giving jurisdiction to certain persons to act alone, shall be read and shall have operation as part of this Act. [*Id.* s. 4.]

47. EXPENSES OF SUCH WITNESSES.—The Court before which any accused person shall be prosecuted or tried, or for trial, before which he may be committed or bailed to appear for any felony or misdemeanor, is hereby authorized and empowered, in its discretion, at the request of any person who shall appear before such Court on recognizance to give evidence on behalf of the person accused, to order payment, unto such witness so appearing, of such sum of money as to the Court shall seem reasonable and sufficient to compensate such witness for the expenses, trouble, and loss of time he shall have incurred or sustained in attending before the examining Magistrate, and at or before such Court; and the amount of such expenses of attending before the examining Magistrate, and compensation for trouble and loss of time therein, shall be ascertained by the certificate of such Magistrate, granted before the attendance in Court; and the amount of all other expenses and compensation shall be ascertained by the proper officer of the Court, who shall, upon the receipt of the sum of twelve cents (*a*) for each witness, make out and deliver to the person entitled thereto an order for such expenses and compensation, together with the said fee of twelve cents. Such witnesses' expenses shall be paid as part of the expense of the prosecution.

VI.—BINDING OVER PROSECUTOR AND WITNESSES BY RECOGNIZANCES.

48. RECOGNIZANCE.—The Justice before whom any witness has been examined, may bind, by (O 1) Recognizance, (*b*) the

(*a*) This fee is not to be taken where the officer is paid by salary, and in certain other cases. [See 32 & 33 Vic., c. 89, s. 10.]

(*b*) *Recognizance* is an acknowledgment, an obligation of record which a man enters into before some Court of Record or Magistrate, duly authorized,

prosecutor, and every such witness, to appear at the next Court, at which the accused is to be tried, to prosecute or to prosecute and give evidence, or to give evidence, as the case may be, against the accused; and such Recognizance shall particularly specify the profession or trade of the person entering into the same, with his Christian and Surname, and the settlement or place of his residence; and if his residence be in a town, the name of the street, (*a*) and the number, if any, of the house in which he resides, and whether he is owner, tenant, or lodger; and the Recognizance, duly acknowledged, shall be subscribed by the Justice, and a (O 2) notice thereof signed by him given to the person bound thereby. (*b*) The several Recognizances so taken, with the written information, if any, the depositions, the statement of the accused, and the Recognizances of bail, if any, shall be delivered to the proper officer of the Court in which the trial is to be had, before or at the opening of the Court, on the first day of the sitting thereof, or at such other time as the Judge shall appoint.

49. WITNESS REFUSING TO ENTER INTO RECOGNIZANCE.—If any witness refuse to enter into a Recognizance, such Justice may, by his Warrant, (P 1) commit him to the jail for the District in which the accused is to be tried, until the trial, unless the witness shall in the meantime enter into a Recognizance, before some Justice of the Peace in the District where the jail is situated; and if the accused shall afterwards be discharged by the Justice, from want of evidence, or other cause, such Justice or

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with condition to do some particular act, such as to keep the peace, give evidence, &c. This is witnessed only by the record of the Court, or the signature of the Magistrate, and is not like a Bond signed and sealed by the party bound.

(*a*) Many of these minute particulars of description can only be complied with in some few places, like St. John's and Harbour Grace. So long as the name, occupation, and residence, are given, so as to identify the party, it will be sufficient. When the Recognizances are completed, each party bound should be handed the notice of the Recognizance.

(*b*) The papers should be forwarded, as directed, to the Chief Clerk and Registrar Supreme Court, St. John's, or to the Chief Clerk of the Circuit where the case is to be tried. See note in Chapter on Practice.

any other Justice may, by his order, direct the witness (P 2) to be discharged from custody. (*a*)

VII.—REMAND.

50. GENERAL RULES FOR REMAND.—If deemed advisable, from the absence of witnesses or other reasonable cause, the Justice may, by Warrant, *remand* the accused from time to time, for a period not exceeding eight clear days, (*b*) to the nearest jail; but if

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(*a*) There seems to be no power to require witnesses, whether minors or married women, to find sureties for their appearance. [*Stone*, p. 9.] It will be advisable to get the husband or father as surety, if you can. Where such a power as this is given to a Magistrate, there will be very little occasion for its use. The Constable who has charge of the case should see that the witnesses are forthcoming in the proper time; and if they leave the District or settlement, should notify the Attorney General of their whereabouts in time.

Remand.—Justices are recommended, where there is a strong *prima facie* case against a prisoner, to use this power of remand when there is a probability of their obtaining more evidence, and where they feel the ends of justice will be served by their doing so. The accused need not have been apprehended under process to warrant a remand, and slight evidence against him upon the charge is sufficient for that purpose; for it is generally impossible, except in the most simple case, to have ready all the evidence, or to present a *prima facie* sufficient to justify a committal on first hearing, &c. [*Oke*, p. 880, note.

Whilst an enquiry is pending before a Justice, or a prisoner is in gaol under *remand*, a Judge of the Supreme Court cannot interfere with that discretion, by ordering the accused to be admitted to bail, like he may do after committal in any case. As a general rule, it may be said that, in practice, it is not usual, on remand, to admit to bail, (especially where the precise nature or extent of the charge is undeveloped, unless property involved is very small), in those cases in which an accused is not entitled to be bailed after committal; in other cases, it is. [*Oke*, p. 881, note.

The reason for this caution is obvious; the accused, if at liberty, may keep witnesses out of the way, secrete the stolen property, and in many ways defeat the ends of justice, and prevent the true facts being brought out in the case. Justices will, of course, make these remands as short as consistent with the nature of the case, and the difficulty of bringing the evidence forward.

(*b*) The limitation of eight days does not apply to adjournments in summary proceedings under 11 & 12 Vic., c. 43, s. 16. The course adopted in the Metropolitan Police Courts is to remand at the latest till the day following the corresponding day in the ensuing week. [36 J. P. 13.] But the usual meaning of these words "clear days" would be eight intervening days be-

the remand be for a time not exceeding three clear days, the Justice may verbally order the Constable, in whose custody the accused may be, or any other Constable named by the Justice, to continue to keep such party in custody until the time appointed for continuing the examination, when any Justice may order the accused to be brought before him, or any other Justice, before the expiration of such period.

51. Instead of detaining the accused in custody during the period to which he is remanded, any one Justice before whom he shall be brought, may discharge him, upon his entering into a recognizance, (O 2) and (O 3) with or without sureties, conditioned for his appearance, at the time and place appointed for the continuance of the examination. (*a*)

52. And if the accused party do not appear upon the recognizance, the Justice may make return of the recognizance, and of the forfeiture thereof, under his hand and seal, in the following form :—

53. FORM.—

I, Thomas Wills, of Island Cove, in the Northern District, one of Her Majesty's Justices of the Peace for the said District of Newfoundland, do hereby certify and return unto the Honourable the Supreme Court, that the Recognizance hereto annexed, marked by me, was on or about the —— day of June, in the year 1875, taken before me ; and that the same has become forfeited by breach of the condition thereof, by Job Stiggins, therein named.

Given under my Hand and Seal, at Island Cove, this —— day of——, A. D. 1875.

THOMAS WILLS. (Seal.)

VIII.—BAIL.

54. BAIL IN FELONY AND CERTAIN MISDEMEANORS.—Where any person shall appear or be brought before a Justice charged with

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tween the day of remand and of hearing. We do not know on what principle a different rule of interpretation is acted upon in London.—*Stone.*

(*a*) *Consol. Stat.* p. 170.—This is the rule to follow when the condition of the Recognizance is not to appear in the Supreme Court, either in Saint John's or on Circuit. When the condition is to appear in the Supreme Court, the course is regulated by Sec. 1, Consol. Stat., p. 169.

1. Whenever any recognizance returned into or given to the Supreme

any felony (except treason), assault with intent to commit any felony, attempt to commit any felony, obtaining or attempting to obtain property by false pretences, misdemeanor in receiving property stolen or obtained by false pretences, perjury, or subornation of perjury, concealing the birth of a child by secret burying or otherwise, wilful or indecent exposure of the person, riot, assault in pursuance of a conspiracy to raise wages, assault upon a peace officer in the execution of his duty, or upon any person acting in his aid, neglect or breach of duty as a peace officer, such Justice may, in his discretion, (*a*) admit such person

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Court shall become forfeited by breach of the condition thereof, the Court may, by a rule *nisi*, to be made upon sufficient affidavits, shewing the execution and forfeiture of such recognizance, and to be served upon such of the parties executing the same as shall be within the jurisdiction of the Court, require such parties to shew cause why the said recognizance should not be declared to be forfeited, and the amount of the penalty thereof paid by them; and thereupon, after hearing the parties to such rule, or such of them as may appear upon the same, or in default of appearance, make an order pronouncing such recognizance forfeited, and directing the payment into Court of the penalty thereof by the parties liable, or discharging such rule *nisi*, as may be lawful in that behalf: Provided that the Court, upon sufficient special cause, may, if they shall see fit so to do, lessen or altogether remit the amount of such penalty.

2. When any recognizance for the doing or not doing of any matter or thing, other than the appearance of any person before the Supreme Court, aforesaid, and made to any Justice or Court of Session, shall become forfeited, such Justice, or in case of his death or incapacity, any other Justice of the district, or the Clerk of Peace or the Court of Session, as the case may be, may make return of such recognizance, and of the forfeiture thereof, under his hand and seal, in the form substantially in the schedule annexed, (as in Form 53,) to the Supreme Court, and thereupon the like proceedings shall be had for declaring the forfeiture of such recognizance and for the recovering of the penalty as are hereinbefore directed in other cases.

(If the return, Form 53, be made by any other than the Justice before whom the recognizance was entered into, or the breach of condition occurred, or was shewn, let the words "all which is satisfactorily proven to me," be added after the word "named.")

(*a*) Although it is discretionary with the Justice whether he will accept bail or not, it has been held by Lush, J., and Brett, J., that a Judge has no discretion in the case of a misdemeanor, as, for instance, obtaining goods by false pretences, but is bound to admit to bail. [See 34 J. P. 701.]

to bail, upon his procuring such surety or sureties as, in the opinion of the Justice, will be sufficient to insure the appearance of the accused at the time and place of trial, and take the recognizance of the accused and his surety or sureties, conditioned for his appearance at the trial; and where a person charged with any indictable offence shall be committed for trial, the Justice who signed the warrant of commitment may, at any time afterwards, and before the first day of the sitting or session at which he is to be tried, or before the day to which the same may be adjourned, admit such accused person to bail in manner aforesaid; or if the committing Justice or Justices shall be of opinion that, for any of the offences aforesaid, the accused person ought to be admitted to bail, he or they shall in such cases, and in all other cases of misdemeanors, certify, on the back of the warrant of commitment, his or their consent to such accused person being bailed, stating the amount of bail which ought to be required; and any Justice attending or being at the gaol or prison (*a*) where the accused shall be in custody, on production of such certificate may admit him to bail (*b*) in manner aforesaid; or if it shall be inconvenient for the sureties to attend at the prison to join in the recognizance with the accused, then the committing Justice may make a duplicate of the certificate, and on the same being produced to any Justice for the same District or place, the last-mentioned Justice may take recognizance of the sureties; and on such recognizance being transmitted to the keeper of the prison, and produced, together with the certificate of the commitment, to any Justice attending at such gaol or prison, such last-mentioned Justice may take the recognizance of the

(*a*) The gaoler will not, it seems, be justified in taking the prisoner from the gaol to the Magistrate. [14 J. P. 102.]

(*b*) A single Justice, being the committing Justice, may admit to bail in all felonies; and if such committing Justice certify on the back of the commitment that such person ought to be admitted to bail, and the amount of bail, any Justice attending or being at the prison may admit such person to bail. If the application for bail be made to a Judge at Chambers, a copy of the depositions should be brought before the Court in the first instance. [*Ex parte Sutcliffe*, 19 J. P. 375.]

accused, and order him to be discharged as to that commitment. [*Id.* s. 23.]

55. BAIL IN OTHER MISDEMEANORS.—Where any person shall be charged before any Justice with any indictable misdemeanor other than those before mentioned, such Justice, after taking the examinations in writing, shall admit him to bail instead of committing him to prison, or if he shall have been committed to prison, and shall apply to any one of the visiting Justices of the prison, or to any other Justice of the same District, before the first day of the sitting or sessions at which he is to be tried, or before the day to which the same may be adjourned, such Justice shall accordingly admit him to bail. And in all cases where such accused person, in custody, shall be admitted to bail (*a*) by a Justice other than the committing Justice, the Justice so admitting to bail shall forthwith transmit the recognizance to the committing Justice or Justices, or one of them, to be by him or them transmitted to the proper officer. [*Id.* s. 23.]

56. BAIL—OBSERVATIONS ON.—The 23rd Section of this Act enumerates the different offences in which the Magistrate may, in his *discretion*, take bail; in all other cases, if sufficient bail is offered, he is bound to take bail. Bail is not to be taken in treason, and bail is never taken by a Magistrate in cases of murder or manslaughter. In the Appendix of Forms of Indictable Offences, I have given a list of the most common offences, and in each case it is shewn when bail is discretionary or compulsory.

57. It has been laid down by an eminent authority, that the power of a Magistrate to accept or refuse bail, even in cases where the accused has a right to be bailed, is a *judicial* duty; and an action will not lie against him for refusing to take bail, in such cases, without proof of express malice, even though the sureties tendered are found by the Jury to have been sufficient. *Sinford* v. *Fitzroy*, 18 L. J. (N. S.) M. C. 108; 13 Q. B. 240; *Oke*, p. 916.

(*a*) From *Linford* v. *Fitzroy*, 18 L. J. 108, it appears that a Magistrate is not liable to any action for refusing to take bail without proof of express malice.

58. In coming to a decision whether an accused should or should not be admitted to bail, the Justice should remember that the only purpose of a committal to prison, before trial, is to "*ensure the appearance of the accused person at the time and place when and where he is to be tried.*" The point, therefore, that the Magistrate should carefully consider, especially where bail is discretionary, is there sufficient security for the prisoner's *appearance* at his trial; and if the Justice feels satisfied that by admitting the accused to bail, his appearance to take his trial will not be imperilled, his duty is obvious.

59. Upon such a question, many circumstances have to be taken into consideration by the Magistrate, and the probability of the prisoner's surrendering to take his trial will be more or less influenced by his position in life, his wealth, &c., the magnitude or specially disgraceful character of the charge against him, its effect upon him in society, the nature of the evidence, whether it is very *strong*, so as to make his conviction almost a certainty, contradictory or *doubtful*, so as to give him a chance of acquittal, or *weak*, so as to make his acquittal almost a certainty. Another important element to consider is the probable severity of the punishment; and I may also mention another consideration, and a very important one in this country. The accused's opportunities of escaping, and the ties that bind him to the country, his wife and children, parents, &c.; all these matters will affect the Justice's judgment in taking bail. He must remember, however, that whilst the probability of a conviction increases, the doubt of the prisoner's surrender, his actual or admitted guilt, is not, of itself, a conclusive reason against admitting him to bail.

60. To refuse bail in a case in which the Defendant is *entitled* to it, is in the eye of the law a serious dereliction of duty, and may subject the Justice to a criminal information. [*Rex* v. *Badger*, 4 Q. B., 468; *Reg.* v. *Saunders*, 2 *Cox*, c. c. 249.]

61. When bail is offered in a case in which the Defendant has a *right* to be bailed, the Justice should be careful not to say anything by way of dissuasion, a Magistrate not being justified in interfering to prevent a man from assisting his neighbour;

neither in such a case should the Magistrate allow himself to be influenced in rejecting persons offered as bail, on any views of a political nature. The chief consideration will be the substantial character of the bail, and their ability to perform the conditions of their recognizance. [*Reg.* v. *Saunders*, *Supra.*]

62. It is usual to have two sureties, though if one will secure the appearance of the accused, one may be taken. (*a*) They should be householders, though there is no imperative rule upon the subject; however, as such sureties only should be received as may be made answerable in case of default, it is obvious that a person who is not a householder, having a settled habitation wherein a living may be made, can answer the purpose intended by admitting to bail. [*Saunders*, p. 226.]

63. For the purpose of determining the ability of the person or persons tendered as bail, whose names the Justice may require to be given to the prosecutor some time previously, say twenty-four or forty-eight hours, the Justice may administer to them an oath, in this form:—"To all such questions as may be demanded of you, you shall true answer make; so help you God." The Justice may then ask them of their means, property, and liabilities, &c.

64. As regards the amount of bail, this will depend upon the magnitude of the offence, and the position and wealth of the parties, and will, in every case, be a fit subject for the exercise of a wise discretion. No precise rule can be laid down; care, however, should be observed, that whilst the amount is not unnecessarily heavy, it is nevertheless sufficiently large to make its forfeiture a matter of serious inconvenience to the parties. The recognizance of the accused himself is usually double that of each of his sureties.

65. Should the Justice decline to take bail, the prisoner may apply to the Supreme Court, or to one of the Judges of that Court, for permission to be admitted to bail.

(*a*) On remand, the accused's own recognizance, (if the Justice consents to bail being taken,) is sufficient. [S. 21, 11 & 12 Vic., c. 42. *Oke*, 880, 881.

66. At any time during which the responsibility of the bail continues, they may surrender the Defendant to custody, and so release themselves of their liability; to do this, they should either apprehend him, and take him before a Justice, who thereupon will commit him or require him to give fresh bail, or the bail may make a complaint, on oath, before a Justice, of their belief that the Defendant will abscond, and thereupon a Warrant will be granted for his apprehension, and this would seem to be the better course of the two, as it precludes a chance of a breach of the peace.

67. LIBERATE TO KEEPER.—Where a Justice shall admit to bail any person after commitment, such Justice shall send to the keeper of the prison a warrant (S. 5) of deliverance under his hand and seal requiring him to discharge the person admitted to bail, if he be detained for no other offence. [*Id.* s. 24.]

IX.—DISCHARGE OR COMMITTAL OF PRISONER FOR TRIAL.

68. DISCHARGE.—If, after hearing all the evidence against the accused, the Justice then present shall be of opinion that it is not sufficient to put such accused party upon his trial, he shall order him to be forthwith discharged.

69. COMMITTAL.—But if the evidence is, in the opinion of the Justice, sufficient, or if it raise a strong or probable presumption of the guilt of the accused, such Justice shall, by warrant, (T 1) commit him to the gaol for trial, or admit him to bail. [*Id.* s. 25.]

70. CONVEYING PRISONERS TO GAOL.—The Constable, or any of the Constables to whom the Warrant of Commitment is directed, shall convey the accused to prison, and deliver him, together with the Warrant, to the Keeper, who shall give a receipt for such prisoner, setting forth the state and condition in which he was delivered; and in all cases where such Constable shall be entitled to his expenses for conveying such person to prison, the committing Justice, or any Justice for the District wherein the offence is alleged in the Warrant to have been committed, shall ascertain the sum which ought to be paid to the Constable for

conveying the accused to prison, and also his expenses in returning, and make an order for payment thereof. But if it appear to the committing Justice that the prisoner has money sufficient to pay the expenses of conveying him to prison, he may order such money, or a sufficient part thereof, to be applied for the purpose. [*Id.* s. 26.]

X.—MISCELLANEOUS.

71. Copies of Depositions.—At any time after the examinations are completed, and before the first day of the sitting of the Court at which any person so committed, or admitted to bail, is to be tried, such person shall be entitled to have, from the officer having the custody of the same, (*a*) copies of the depositions on which he shall have been committed or bailed, on payment of a sum not exceeding 1½d. British sterling, for each folio of 90 words. (Sec. 27.)

72. Forms in Schedule.—The several forms in the Schedule to the Act, or forms to the like effect, shall be deemed valid. (Sec. 28.)

73. Stipendiary Magistrates, &c.—Every Stipendiary Magistrate shall have power to do, alone, whatever is authorized by this Act to be done by any one or more Justices. Powers of the same character are given to Stipendiary Magistrates, under the 6th Section, Cap. 13, Consol. Stat., quoted *ante*, Cap. 2, page 8, Manual.

74. The remaining Sections of this Act refer to Berwick-upon-Tweed, and the non extension of the Act to Scotland, Ireland, &c., and to the repeal of Statutes.

75. Deposition of Person dangerously Ill.—Whenever it shall be made to appear to the satisfaction of any Justice that any person dangerously ill, and in the opinion of some register-

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(*a*) This section does not apply to depositions on which the prisoner has been remanded [*Ex parte Fletcher*, 13 L. J. 67], but only to persons bailed or committed for some offence for which they are to be tried, and with the view of enabling them to prepare for trial; and not to a person committed for default of sureties, and who has been discharged at the sessions. [*Ex parte Humphreys*, 19 L. J. 189.]

ed medical practitioner (*a*) not likely to recover from such illness, is able and willing to give material information relating to any indictable offence, or relating to any person accused of any such offence, and it shall not be practicable for any Justice to take an examination or deposition in accordance with the provisions of 11 & 12 Vic., c. 42, s. 17, of the person so being ill, it shall be lawful for the said Justice to take in writing the statement on oath or affirmation of such person so being ill, and such Justice shall thereupon subscribe the same, and shall add thereto by way of caption a statement of his reason for taking the same, and of the day and place when and where the same was taken, and of the names of the persons (if any) present at the taking thereof, and, if the same shall relate to any indictable offence for which any accused person is already committed or bailed to appear for trial, shall transmit the same with the said addition to the proper officer of the Court for trial at which such accused person shall have been so committed or bailed; and in all other cases he shall transmit the same to the Clerk of the Peace of the District in which he shall have taken the same, who is hereby required to preserve the same, and file it of record; and if afterwards, upon the trial of any offender or offence to which the same may relate, the person who made the same statement shall be proved to be dead, or if it shall be proved that there is no reasonable probability that such person will ever be able to travel or to give evidence, it shall be lawful to read such statement in evidence, either for or against the accused, without further proof thereof, if the same purports to be signed by the Justice by or before whom it purports to be taken, and provided it be proved to the satisfaction of the Court that reasonable notice (see *R.* v. *Quigley*, 18 L. T. (N.) 211), of the intention to take such statement has been served upon the person (whether prosecutor or accused) against whom it is proposed to be read in evidence, and that such person, or his counsel or attorney, had or might have had, if he had chosen to be present, full opportunity of cross-examining the deceased person who made the same. [*Id.* s. 6.]

(*a*) This means a Doctor with a regular medical diploma.

76. Prisoner's Presence.—Whenever a prisoner in actual custody shall have served or shall have received notice of an intention to take such statement as hereinbefore mentioned, the Judge or Justice by whom the prisoner was committed, or the visiting Justice of the prison in which he is confined, may, by an order in writing, direct the gaoler having the custody of the prisoner to convey him to the place mentioned in the said notice for the purpose of being present at the taking of the statement; and such gaoler shall convey the prisoner accordingly, and the expenses of such conveyance shall be paid out of the funds applicable to the other expenses of the prison from which the prisoner shall have been conveyed. [*Id.* s. 7.]

77. Money found on Prisoner.—Where any prisoner shall be convicted, either summarily or otherwise, of larceny or other offence which includes the stealing of any property, and it shall appear to the Court by the evidence that the prisoner has sold the stolen property to any person, and that such person has had no knowledge that the same was stolen, and that any monies have been taken from the prisoner on his apprehension, it shall be lawful for the Court, on the application of such purchaser, and on the restitution of the stolen property to the prosecutor, to order that out of such monies a sum not exceeding the amount of the proceeds of the said sale be delivered to the said purchaser. [*Id.* s. 9.]

78. Removal of Prisoner without Habeas Corpus.—Where recognizances shall have been entered into for the appearance of any person to take his trial for any offence at any Court of criminal jurisdiction, and a bill of indictment shall be found against him, and such person shall be then in the prison belonging to the jurisdiction of such Court, under Warrant of Commitment, or under sentence for some other offence, it shall be lawful for the Court, by order in writing, to direct the governor of the said prison to bring up the body of such person in order that he may be arraigned upon such indictment without Writ of *Habeas Corpus*, and the said governor shall thereupon obey such order. [*Id.* s. 10.]

As a reminder to Justices in taking examinations in indict-

able offences, under this Act, I now give a brief note of the various steps of the procedure, taken from *Oke*, p. 887:—

1.—Prosecutor's Counsel or Attorney to open case.

2.—Depositions of Prosecutor's Witnesses taken.

3.—Accused invited at the close of each examination to put questions to the witness; such cross-examination being distinguished in the deposition from the examination in chief.

4.—When case for prosecution completed, depositions read over to and signed by the witnesses, (it is generally more convenient to read over each deposition to the witness, when finished, and have it then signed and completed); when examinations are completed, depositions must all be read over, but the witnesses need not be present at the reading.

5.—In long cases, or where there have been several examinations, it is convenient to hear Prosecutor's Counsel or Attorney. At this stage sum up the evidence, and give his reasons for the committal of the accused on the charges alleged. (*a*)

6.—If evidence insufficient, and not calling for an answer, accused discharged.

7.—If evidence sufficient for an answer, Attorney of accused to address the Magistrate, if case for prosecution completed; or if not completed, and remand intended, to state his objections to a remand.

8.—If evidence incomplete, accused remanded or bailed until a future day.

9.—If evidence sufficient, and case completed, depositions read as No. 4, and the Magistrate or Clerk of the Peace has informed accused of the precise legal charge against him, (as in the form in caption.)

10.—Justice to caution accused, as explained at page 62, Manual, and under 30 & 31 Vic., c. 35, s. 3, p. 63.

11.—Accused's statement to be taken down and read over to him.

(*a*) There is no right of reply to the prosecution (unless the Magistrate allows it) after the accused has made his statement and called his witnesses, if any.

12.—Accused's witnesses, if any, heard, and their depositions taken.

13.—If accused calls witnesses, Prosecutor or his Attorney to cross-examine them.

14.—If case not sufficient to put accused on his trial, accused to be discharged, if otherwise committed or held to bail for trial.

15.—Bailing accused.

16.—Binding over prosecutor and his witnesses to prosecute and give evidence, and also accused's witnesses.

CHAPTER IX.

INDICTABLE OFFENCES—PROCEEDINGS IN AN IMAGINARY CASE.

SECTIONS

1.—Introductory observations.
2.—Imaginary case.
3.—Information.
4.—Warrant.
5.—Commencement of hearing.
6.—Charge—Form of.
7.—Reading charge to prisoner.
8.—Caption.
9.—Swearing witnesses at hearing.
10.—Directions to prisoner when to cross-examine.
11.—Taking depositions.
12.—Mode of stating cross-examination.
13.—Reading over and signing depositions, &c.
14.—Discharge or commitment.
15.—Observations of Prisoner during examination to be taken down.

SECTION

16.—Statement of accused—Form.
17.—Examination of accused's witnesses.
18.—Commitment or bail—Recognizance, &c.; forwarding depositions.
19.—Remand.
20.—Form of Remand.
21.—How to procure prisoner's attendance before expiry of remand.
22.—Form to bring up prisoner.
23.—Bail.
24.—Recognizance of Bail—Form.
25.—Condition to be endorsed—Form.
26.—Notice to be given.
27.—Form of such Notice.
28.—Commitment.
29.—Form of Commitment.

1. In order to make the course of proceeding under the foregoing Chapter 8, as clear and intelligible as possible, I explain in this Chapter what should be done by a Justice of the Peace at

each step in a suppositious case of larceny. I have left out all about remand, bail, binding over prosecutor and witnesses, &c., which are all explained under the various heads under Chapter 8, which must read together with this Chapter; but bearing in mind the rules with respect to those subjects mentioned in the previous Chapter 8, exactly the same course must be followed by the Justice, as he is directed to do in this Chapter; in other cases of indictable offences, such as murder, manslaughter, concealment of birth, &c., the only difference will be in the charge in the caption (or heading) of the depositions.

2. We will suppose, then, that John Jones, Planter, of Island Cove, in the Northern District, has had ten pounds stolen out of his box, and that William Smith and Jane Butler, his servants, can give evidence respecting the thief, whom we will call Job Stiggins.

3. John Jones goes before the next Justice, whom we will call Thomas Wills, and states the facts to his Worship. Mr. Wills immediately prepares an information, in accordance with Form (A) in the Appendix of Forms. As soon as it is prepared, and William Smith, the witness, or John Jones himself, has signed it, or placed his mark to it, Mr. Wills hands William or Jones the Testament, which William is to hold in his right hand, and repeats the following oath to him:—"You make oath that the contents of this, your information, which has been read over to you, and to which you have signed your name, (or placed your mark) is correct and true in every particular; so help you GOD." William then kisses the Testament, and Mr. Wills fills in the date, and writes his name, with J. P. after it, under the words, "sworn, &c.," at the left hand corner of the information.

4. Mr. Wills then prepares his Warrant (B) or his Summons, (C) gives it to the Constable who arrests or summons Job Stiggins, or Job Stiggins attends before Mr. Wills, without either Summons or Warrant; it makes no difference so long as he is before the Magistrate, and there is a charge against him.

5. Mr. Wills then commences the proceedings by charging Job Stiggins with the offence.

6. CHARGE.—You, Job Stiggins, stand charged before me, one of Her Majesty's Justices of the Peace for the Northern District of Newfoundland, for that you, Job Stiggins, on the fifth day of June, in the *year* eighteen hundred and seventy——, at Island Cove, aforesaid, certain *money*, to wit, ten pounds, or forty dollars, the property of John Jones, feloniously did steal, take, and carry away, against the form of the Statute in such case made and provided.

7. READING CHARGE TO PRISONER.—Mr. Wills reads this charge to Job, the prisoner, from the caption or heading to the depositions of the witnesses, William Smith and Jane Butler, which he is about to take, and which is in the following form:—

8. CAPTION.—

FORM (M.)

NEWFOUNDLAND.

NORTHERN DISTRICT, *Island Cove*, to wit. } The examinations of William Smith, of Island Cove aforesaid, Fisherman, and Jane Butler, of same place, single woman, taken on oath this —— day of June, in the year of Our Lord One Thousand Eight Hundred and

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Year.—Consol. Stat. p. 3. Year alone, means year of our Lord.

Money.—This includes notes and all other descriptions of money. [*Oke*, p. 848.

Time.—Whilst it is well to be accurate about the time when an offence was committed, and also as to the amount stolen in larceny, it is not necessary to prove any particular value; there must be some value. Where, however, in summary proceedings, the jurisdiction is limited to a specified amount, a sum not exceeding the limits of the summary jurisdiction must appear on the face of the proceedings. The offence need not be stated in the information to have occurred on a particular day. It will be sufficient if the party laying the information state that the offence was committed between a certain day and some day prior to the information being laid. A conviction stating any day between these dates will be good. [*Stone*, p. 423.]

Caption.—The practice is to have the Caption a fly sheet, and the different depositions taken on the one day follow in the order of being taken, each commencing, "this Deponent, ——, on his oath, saith." When, however, the examination goes into a subsequent day, it is necessary to have a second Caption, as *all depositions must have a Caption*, only that instead of setting out the charge again, you may abbreviate it; thus, after the words "in the presence and hearing of Job Stiggins, who stands charged this day before me," add "with the before-mentioned offence," instead of setting out the whole charge again.

Seventy ——, at Island Cove, in the District aforesaid, before the undersigned, one of Her Majesty's Justices of the Peace for the said District, in the presence and hearing of Job Stiggins, who stands charged this day before me, for that he, the said Job Stiggins, on the fifth day of June, &c., (as in the foregoing charge.)

9. Swearing Witnesses at Hearing.—Mr. Wills then, in the presence of Stiggins, swears William Smith in this manner :—

"The evidence you shall give on the present enquiry, shall be the truth, the whole truth, and nothing but the truth,—So help you God."

10. Directions to Prisoner when to Cross-examine.—Mr. Wills then tells the prisoner that after each witness has been examined he may ask him any question he thinks fit ; but that he must not interrupt the witness whilst giving his evidence, and that after all the witnesses have been examined, he may make his own statement.

11. Taking Depositions.—Mr. Wills then proceeds to take down the evidence, commencing the Deposition thus :—

This Deponent, William Smith, on his oath, saith as follows :—"I saw Job Stiggins go into the room," and so on, in the first person. It must also be taken down exactly as William Smith tells it, omitting what is irrelevant and not strictly evidence. As soon as the evidence of the witness is finished, Mr. Wills will then ask the prisoner, Job Stiggins :—Do you wish to ask the witness any questions ; if he says "no," then Mr. Wills proceeds with the next witness, Jane Butler, precisely in the same manner.

12. Mode of stating Cross-examination.—If, however, the prisoner wishes to ask any questions, Mr. Wills writes in the left hand corner of the Deposition thus :—

Cross-examined by the prisoner, Job Stiggins ; and he will then proceed to take down the evidence given by Smith in answer to the prisoner's questions.

13. Reading over and Signing Depositions, &c.—When the evidence is all taken, the caption, and the different sheets of paper, must be tied together, and then Mr. Wills proceeds to read them all over in presence of the witnesses and the prisoner; when all this is done, each witness signs his deposition, and after

he has signed it, Mr. Wills will swear him again in this manner,—(or it may be read over and signed by each witness and sworn, as each witness's evidence is completed.) "You make oath that the contents of this, your Deposition, which has been read over and explained to you, and to which you have signed your name, (or placed your mark), is correct and true in every particular,—So help your God." When this is done, Mr. Wills then writes at the foot of the Deposition what is called the "*Jurat*," from the Latin "*Juro*," I swear.

Taken and sworn before me, at Island Cove, this —— day of ——, A. D. 1875, (adding, in case of a marksman, having first been read over and explained to the said Deponent.)

(Sd.) THOMAS WILLS, J. P.

14. DISCHARGE OR COMMITMENT.—When these formalities have been gone through with both witnesses, Mr. Wills has then to consider the question, is there sufficient evidence to warrant him in committing the prisoner to jail to take his trial for the offence? (*a*)

15. OBSERVATIONS OF PRISONER DURING EXAMINATION TO BE TAKEN DOWN.—We will suppose in this case that Mr. Wills having heard the whole case, and possibly remarks from the prisoner also, for it has been decided that the caution mentioned further on is not necessary until all the Depositions are taken down,

(*a*) A Magistrate is clearly bound, in the exercise of a sound discretion, not to commit any one unless a *prima facie* case (this means a case which *prima facie* on the first face or first appearance) is made out against him by witnesses entitled to a reasonable degree of credit. Justices ought not, therefore, to balance the evidence and decide according as it preponderates, for this would, in fact, be taking upon themselves the functions of the Petty Jury, and be trying the case; but they should consider whether or not the evidence makes out a *strong* or *probable* or even a *conflicting* case of guilt, in any one of which cases they should commit the accused to trial. If, however, from the slender nature of the evidence, the unworthiness of the witnesses, or the conclusive proof of innocence produced on the part of the accused, they feel that the case is not sustained, and that if they sent it for trial he must be acquitted, they should discharge the accused. [Per *Justice Bayley*. *Cox* v. *Coleridge*, (1 B. & C. 50). *Oke*, p. 898.]

and the case for the prosecution completed. "Everything occurring before the Magistrates should be taken down in writing, and returned with the depositions, as where the prisoner voluntarily makes a remark or statement which is *material* during any period of the examination, for it is admissible as evidence, although the prisoner's statement is afterwards taken in writing." (*a*)

16. Mr. Wills, as we have said, then being satisfied that there is sufficient evidence against the prisoner to commit him for trial, and having read over all the depositions to the prisoner, he then reads this paper to the prisoner, which is fastened to the depositions:

FORM (N.)

NEWFOUNDLAND.

NORTHERN DISTRICT, *Island Cove*, to wit. } You, Job Stiggins, stand charged before the undersigned, one of Her Majesty's Justices of the Peace in and for the Northern District aforesaid, this —— day of June, in the year of Our Lord One Thousand Eight

(*a*) EXAMPLE OF HOW SUCH OBSERVATIONS SHOULD BE NOTED.—When the prisoner, therefore, Job Stiggins, in the course of William Smith's examination, says, for instance, "There was not ten pounds in the purse," it will be obvious that this statement is material, and it should be taken down thus, and distinguished in the deposition. The prisoner, Job Stiggins, here voluntarily said, "There was not ten pounds in the purse;" or suppose, when asked if he has any questions to ask the witness, he says, "no; all that he has said is true," it will thus be inserted in the deposition: The prisoner, Job Stiggins, on being asked if he wished to put any question to the witness, *voluntarily* said, "no; all that he said, &c."

See under the head *confessions* and *threats*, as to when confessions are admissible in evidence, under the head "*Practice*," Post.

Should the prisoner at this stage of the proceedings, (that is before the examination of prosecutor's witnesses are finished,) desire to make a statement, he should be informed by the Magistrate "that he was not obliged to say anything now, but that whatever he did say would be taken down in writing, and might be used in evidence against him." If, after this, he makes a statement, it should be inserted in the deposition, thus:—"The prisoner at this stage of the proceeding said he desired to make a statement, and having been given clearly to understand that he was not obliged to say anything now, but that whatever he did say would be taken down in writing, and might be used in evidence against him, voluntarily saith as follows," (here put his very words.) When the Magistrate re-examines, after the prisoner or his counsel's cross-examination, it should be distinguished thus,—"Re-examined by the Magistrate." When the prisoner cross-examines, the questions as well as the answers may be taken down, if desirable.

Hundred and Seventy ——, for that you, Job Stiggins, on the fifth day of June, in the year Eighteen Hundred and Seventy ——, at Island Cove, aforesaid, (*a*) certain money, &c., —— and the said charge being read to the said Job Stiggins, and the witnesses for the prosecution, William Smith and Jane Butler, being severally examined in his presence, the said Job Stiggins is addressed by me as follows:—"Having heard the evidence, do you wish to say anything in answer to the charge? you are not obliged to say anything unless you desire to do so; but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial. And you are also clearly to understand that you have nothing to hope from any promise of favour, and nothing to fear from any threat which may have been holden out to you, to induce you to make any admission or confession of your guilt; but whatever you shall now say may be given in evidence against you upon your trial, notwithstanding such promise or threat. Do you desire to call any witness? if you do, it must be done after you have made your own statement."

Here put down whatever Job Stiggins may choose to say, and in his very words as nearly as possible; get him to sign it, if he will do so. If Job Stiggins says anything, put it down thus:—

Whereupon the said Job Stiggins saith, "I have nothing more to say; I have no witnesses to call."

his
JOB ⋈ STIGGINS.
mark.

Taken before me, at Island Cove, aforesaid, the day and year first above-mentioned.

THOMAS WILLS, J. P.

17. AS TO THE EXAMINATION OF ACCUSED'S WITNESSES.—THE ORDER OF PROCEEDINGS, &C. *See Ante*, *p.* 63 and 64.

If the accused, after making a statement, calls witnesses to account for his possession of the stolen property or the like, write as follows at the foot of his statement:—

"The above named prisoner, Job Stiggins, after making the foregoing statement in answer to the charge, calls the following witnesses to be examined on his behalf, namely: G. H., of ——, in the said District, Fisherman, and ——. The said G. H. on his oath, saith as follows." (Stating his very words, and so on, as in taking the depositions of Prosecutor's witnesses.)

(*a*) This charge is a copy of the charge in the Caption.

18. Mr. Wills then prepares a Commitment to send Stiggins to the jail, (see under the head Commitment,) or admits him to Bail. (See *Bail*, page 68.) Takes the Recognizances of Jones, and the two witnesses, and forwards the depositions and all other papers to the Chief Clerk and Registrar of the Supreme Court, on the Northern Circuit, at Harbour Grace; (*a*) he should also write the Attorney General, and send him copies of all the papers. Should the case be of a very serious character, as to where he is to send the prisoner and depositions.—*See Post*, Sec. 28 of this Chapter respecting Commitment.

19. We will suppose, in our imaginary case, that Mr. Wills has not all the witnesses present, and he wishes to remand Job Stiggins for not more than *three* days; he tells the prisoner that he is remanded for three days, and he directs the Constable either to keep him in his custody, where there is no jail, or else to take him to jail, (any place of security will answer where there is no jail, but the prisoner must be properly fed and treated humanely), and to bring him back at the expiration of the time. Mr. Wills also will write, after the last deposition taken before the remand,—

"The prisoner was then remanded for three days."

Supposing that Mr. Wills wished to remand the prisoner for a longer time, he would then have to fill up this Warrant, which must not be for a longer period than eight days. See p. 67 "Remand."

20. FORM (Q 1.)

NORTHERN DISTRICT, *Island Cove*, to wit. } NEWFOUNDLAND.

To the Constables of the Northern District, and to the Keeper of the Jail at ——, (the nearest Jail in the District.) (b)

WHEREAS Job Stiggins, hereafter called the accused, was on the ——

(*a*) If the case is to be tried on the Northern Circuit. When the case is to be tried on the Southern Circuit, the papers must be sent to the Chief Clerk of the Supreme Court on the Southern Circuit, St. John's; and when the case is one for the Supreme Court, then to the Chief Clerk and Registrar Supreme Court, St. John's.

(*b*) With respect to this Form, and all other Forms of Warrants and Commitments, observe the note, p. 48.—The Police are all sworn in for the Colony.

day of ——, charged before the undersigned, one of the Justices of the Peace for the Northern District, for that the accused, on the fifth day of June, in the year Eighteen Hundred and Seventy ——, at Island Cove, aforesaid, certain money, to wit, forty dollars, the property of John Jones, feloniously did steal, take, and carry away, against the form of the Statute, in such case made and provided. These are therefore to command you, the said Constables, in Her Majesty's name, forthwith to convey the said accused to the said Gaol, and there to deliver him to the Keeper of the said Gaol, together with this Precept; and I hereby command you, the said Keeper of the said Gaol, to receive the said accused into your custody, in the said Gaol, and there safely keep him until the —— day of ——, when I hereby command you to have him, the said accused, before me or some other Justice for the said District, as may then be there, to answer further to the said charge, and to be further dealt with according to Law, unless you shall be otherwise ordered in the meantime.

Given under my Hand and Seal, at Island Cove, aforesaid, this —— day of ——, in the year of Our Lord One Thousand Eight Hundred and Seventy ——.

T. WILLS, J. P. (L. S.)

21. Should it be desirable to have the prisoner before the Magistrate prior to the expiration of the eight days, the Magistrate might send a written message to the Keeper of the Gaol, by the Constable, requesting such Keeper to deliver the prisoner to the Constable, or, to be more formal and correct, he should send this order :—

NEWFOUNDLAND.

NORTHERN DISTRICT, *Island Cove*, to wit.

22. *To the Keeper of the Gaol at ——, in the said District.*

WHEREAS on the —— day of ——, Job Stiggins, hereafter called the accused, was committed by me to your custody on a charge of larceny, as mentioned in my said Warrant, for a period of eight days, unless he should be otherwise ordered in the meantime; and whereas it appears to me, the undersigned Justice of the Peace for the said District, that it is expedient the said accused should be further examined before the expiration of the said remand; these are therefore to order you, in Her Majesty's name, to have the said accused at ——, in the said District, before

me or some other Justice of the said District, at —— o'clock in the forenoon of (state day), to answer further to the said charge, and to be further dealt with according to Law.

Given under my Hand and Seal, at Island Cove, aforesaid, this —— day of ——, in the year Eighteen Hundred and Seventy ——.

T. WILLS, J. P. (L. S.)

23. We will suppose that Mr. Wills is satisfied that there is a sufficient case against Stiggins to commit him for trial, but that Stiggins can obtain Bail. Should it be a case in which the Magistrate would take Bail, (see various observations on Bail, *Ante*, *p.* 68), and the Magistrate makes up his mind to accept Bail; (in such a case as Stiggin's, of course, if satisfactory Bail were forthcoming, Bail should be taken). The next thing to be done is to inform the prisoner that Bail will be taken, telling him the amount. Stiggins sends to his friends, either by the Constable or some one else, who come before the Magistrate, and if he is satisfied with them he then prepares the Recognizance of Bail in this Form :—

(FORM S 1.)

24. NEWFOUNDLAND.

NORTHERN DISTRICT, *Island Cove*, to wit. } Be it remembered that on the —— day of ——, in the year Eighteen Hundred and Seventy ——, Job Stiggins, of ——, in the said District, Fisherman, and ——, of same place, Planter, and ——, of same place, Fisherman, personally came before me, the undersigned Justice of the Peace for the said District, and severally acknowledged themselves to owe to Her Majesty the Queen the several sums following, that is to say, Job Stiggins, —— dollars, (the other two sureties, generally half the prisoner's amount) the said ——, and the said ——, —— dollars each, to be made and levied of their several goods and chattels, lands and tenements, respectively, to the use of Her Majesty, if the said Stiggins fail in the condition endorsed.

Taken and acknowledged the day and year first above-mentioned at ——, before me,

T. WILLS, J. P.

25. The following is written on the back of the Recognizance of Bail :—

The condition of the within written Recognizance is such that where-

as the said Job Stiggins was this day charged before me, the Justice within mentioned, for that he, the said Job Stiggins, on the fifth day of June, in the year Eighteen Hundred and Seventy ——, at Island Cove, aforesaid, certain money, &c., (*and following out the charge as in Caption.*) If therefore the said Job Stiggins will appear at the next term of the Supreme (*a*) Court of Newfoundland on the Northern Circuit, to be holden at Harbor Grace, in the District aforesaid, and there surrender himself into the custody of the Keeper of the Common Gaol there and plead to such indictment as may be found against him by the Grand Jury for and in respect of the charge aforesaid, and take his trial upon the same, and not depart the said Court without leave, then the said Recognizance to be void or else to stand in full force and virtue.

26. NOTICE OF RECOGNIZANCE to be given to Accused and Bail. As soon as the Recognizance is completed the Justice should give to Stiggins and each of his Bail the following notice, and on the copies he should note the day when they were delivered to them :—

FORM O 2.)

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

Take notice that you, Job Stiggins, of Island Cove, in the Northern District, —— are bound in the sum of —— dollars, and your Sureties, —— of ——, and —— of —— in the District aforesaid, ——, in the sum of —— dollars ; that you the said —— will appear on the first day of the next term of the Supreme Court on Circuit, to be holden at Harbor Grace, in the said Northern District, and there surrender yourself into the custody of the Keeper of the Common Gaol at ——, aforesaid, and there plead to such indictment as may be found against you by the Grand Jury, for and in respect of the offence whereof you stand charged, and take your trial upon the same, and not depart the said Court without leave ; and unless you, the said Job Stiggins, personally appear and plead and take your trial accordingly, the Recognizance entered into by you and your Sureties shall be forthwith levied on you and them.

Dated this —— day of ——, A. D. 187—.

T. WILLS, J. P.
The Justice of the Peace before whom
the said Recognizance was taken.

(*a*) When in St. John's say, " at the next term of the Supreme Court of Newfoundland, to be holden at St. John's."

28. If Bail is not forthcoming for Stiggins, Mr. Wills will commit him to jail; and as respects the jail to which he will send the prisoner, he will be guided by the consideration of where he is to be tried; of course, if the crime was committed in the winter months, he would send the prisoner to Harbour Grace, that being the only place on the Northern Circuit where a term is held in May. Should a crime be committed either in the Northern or Southern Districts, the Justice will have to consider whether the Supreme Court on Circuit or the Supreme Court in St. John's could most conveniently dispose of the case, taking into consideration the obtaining of witnesses, their expenses, &c.; and where there is any doubt as to which is the best course to adopt, the Justice should communicate as soon as possible with the Attorney General, by whose instructions he will have to be guided; in all cases the Attorney General should be informed by the very first opportunity of a crime having been committed, and what has been done in the matter. We will suppose that in Stiggin's case, then, he is committed to Harbour Grace jail. The Commitment will be in the following Form:—

FORM (T 1.)

29. *WARRANT OF COMMITMENT.*

NEWFOUNDLAND.

NORTHERN DISTRICT,
Island Cove,
to wit.

To the Constable of ———, and the Keeper of the Gaol at Harbor Grace, in the said District.

WHEREAS Job Stiggins, hereafter called the accused, was this day charged before me, Thomas Wills, one of Her Majesty's Justices of the Peace for the said District, on the oath of William Smith and others, for that, [*here state the offence as in charge in Caption.*] These are, therefore, to command you, the said Constable, to take the said accused, and him safely convey to the said Gaol, and there to deliver him to the Keeper thereof, together with this Precept; and I do hereby command you, the said Keeper, to receive the said accused into your custody in the said

Gaol, and there safely keep him until he shall be thence delivered by due course of Law. (*a*)

Given under my Hand and Seal, at Island Cove, this —— day of ——, in the year 187—.

T. WILLS, J. P. (L. S.)

APPENDIX OF FORMS

UNDER JERVIS'S ACT, 11 & 12 VIC., CAP. 42, REFERRED TO IN CHAPTERS 8 & 9.

(A.)

Information and Complaint for an Indictable Offence.

—— DISTRICT, } NEWFOUNDLAND.
—— to wit. }

The information and complaint of C. D. of ——, [*Fisherman*], taken this —— day of —— in the year of our Lord, 187—, before the undersigned, [*one*] of Her Majesty's Justice of the Peace in and for the said [*District*] of ——, who saith that [*&c., stating the offence*]. (*b*)

Sworn before [*me*], the day and year first above mentioned, at ——. }

J. S., J. P. (Signed) C. D.

(B.)

Warrant to apprehend a Person charged with an Indictable Offence.

—— DISTRICT, } NEWFOUNDLAND.
—— to wit.. }

To the Constable of ——, and to all other Constables in the said [*District*] of ——.

Where[illegible] *B.* of —— [*Fisherman*], hath this day been charged upon oath before the undersigned, [*one*] of Her Majesty's Justices of the Peace in and for the said district of ——, for that he, on —— at —— did,

---

(*a*) It will be observed that no time is stated when prisoner is to be tried, and it has been noticed as a defect in this Form by English Text writers; but in the case of the Circuits no time can be fixed exactly beforehand when they will be held; it depends on the Proclamation and sometimes on the weather.

(*b*) If the offender is merely suspected to have committed the offence, insert after "saith," "he hath just cause to believe and suspect, and doth believe and suspect that."

[*&c., stating shortly the offence*]: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before [*me*], or some other of Her Majesty's Justices of the Peace in and for the said [*District*], to answer unto the said charge, and to be further dealt with according to law.

Given under my Hand and Seal, this —— day of ——, in the year of our Lord ——, at ——, in the [*District*] aforesaid.

J. S. (L. S.)

(C.)

Summons to a Person charged with an Indictable Offence.

—— District, } NEWFOUNDLAND.
——, to wit. }

To A. B., of ——, [*Fisherman*].

Whereas you have this day been charged before the undersigned, [*one*] of Her Majesty's Justices of the Peace in and for the said [*District*] of ——, for that you on ——, at —— [*&c., stating shortly the offence*]: These are therefore to command you, in Her Majesty's name, to be and appear before me on ——, at —— o'clock in the forenoon, at ——, or before such other Justice of the Peace for the same [*District*] as may then be there, to answer to the said charge, and to be further dealt with according to law. Herein fail not.

Given under my Hand and Seal this —— day of ——, in the year of our Lord ——, at ——, in the District aforesaid.

J. S. (L. S.)

(D.)

Warrant where the Summons is disobeyed.

To the Constables of ——, and to all other Constables in the said [*District*] of ——.

Whereas on the —— last past, A. B., of ——, [*Fisherman*], was charged before the undersigned, [*one*] of Her Majesty's Justices of the Peace in and for the said [*District*] of ——, for that [*&c., as in the Summons*]: And whereas [*I*] then issued [*my*] Summons to the said A. B., commanding him, in Her Majesty's name, to be and appear before [*me*] on ——, at —— o'clock in the forenoon, at ——, or before such other Justice of the Peace for the same [*District*] as might then be there, to answer to the said charge, and to be further dealt with according to

law: And whereas the said A. B., hath neglected to be or appear at the time and place appointed in and by the said Summons, although it hath now been proved to me upon oath that the said Summons was duly served upon the said A. B.: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before me, or some other of Her Majesty's Justices of the Peace in and for the said [*District*], to answer to the said charge, and to be further dealt with according to law.

Given under my Hand and Seal, this —— day of ——, in the year of our Lord ——, at ——, in the District aforesaid.

J. S. (L. S.)

(E.)

Warrant to apprehend a Person charged with an Indictable Offence committed on the High Seas or Abroad.

For offences committed on the high seas the Warrant may be the same as in ordinary cases, but describing the offence to have been committed "on the high seas, out of this Colony, and within the jurisdiction of the Admiralty of England."

(F.)

Certificate of Indictment being found.

I hereby certify, that in the Supreme Court of Newfoundland (or the Supreme Court of Newfoundland on the —— Circuit at ——, *or* a Court of General Quarter Sessions of the Peace, holden at ——, in the said [*Island*], on —— a bill of indictment was found by the Grand Jury against A. B., therein described as A. B., late of —— [*laborer*], for that he [*&c., stating shortly the offence,*] and that the said A. B. hath not appeared or pleaded to the said indictment.

Dated this —— day of ——, 187—.

J. D.
C. C. & Reg., or C. Supreme Court on the —— Circuit, &c., *or* Clerk of the Peace at ——.

(G.)

Warrant to apprehend a Person indicted.

To the Constable of ——, and to all other Constables in the said [*District*] of —— in Newfoundland.

Whereas it hath been duly certified by J. D., C. C. & Reg., &c., *or* Clerk of the Peace at —— in the said Island [that *&c., stating the Certificate*]:

These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before [*me*], or some other Justice of the Peace in and for the said [*District*], to be dealt with according to law.

Given under my Hand and Seal, this —— day of —— in the year of our Lord ——, at ——, in the [*District*] aforesaid.

J. S. (L. S.)

(H.)

Warrant of Commitment of a Person indicted.

—— District, —— to wit. } NEWFOUNDLAND.

To the Constable of —— and to the Keeper of the Gaol, at ——, in the said [*District*] of ——.

Whereas by [*my*] warrant, dated the —— day of ——, after reciting that it had been certified by J. D. [*&c., as in the certificate*], [*I*] commanded the Constable of ——, and all other Constables of the said District, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before [*me*], the undersigned, [*one*] of Her Majesty's Justices of the Peace in and for the said [*District*], or before some other Justice of the Peace in and for the said [*District*], to be dealt with according to law: And whereas the said A. B. hath been apprehended under and by virtue of the said warrant, and being now brought before [*me*], it is hereupon duly proved to [*me*] upon oath, that the said A. B. is the same person who is named and charged in and by the said indictment: These are therefore to command you, the said Constable, in Her Majesty's name, forthwith to take and safely convey the said A. B. to the said [*Gaol*] at —— in the said [*District*], and there to deliver him to the Keeper thereof, together with this precept: And I hereby command you the said Keeper to receive the said A. B. into your custody in the said Gaol, and him there safely to keep until he shall be thence delivered by due course of law.

Given under my Hand and Seal, this —— day of ——, in the year of our Lord ——, at ——, in the District aforesaid.

J. S. (L. S.)

(I.)

Warrant to detain a Person indicted who is already in Custody for another Offence.

——— DISTRICT, } NEWFOUNDLAND.
——, to wit. }

To the Keeper of the Gaol at ——, in the said District of ——.

Whereas it hath been duly certified by J. D., C. C. & Reg., &c., or Clerk of the Peace at ——, that [*&c., stating the certificate*]: And whereas [*I am*] informed that the said A. B. is in your custody in the said Gaol at —— aforesaid, charged with some offence or other matter; and it being now duly proved upon oath before [me] that the said A. B. so indicted as aforesaid, and the said A. B. in your custody as aforesaid, are one and the same person: These are therefore to command you, in Her Majesty's name, to detain the said A. B. in your custody in the Gaol aforesaid, until by Her Majesty's Writ of Habeas Corpus he shall be removed therefrom for the purpose of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of your custody by due course of law.

Given under my Hand and Seal, this —— day of—— , in the year of our Lord ——, at ——, in the District aforesaid.

J. S. (L. S.)

FORM (K.) given at page 50.

(L. 1.)

Summons of a Witness.

To E. F., of ——, *Fisherman.*

Whereas information hath been laid before the undersigned [*one*] of Her Majesty's Justices of the Peace in and for the said [*District*] of ——, that A. B. [*&c., as in the Summons or Warrant against the accused*], and it hath been made to appear to me [upon *oath if so, though it is not necessary that this information should be given on oath,*] that you are likely to give material evidence for the prosecution: These are therefore to require you to be and to appear before me on —— next, at —— o'clock in the forenoon, at ——, or before such other Justice of the Peace for the same District as may then be there, to testify what you shall know concerning the said charge so made against the said A. B., as aforesaid. Herein fail not.

Given under my Hand and Seal, this —— day of ——, in the year of our Lord ——, at ——, in the District aforesaid.

J. S. (L. S.)

(L. 2.)

Warrant where a Witness has not obeyed a Summons.

To the Constable of ——, and to all other Constables in the said District of ——, in Newfoundland.

Whereas information having been laid before the undersigned, one of Her Majesty's Justices of the Peace in and for the said District of ——, that A. B., [*&c., as in the Summons*]; and it having been made to appear to me upon oath that E. F., of ——, [*Fisherman*] was likely to give material evidence for the prosecution, I did duly issue my Summons to the said E. F., requiring him to be and appear before me on —— at ——, or before such other Justice or Justices of the Peace for the same District as might then be there, to testify what he should know respecting the said charge so made against the said A. B., as aforesaid: And whereas proof hath this day been made before me upon oath of such Summons having been duly served upon the said E. F.: And whereas the said E. F. hath neglected to appear at the time and place appointed by the said Summons, and no just excuse has been offered for such neglect: These are therefore to command you to bring and have the said E. F. before me on ——, at —— o'clock in the forenoon, at ——, or before such other Justice of the Peace for the same [*District*] as may then be there, to testify what he shall know concerning the said charge so made against the said A. B. as aforesaid.

Given under my Hand and Seal, this —— day of ——, in the year of our Lord ——, at ——, in the District aforesaid.

J. S. (L. S.)

(L. 3.)

Warrant for a Witness in the first instance.

To the Constable of ——, and to all other Constables in the said District of ——.

Whereas information hath been laid before the undersigned, [*one*] of Her Majesty's Justices of the Peace in and for the said [*District*] of ——, that [*&c., as in Summons*]; and it having been made to appear to [*me*] upon oath, that E. F., of ——, [*Fisherman*] is likely to give material evidence for the prosecution, and that it is probable that the said E. F. will not attend to give evidence without being compelled so to do: These are therefore to command you to bring and have the said E. F. before me on ——, at —— o'clock in the forenoon, at ——, or before such other Justice of the Peace for the same [*District*] as may then be

there, to testify what he shall know concerning the said charge so made against the said A. B., as aforesaid.

Given under my Hand and Seal, this —— day of ——, in the year of our Lord ——, at ——. in the District aforesaid.

J. S. (L. S.)

(L. 4.)

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

To the Constable of ——, and to the Keeper of the Gaol at ——, in the said District of ——, in Newfoundland.

Whereas A. B. was lately charged before the undersigned, [*one*] of Her Majesty's Justices of the Peace in and for the said [*District*] of ——, for that [*&c., as in the Summons*]; and it having been made to appear to [*me*] upon oath, that E. F., of ——, [hereafter called the witness,] was likely to give material evidence for the prosecution, I duly issued my Summons to the said witness, requiring him to be and appear before me on ——, at ——, or before such other Justice of the Peace as should then be there, to testify what he should know concerning the said charge so made against the said A. B., as aforesaid; and the said witness now appearing before me [*or* being brought before me by virtue of a Warrant in that behalf, to testify as aforesaid], and being required to make oath or affirmation as a witness in that behalf, hath now refused so to do [*or* being duly sworn as a witness doth now refuse to answer certain questions concerning the premises which are here put to him], without offering any just excuse for such his refusal: These are therefore to command you the said Constable to take the said witness and him safely to convey to the said Gaol at ——, and there deliver him to the said Keeper thereof, together with this precept; and I do hereby command you the said Keeper to receive the said witness into your custody in the said Gaol, and him there safely keep for the space of —— days, for his said contempt, unless he shall in the meantime consent to be examined and to answer concerning the premises; and for your so doing this shall be your sufficient warrant.

Given under my Hand and Seal, this —— day of ——, in the year of our Lord ——, at ——, in the District aforesaid.

J. S. (L. S.)

(M.)

Depositions of Witnesses, given at page 31.

(N.)

Statement of the Accused, given at page 84.

(O. 1.)

Recognizance to prosecute or give Evidence.

NEWFOUNDLAND.

—— District, } to wit. } Be it remembered, that on the —— day of ——, in the year of our Lord ——, C. D., of ——, in the said District, Fisherman, personally came before me, one of Her Majesty's Justices of the Peace for the said District, and acknowledged himself to owe to our Sovereign Lady the Queen the sum of —— dollars, to be made and levied of his goods and chattels, lands and tenements, to the use of our said Lady the Queen, Her Heirs and Successors, if the said C. D. shall fail in the condition indorsed.

Taken and acknowledged, the day and year first above mentioned, at ——, before me. }

J. S.

Condition to prosecute.

The condition of the within written recognizance is such, that whereas one A. B. was this day charged before me, J. S., Justice of the Peace within mentioned, for that [*&c., as in the caption of the depositions;*] if therefore he the said C. D. shall appear at the next sitting of the Supreme Court of Newfoundland, in St. John's, or at the next sitting of the Supreme Court of Newfoundland on the —— Circuit at ——, [*or* at the next Court of General Quarter Sessions of the peace] to be holden at ——,* and there prefer or cause to be preferred a bill of indictment for the offence aforesaid against the said A. B., and there also duly prosecute such indictment, then the said recognizance to be void, or else to stand in full force and virtue.

Condition to prosecute and give Evidence.

Same as the last form to the asterisk, and then thus:*—"and there prefer or cause to be preferred a bill of indictment against the said A. B. for the offence aforesaid, and duly prosecute such indictment, and give evidence thereon, as well to the jurors who shall then inquire of the said offence as also to them who shall pass upon the trial of the said A. B.; then the said recognizance to be void, or else to stand in full force and virtue."

Condition to give Evidence.

Same as the last form but one, to the asterisk, and then thus:*—" and there give such evidence as he knoweth upon a bill of indictment to be then and there preferred against the said A. B. for the offence aforesaid, as well to the jurors who shall there inquire of the said offence as also to the jurors who shall pass upon the trial of the said A. B. if the said bill shall be found a true bill; then the said recognizance to be void, or else to stand in full force and virtue."

(O. 2.)

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

—— } Take notice that you, C. D., of ——, are bound in the
to wit. } sum of —— dollars to appear at the next sitting of —— Court at ——, in Newfoundland, and then and there [*prosecute and*] give evidence against A. B.; and unless you then appear there, and [*prosecute and*] give evidence accordingly, the recognizance entered into by you will be forthwith levied on you.

Dated this —— day of ——, 187—.

J. S.

(P. 1.)

Commitment of Witness for refusing to enter into the Recognizance.

NEWFOUNDLAND.

—— District, }
——, to wit. }

To the Constables of ——, and to the Keeper of the Gaol at ——, in the said District of ——.

Whereas A. B. was lately charged before the undersigned, [*one*] of Her Majesty's Justices of the Peace in and for the said [*District*] of ——, for that [*&c., as in the Summons to the witness*], and it having been made to appear to [*me*], upon oath that E. F., of ——, was likely to give material evidence for the prosecution, [*I*] duly issued [my summons to the said E. F., requiring him to be and appear] before [*me*] on ——, at ——, or before such other Justice of the Peace as should then be there, to testify what he should know concerning the said charge so made against the said A. B., as aforesaid; and the said E. F. now appearing before [*me*], [or being brought before [*me*] by virtue of a warrant in that behalf, to testify as aforesaid, hath been now examined by [*me*] touching

the premises, but being by [*me*] required to enter into a recognizance conditioned to give evidence against the said A. B. hath now refused so to do: These are therefore to command you the said Constable to take the said E. F., and him safely to convey to the said Gaol at ——, in the District aforesaid, and there deliver him to the said Keeper thereof, together with this precept; and I do hereby command you the said Keeper to receive the said E. F. into your custody in the said Gaol, there to imprison and safely keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime such E. F. shall duly enter into such recognizance as aforesaid in the sum of —— dollars before some one Justice of the Peace for the said District, conditioned in the usual form to appear at the next sitting of the Supreme Court of Newfoundland, at St. John's, (or at the next sitting of the Supreme Court on Circuit at ——, or General Quarter Sessions of the Peace,] to be holden at ——,) and there to give evidence before the Grand Jury upon any bill of indictment which may then and there be preferred against the said A. B. for the offence aforesaid, and also to give evidence upon the trial of the said A. B. for the said offence, if a true bill should be found against him for the same.

Given under my Hand and Seal, this —— day of ——, in the year of our Lord ——, at ——, in the District aforesaid.

(P. 2.)

Subsequent Order to Discharge the Witness.

To the Keeper of the Gaol at ——, in the District of ——, Newfoundland.

Whereas by [*my*] order dated the —— day of —— , instant, reciting that A. B. was lately before me, charged before [*me*] for a certain offence therein mentioned, and that E. F. having appeared before [*me,*] and being examined as a witness for the prosecution in that behalf, refused to enter into a recognizance to give evidence against the said A. B., and I therefore thereby committed the said E. F. to your custody, and required you safely to keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime he should enter into such recognizance as aforesaid: And whereas, for want of sufficient evidence against the said A. B., the said A. B. has not been committed or holden to bail for the said offence, but on the contrary thereof has been since discharged, and it is therefore not necessary that the said E. F. should be detained longer in your custody: These are therefore to order and direct

you the said Keeper to discharge the said E. F. out of your custody as to the said commitment, and suffer him to go at large.

Given under my Hand and Seal, this —— day of ——, in the year of our Lord ——, at ——, in the District aforesaid.

J. S. (L. S.)

(Q. 2.)

Recognizance of Bail instead of Remand, on an Adjournment of Examination.

Follow the Form (S. 1,) page 88, and then endorse this condition on it.

Condition.

The condition of the within-written recognizance is such, that whereas the within-bounden A. B. was this day [*or* on —— last past] charged before me, for that [*&c., as in the warrant*]: And whereas the examination of the witnesses for the prosecution in this behalf is adjourned until the —— day of ——, instant; if therefore the said A. B. shall appear before me on the said —— day of ——, instant, at —— o'clock in the forenoon, or before such other Justice of the Peace for the said District as may then be there, to answer further to the said charge, and to be further dealt with according to law, then the said recognizance to be void, or else to stand in full force and virtue.

(Q. 3.)

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

—— District, } NEWFOUNDLAND.
——, to wit. }

Take notice, that you A. B., of ——, are bound in the sum of ——, and your sureties L. M. and N. O. in the sum of —— each, that you A. B. appear before me J. S., one of Her Majesty's Justices of the Peace for the District of ——, on ——, the —— day of ——, instant, at —— o'clock in the forenoon, at ——, or before such other Justice of the Peace for the same District as may then be there, to answer further to the charge made against you by C. D., and to be further dealt with according to law; and unless you, A. B., personally appear accordingly, the recognizances entered into by yourself and sureties will be forthwith levied on you and them.

Dated this —— day of ——, 187–.

J. S.

(Q. 4.)

(a) *Certificate of Non-appearance to be indorsed on the Recognizance.*

I hereby certify to the Supreme Court of Newfoundland that the said A. B. hath not appeared at the time and place in the above condition mentioned, but therein hath made default, by reason whereof the within-written recognizance is forfeited.

J. C.

(R. 1.)

Warrant to convey the Accused before a Justice of the District, &c., in which the Offence was committed.

To W. T., Constable of ——, and to all other Constables in the said District of ——, Newfoundland.

Whereas A. B., of ——, *labourer*, hath this day been charged before the undersigned, [*one*] of Her Majesty's Justices of the Peace in and for the said District of ——, for that [*&c., as in the warrant to apprehend*]: And whereas [*I*] have taken the deposition of C. D., a witness examined by [*me*] in this behalf; but inasmuch as [*I*] am informed that the principal witnesses to prove the said offence against the said A. B. reside in the District of ——, where the said offence is alleged to have been committed, These are therefore to command you, the said Constable, in Her Majesty's name, forthwith to take and convey the said A. B. to the said District of ——, and there carry him before some Justice of the Peace in and for that District, and near unto where the offence is alleged to have been committed, to answer further to the said charge before him, and to be further dealt with according to law; and [*I*] hereby further command you the said Constable to deliver to the said Justice the information in this behalf, and also the said deposition of C. D. now given into your possession for that purpose, together with this precept.

Given under my Hand and Seal, this —— day of ——, in the year of our Lord ——, at ——, in the District aforesaid.

J. S. (L. S.)

FORM (S. 1.) given at page 88.

Recognizance of Bail.

(a) This is the Form to be observed when the Recognizance is to appear in the Supreme Court, either in St. John's or on Circuit. Form given at page 68, is when the Recognizance is to appear before the Justice or Quarter Sessions.

FORMS (S. 3 & 4) not used.

(S. 5.)

Warrant of Deliverance on Bail being given for a Prisoner already committed.

To the Keeper of the Gaol at ——, in the said District of ——, in Newfoundland.

Whereas A. B., late of ——, Fisherman, hath before me, one of Her Majesty's Justices of the Peace in and for the said District, entered into his own recognizance, and found sufficient sureties for his appearance at the next term of the Supreme Court or of the Supreme Court on the —— Circuit, to be holden at ——, [or Court of General Quarter Sessions of the Peace] at ——, to answer our Sovereign Lady the Queen, for that [*&c., as in the commitment*], for which he was taken and committed to your said Gaol: These are therefore to command you, in Her Majesty's name, that if the said A. B. do remain in your custody in the said Gaol for the said cause, and for no other, you shall forthwith suffer him to go at large.

Given under my Hand and Seal, this —— day of ——, in the year of our Lord ——, at ——, in the District aforesaid.

J. S. (L. S.)

(T. 1.)

Warrant of Commitment given at page 90.

VARIOUS FORMS NOT GIVEN IN THE APPENDIX TO JERVIS'S ACT.

Mode of describing, technically, different descriptions of Property.

LIVE ANIMALS.—One horse;
One tame duck.

DEAD ANIMAL.—One dead fowl.

BANK NOTE.—One Bank note for the payment and of the value of —— dollars.

MONEY.—Certain money to the amount of —— dollars, or the sum of —— dollars in money.

PAIRS OF ARTICLES.—Three pairs of shoes.

HEAVY ARTICLES—(Weight.) ——— pounds and the half of another pound weight of flour, the goods, &c.

ARTICLES—(Capacity.)—One gallon of molasses.

" —(Length.)—Ten yards and the half of another yard of calico, &c.

Mode of describing Owner's Property:

TWO PARTNERS IN A FIRM.—For instance, property belonging to the firm of Messrs. P. & L. Tessier, would be described as "Of Peter Tessier and another."

MORE THAN TWO PARTNERS.—Property belonging to a firm, such as Baine, Johnston & Co., would be described as "the property of James S. Grieve and others."

PERSON UNKNOWN.—A certain person whose name is unknown.

SINGLE WOMAN MARRIED.—Mary Smith, now Mary Jones.

A PERSON DECEASED BEFORE ADMINISTRATION GRANTED.—The property of John Smith, since deceased.

Memorandum to be written on Documents produced in Evidence.

This is the plan, (*or as the case may be*) produced to me, the undersigned Justice of the Peace for the —— District of Newfoundland, on the examination of A. B., charged with (arson, forgery, &c.,) and referred to in the examination of C. D., touching the said charge.

Taken before me, this —— day of ——, 187—.

T. WILLS, J. P.

Deposition of Witness dangerously ill and unable to travel, (referred to in page 75.)

——— District, } NEWFOUNDLAND.
——, to wit. }

The examination and deposition of L. M., of ——, in the said District, Fisherman, taken on oath this —— day of ——, in the year —— at ——, in the said District, before the undersigned, one of Her Majesty's Justices of the Peace for the said District, pursuant to Section 6 of the Imperial Act of the 30th and 31st years of Her Majesty, Chapter

35, intituled "An Act to remove some defects in the administration of the Criminal Law," it having been made to appear to my satisfaction that the said L. M. is dangerously ill, and unable to travel, and in the opinion of E. F. (*a registered Medical Practitioner are the words of the Act, but any medical man holding a medical diploma recognized by Law in England, Scotland, or Ireland, would satisfy the Act*) not likely to recover from such illness, and it not being practicable for a Justice of the Peace to take an examination or deposition of the said L. M., in accordance with the provisions of the Act 11 & 12 Victoria, Chapter 42, in the presence and hearing of A. B., (the accused) and of the said E. F.,* and ——, (the said accused having been committed or bailed to appear for trial in the next Supreme Court, or Supreme Court on the —— Circuit, or Quarter Sessions, at ——, to answer to a charge of having on, &c., at, &c., *stating the offence shortly*) [*or if no person charged, say from the asterisk**, relating to a certain indictable offence, namely, the offence of ——, *stating it shortly*, alleged to have been committed on, &c., at, &c., for which no person has already been accused, (*or committed, or bailed*), to appear for trial]. This deponent, L. M., on his oath, saith as follows, &c.

L. M.

The above deposition of L. M., was taken and sworn before me, at ——, on the day and year first above-mentioned.

J. S., J. P.

Notice of intention to take Deposition of Witness Ill.

To A. B., (the accused or the prosecutor,) I, C. D., of &c., Constable of ——, being the prosecutor of you, the said A. B., (or being the person accused of the offence of ——,) hereby give you notice, pursuant to the Imperial Statute, 30 & 31 Victoria, Chapter 35, Section 6, that J. S., one of Her Majesty's Justices of the Peace for the —— District of Newfoundland, intends, on the —— day of ——, at ——,in the said District, to take the statement of L. M., who is there dangerously ill, and unable to travel, and who it is alleged is able and willing to give material information relating to the offence with which you were charged on the —— day of ——, before the said Justice, (or relating to me the said accused.)

Dated this —— day of ——, 187—.

C. D. Constable, the Prosecutor in this case, (or the accused.) (*a*)

(*a*) It will be necessary for the Magistrate carefully to bear in mind the directions given by the Statute, p. 75, 76, & 77, as to how this Deposition is to be taken. It may be taken on a notice from the Prosecutor, who is gene-

Order to convey a Prisoner to place of taking a Deposition of Witness Ill.

——— District, } NEWFOUNDLAND.
——, to wit. }

To the Keeper of the Gaol at ——, in the said District.

Whereas it appears to me that one A. B., now in your custody, (under my commitment) has duly served, or has received from one C. D. a notice pursuant to the Imperial Act, 30 & 31 Victoria, Chapter 35, Section 6, that I, J. S., one of Her Majesty's Justices of the Peace for the said District, intend, &c., (*as in the last form to the end*). Now, I, the said Committing Justice, by virtue of Section 7 of the said Act, direct you to convey the said A. B. to the place mentioned in the said notice, for the purpose of being present at the taking of the statement of the said L. M.

Given under my Hand and Seal, at ——, aforesaid, this —— day of ——, A. D. 187—.

(Justice's Signature and Seal.)

FORM OF DYING DECLARATION IN MURDER OR MANSLAUGHTER.

No particular Form is necessary, but it may be as well to state its principal ingredients, in order to its admissibility in evidence against the prisoner; it should only be taken when the Declarant is in imminent danger of death, and when he might expire at any moment. Whenever there is time, and there is a suitable opportunity for doing so, the prisoner should be brought into the injured man's presence, and the depositions taken by the Justice in the usual way, as described in Chapters 8 and 9. When a dying declaration is taken, the three following points are necessary:—

1. The cause of the death of the declarant must be the subject of inquiry.

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rally the Constable, or on notice from the accused. When the prisoner is present at the examination, he must be asked to cross-examine, and where in the form of taking such a deposition the words at the end occur "*to answer to a charge of having, on, &c.*, the charge must be stated as in page 81, and the evidence taken down with the same care and particularity. The notice must be served on the accused or the prosecutor within a reasonable time. Great care should be taken to serve it personally, and the person serving should keep a copy of the notice, and mark on it the day and hour when served.

2. The circumstance of the death; the subject of the declaration.

3. It must appear to have been made at a time when the declarant (the deceased) was perfectly aware of his danger, and entertained no hope of recovery.

The declaration must not be on *oath*, but might be taken somewhat in this form:

——— District, } NEWFOUNDLAND.
——, to wit. }

I, A. B., of ——, in the said District, Fisherman, being aware that my end is approaching, and entertaining no hope of recovery, do hereby solemnly and sincerely declare, that [*here set out the statement in the very words used*]. (*It is well, if possible, to get the injured man to sign it, if he is able, and in all such cases it is advisable to have some one present besides the Magistrate to hear and confirm the injured man's statement.*)

Taken before me, at ——, in the said District, this —— day of ——, 187—. (*a*) }

T. WILLS, J. P. for the said District.

CHAPTER X.

SUMMARY JURISDICTION IN LARCENY.

SECTION

1.—General observations on Criminal Justice and Juvenile Offenders' Act.
2.—Special character of proceedings.
3.—Practice—General directions.
4.—Criminal Justice Act; Table of offences.
5.—Analysis of Sections of Act.
6.—Proceedings in offences 1, 2, 3, and 7.

SECTIONS

7.—Offences 4, 5, 6 & 7, defined.
8.—Course of proceeding respecting them.
9.—General clauses of Criminal Justice Act.
10.—Juvenile Offenders' Act.
11.—Table of offences and punishments.
12.—Procedure.
13.—Appendix of Forms.

1. Under the Imperial Acts, 18 & 19 Victoria, c. 126, and

(*a*) Whilst it is best to have it taken by a Magistrate, it may be made orally, or in writing, to a Surgeon or Police officer, or other competent person; and after the death of the dying person, proved by the person who heard the expressions used. [*Oke*, p. 834.]

31 & 32 Victoria, c. 116, sec. 2, known as the Criminal Justice Acts, and the Juvenile Offenders' Acts, 10 & 11 Vic., c. 82, extended by 13 & 14 Vic., c. 37, and 34 & 35 Vic., c. 78, sec. 13, power is given to Justices in Petty Sessions, (notice to be given where such Sessions are held) and to Stipendiary Magistrates, to adjudicate summarily upon certain felonies and indictable misdemeanors, the Criminal Justice Acts applying to certain offences where the property in respect of which the charge is made, is of limited value, and where the accused *pleads guilty*, and the Juvenile Offenders' Acts to the same and certain other offences where the accused is under sixteen years of age; under all the Acts this jurisdiction cannot be exercised *unless the accused consents.*

2. As the proceedings under this Chapter differ from both indictable offences, and those under summary jurisdiction, I have thought it necessary to explain them fully. It appears to me that as no Petty Sessions are held in this Colony, and as the Act is very definite about the holding of such Sessions, (the notice to be given to inform the Public, &c.,) that two honorary Justices could not safely exercise this jurisdiction; it will make no difference as the powers may be exercised by a Stipendiary Magistrate alone, who should try all offenders under this Chapter, in the Court House, or such other building as is commonly used for the exercise of his Magisterial duties, the provisions mentioned in (sec. 5, page 8 of this Manual), will apply, and the honorary J. P. may, in the absence, &c., of the Stipendiary, act; but he should be very careful to attend to all the directions, and to try the offenders at the same place as the Stipendiary would have tried them, not in his own private house or office.

3. It should be observed, that the practice in all cases up to the period when the depositions of the witnesses for the prosecution are completed, will be precisely the same as directed in Chapters 8 & 9; it is not until then that the special procedure comes into operation. I have given from *Oke* an abstract of the different offences under the Criminal Justice Acts, and the punishments; also, an abstract of different offences and punishments under the Juvenile Offenders' Act.

4. Sec. 1.—THE CRIMINAL JUSTICE ACT.

Offences.	Statutes, &c.	Punishment.
Any person charged with having—	Imperial Act, 18 & 19 Vic., c. 126, s. 1, no limitation of time, 11 & 12 Vic., c. 43, s. 11, not applying.	Commitment to gaol not exceeding three calendar months, or if charges proved and Justice thinks it inexpedient to inflict any punishment; may dismiss person charged without proceeding to conviction.
1. Committed simple larceny, the value of the whole of the property stolen not exceeding one dollar and twenty cents (*and offender above sixteen.*)		
2. Attempted to commit larceny from the person, (*no limitation of value or age of offender.*)		
3. Attempted to commit simple larceny, (*a*) (*no limitation of value, and offender above sixteen.*)		
Memo. Nos. 1 & 3, are likewise punishable under the Juvenile Offender Acts.—(*Post.*) When offender not exceeding sixteen the offender must consent to the summary disposal of the case, but no plea of guilty is necessary as in next offences, 4 & 6.		
Any person charged with—		
4. Simple larceny, the property stolen exceeding in value one dollar and twenty cents, (*offender above sixteen and pleading guilty.*)	Id., Sec. 3.	Commitment to gaol for any term not exceeding six calendar months.
5. Stealing from the person (*no limitation of value or age of offender, but pleading guilty.*)		
6. Larceny as clerk or servant, (*no limitation of value or age of offender, but pleading guilty.*)		
7. Embezzlement as clerk or servant.	31 & 32 Vic., c. 116, s. 2.	Imprisonment as offences 1—3, where amount embezzled not exceeding $1.20. Imprisonment as offences 4—6, if am't exceeds $1.20.

5. Analysis of Sections of Act.—When any person is charged before any Stipendiary Magistrate, with having committed

(*a*) *Simple Larceny* is the larceny of the goods only; *Compound Larceny* is a larceny from the person or habitation of the owner.

simple larceny (No. 1) (*a*) (or with embezzlement (*b*) as a clerk or servant, (No. 7) or person employed for the purpose or in the capacity of a clerk or servant, 31 & 32 Vic., c. 116, s. 2,) *and the value of the whole of the property alleged to have been stolen does not in the judgment of such Magistrate exceed one dollar and twenty cents*, or with having attempted (No. 2) (*c*) to commit larceny from the person, or simple larceny, (No. 3) it shall be lawful for such Ma-

(*a*) The Larceny Consolidation Act of 24 & 25 Vict., c. 96, does not appear to make any alteration with regard to the offences punishable by Justices under the Criminal Justice Act. Justices may, it is considered, convict of simple larceny, although the offender might be charged with the more serious offence of stealing from his master, or from the person, if the charge actually preferred be that of simple larceny. The Act does not apply to receivers or accessories after the fact, nor (as in the Juvenile Offenders' Act) to offences punishable as simple larceny, but a bailee of property guilty of larceny under 24 & 25 Vict., c. 96, s. 3, is within its operation. [*Oke's Syn.*, and *Treat.* 35 *J. P.* 145.]

(*b*) Cases of embezzlement may, according to *Oke's Syn.* be dealt with in either of three modes,—1st, under section 3, on a plea of guilty,—2nd, under section 1,—or, 3rd, where the amount embezzled does not exceed five shillings stg., under section 3; but the third course is recommended, which we believe to be the meaning of the Act, and to be the most just course towards an offender. If there be more than one act of embezzlement, the prosecutor may, we conceive, choose that as a subject of prosecution on which he has the clearest evidence. He cannot, as in indictments, include three separate offences of stealing or embezzlement committed within six months, in one charge against the same individual; but the defendant may in certain cases be charged with embezzling a gross sum, and the charge be proved by evidence that several smaller sums, making together the gross sum, had been embezzled. [See *R.* v. *Balls*, 24 *L. T.* (N.) 760.

(*c*) If the offence charged be that of attempting to commit larceny, the Justices are, it seems, competent to decide the case summarily, if the party consents, without reference to the question whether the value of the goods attempted to be stolen is more or less than five shillings, stg. Indeed it would, in attempts to steal from the person, be obviously impossible to state what amount the party intended to steal. If a person puts his hand into the pocket of another with intent to steal what he can find there, and it turns out that the pocket is empty, he cannot be convicted of an attempt to steal. [*R.* v. *Collins*, 33 *L. J.* 177.] So in an indictment for an attempt to steal goods in a dwelling-house, it was held in *R.* v. *Johnson*, 34 *L. J.* 24, that it was not necessary to specify in the indictment what the goods were, but that it was necessary to prove that goods were there which the prisoner could steal.

gistrate (*a*) to hear and determine the charge in a summary way; and if the person charged shall confess the same, or if such Magistrate, after hearing the whole case for the prosecution and for the defence, shall find the charge to be proved, the Magistrate may convict the person charged, and commit him to the gaol, for not exceeding (*b*) three calendar months; and if he find the offence not proved, he shall dismiss the charge, and make out and deliver to the person charged a certificate under his hand, stating the fact of such dismissal. The conviction and certificate may be in the form given in the Schedule to the Act, or to the like effect. But if the person charged do not consent to have the case heard and determined by such Magistrate, or if it appears to him that the offence is one which, (*c*) *owing to a previous conviction* of the offender, is punishable by law with imprisonment not exceeding two years, or that the charge is from any other circumstances fit to be made the subject of prosecution by indictment, rather than to be disposed of summarily, the Magistrate shall, instead of summarily adjudicatiag thereon, deal with the case as if this Act had not been passed; provided also, that if, upon the hearing of the charge, such Magistrate shall be of opinion that there are circumstances in the case which render it inexpedient to inflict any punishment, he shall have power to dismiss the person charged without proceeding to a conviction. [18 & 19 Vict., c. 126, s. 1.]

6. The course of proceeding in offences 1, 2, 3 & 7, (*d*) is as follows, under Sections 1 & 2.

(*a*) If goods be stolen in A., and afterwards carried by the offender to B., he may, we conceive, be tried in either A. or B., the continuance of the asportation being in law a new caption. The Criminal Justice Act does not make any difference in regard to jurisdiction, although it alters the procedure. [34 *J. P.* 127.]

(*b*) The power to order consecutive periods of imprisonment applies, we conceive, to cases of conviction under the Criminal Justice Act.

(*c*) The words in italics were inserted at a time when the offence of simple larceny was not punishable, as here mentioned, on a first conviction.

(*d*) Sec. 7. *Oke* recommends that cases of embezzlement by clerk or servant should be dealt with where not exceeding $1.20 under the above rules, and when over that amount under Sec. 3, *post*.

(1.) After the completion of the depositions of the prosecutor's witnesses, the Stipendiary Magistrate or Clerk of the Peace says to the accused: "*You stand charged with, &c.*, as in the Caption, p. 81. *Do you consent that the charge against you shall be tried by me, or do you desire that it shall be sent for trial by a jury at the Supreme Court, in St. John's, (or on Circuit, or at Quarter Sessions, as the case may be.*")

(2.) If the accused consents, then the Magistrate or Clerk says to him:—"*You have heard the charge against you read; are you guilty or not guilty of that charge?*" If he plead guilty, consider the punishment. If he plead *not guilty*, then ask him:—"*What is your defence to the charge?*" Then hear the defence. If offence proved, consider the punishment; if offence not proved, dismiss the charge, and give the accused a certificate of dismissal.

(3.) If the accused do not consent, the summary jurisdiction cannot be applied, and the Magistrate must caution him in the usual mode directed for an indictable offence, pp. 62 & 85.

7. Offences 4, 5, 6 & 7, Defined.—When any person is charged before a Stipendiary Magistrate with simple larceny (No. 4) (or with embezzlement as a clerk or servant, (No. 7) or person employed for the purpose, or in the capacity of a clerk or servant, 31 & 32 Vict., c. 116, s. 2), *the property alleged to have been stolen exceeding in value one dollar and twenty cents*, or stealing from the person, (No. 5) or larceny as a clerk or servant (No. 6), and the evidence, when the case on the part of the prosecution has been completed, is, in the opinion of the Magistrate, sufficient to put the person charged on his trial for the offence, such Magistrate, if the case appear to him to be one which may properly be disposed of in a summary way, and adequately punished under this Act, shall reduce the charge into writing, and read it to the person charged, and ask him whether he is guilty or not of the charge; and if he shall say that he is guilty, the Magistrate shall thereupon cause a plea of guilty to be entered upon the proceedings and convict him of the offence, and commit him to the gaol, for not exceeding six calendar months, and the conviction may be in the form given in the

Schedule or to the like effect: Provided always, that the Magistrate, before he ask such person whether he is guilty or not, shall explain to him that he is not obliged to plead or answer before him at all, and that if he do not plead or answer before him, he will be committed for trial in the usual course. [*Id.* s. 3.]

8. PROCEDURE UNDER SEC. 3, FOR OFFENCES 4, 5, 6 & 7.—(1.) After the completion of the depositions, the Magistrate says to accused :—"*You stand charged, &c.*, [as in Caption to Depositions, p. 81.] *I am about to ask you whether you are guilty or not of the charge; but before I do so I have to tell you that you are not obliged to plead or answer to the charge at all, and that if you do not plead or answer before me, you will be committed for trial in the usual way. I now ask you, are you guilty or not of the charge?*"

(2.) If the accused plead *guilty*, consider the punishment.

(3.) If accused plead *not guilty*, the summary jurisdiction cannot be applied, and the Magistrate must caution him, as in pp. 62 & 85, and proceed in the mode directed for an indictable offence, in Chapters 8 & 9.

9. GENERAL CLAUSES.—The accused shall be allowed to make his full answer and defence, and to have all witnesses examined and cross-examined by counsel or attorney. [*Id.* s. 4.] Justices may remand the party charged, (*a*) as authorized by 11 & 12 Vic., c. 42, s. 21. [*Id.* s. 5.] And any forfeited recognizance taken on the remand of such party, is to be transmitted. (*b*) [*Id.* s. 6.] Convictions or duplicates of certificates of dismissal with the written charge, the depositions of the witnesses for the prosecution and defence, and the statement of the accused, are to be transmitted to the Court where case is to be tried if by indictment, and to Quarter Sessions if tried summarily, and a copy of the conviction or certificate certified by the proper officer of the Court shall be sufficient evidence to prove a conviction or dismissal for the offence in any legal proceedings. [*Id.* s. 7.] Magistrates may order (*c*) restitution of the property stolen,

(*a*) It is doubtful whether the remand may exceed eight clear days.

(*b*) As directed at p. 170, Consol. Stat., p. 68, Manual.

(*c*) The 30 & 31 Vict. c. 35, s. 9, gives certain powers to the Justices over money found on a prisoner. See p. 117.

taken, or obtained by false pretences, (*a*) in those cases in which the Court before whom the person convicted would have been tried but for this Act, may be by law authorized to order restitution. [*Id.* s. 8.]

10. JUVENILE OFFENDERS UNDER SIXTEEN.—Any person charged with having committed, or (*b*) attempting to commit, or with having been an aider, abettor, counsellor, or procuror, in the commission of any offence, now or hereafter deemed or declared to be simple larceny, (*c*) or punishable as simple larceny, and whose age, at the time of such offence, shall not, in the opinion of the Magistrate, exceed the age of fourteen years (*d*) shall, on conviction, upon his own confession, or upon proof before a Stipendiary Magistrate, in open Court, be committed to the gaol, for not exceeding three calendar months, or in the discretion of such Magistrate, forfeit any sum not exceeding fourteen dollars

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(*a*) The words "taken or obtained by false pretences," seem to have been left in the Act through inadvertency, the Justices having no power to convict for such offences.

(*b*) On an indictment for attempting to steal goods in a house, it was held, in *R.* v. *Johnson*, 34 L. J. 24, that it was not necessary to specify what the goods were, but that it was necessary to prove that goods were in the house, which the prisoner could steal.

(*c*) The jurisdiction of Justices under this Act, will, we conceive, be confined to those cases where the accused shall be charged with having committed, or having attempted to commit, or with having been an aider, &c., in the commission of simple larceny, or any offences made punishable, as in the case of simple larceny, by the 26th, 27th, 31st, 32nd, 33rd, or 36th sections of 24 & 25 Vic., c. 96, *i. e.*, stealing oysters, s. 26—stealing any valuable security other than a document of title to lands, s. 27—stealing glass, wood-work, fixtures, &c., fixed to house or land, s. 31—stealing trees, &c., in pleasure grounds, of the value of one pound, stg., or elsewhere of the value of five pounds, stg., s. 32—third offence, for stealing trees, &c., wheresoever growing, above the value of one shilling, stg., s. 33—second offence, for stealing vegetable productions growing in gardens, &c., s. 36. The Act does not extend to cases of embezzlement, but a juvenile delinquent may be convicted of embezzlement under the "Criminal Justice Act," as extended by 31 & 32 Vic., c. 116.

(*d*) Extended to sixteen years by 13 & 14 Vic., c. 37, s. 1, with a proviso that whipping shall not be inflicted on any offender above the age of fourteen years.

and fifty cents; or if a male, be once privately whipped, (*a*) either instead of or in addition to such imprisonment, or imprisonment with hard labour; and the Magistrate is to appoint a fit person, being a Constable, to inflict the whipping, when ordered to be inflicted out of prison [10 & 11 Vic., c. 82, s. 1]; with a proviso, that if the Magistrate think the offence is not proved, or that it is not expedient to inflict any punishment, he may dismiss the party charged, either with or without finding surety or sureties for his good behaviour, and deliver a certificate under his hand, stating the fact of such dismissal in the form set forth in the Schedule. If, however, the Justices are of opinion that the charge is, from any circumstances, a fit subject for prosecution by indictment, or if the person charged shall object to the case being summarily disposed of under this Act, the Stipendiary Magistrate may deal with the case as if this Act had not been passed; [*Id.* ss. 1, 2] and such certificate, or a conviction under this Act, is a bar to other proceedings. [*Id.* s. 3.] *Stone*, p. 269.

(*a*) The conviction must specify the number of strokes and the instrument to be used, and where the offender's age does not exceed fourteen (as in all cases of whipping under the Juvenile Offender's Act) the number of strokes must not exceed twelve, and the instrument used be a birch rod; and no offender is to be whipped more than once for the same offence. [25 & 26 Vic., c. 18, ss. 1, 2.]

11.—TABLE OF OFFENCES AND PUNISHMENTS UNDER THE JUVENILE OFFENDERS' ACT.

Offences.	Statutes, &c.	Punishment.
Every person whose age, at the period of the commission or attempted commission of the offence, shall not, in the opinion of the Magistrate before whom he shall be brought or appear, exceed sixteen years, 13 & 14 Vic., c. 37, s. 1. 1. Committing simple larceny. 2. Attempting to commit simple larceny. 3. Aiding, abetting, counselling or procuring the commission of simple larceny. 4. Committing any offence declared to be punishable as simple larceny. 5. Attempting to commit any offence declared to be punishable as simple larceny. 6. Aiding, abetting, counselling, or procuring the commission of any offence declared to be punishable as simple larceny.	10 & 11 Vict., c. 82, s. 1.	Either imprisonment not exceeding three calendar mo's., or in Magistrate's discretion, to forfeit and pay not exceeding $14 50. Time may be given for payment and detainer, unless security given till day appointed; in default of payment, commitment not exceeding three calendar mo's., reckoned from time of adjudication, unless sooner paid. Or if a male, and not exceeding fourteen years of age, (13 & 14 Vic., c. 37, s. 2) to be once privately whipped, either instead of or in addition to such imprisonment, under s. 1, and the Magistrate to order a Constable to inflict the whipping, when ordered to be done out of prison. Or if offence not proved, or if Magistrate deems it not expedient to inflict any punishment, accused may be (*a*) dismissed, or may be required to find surety for future good behaviour, and a certificate of dismissal to be given to him.

(*a*) This valuable provision, which applies to the Criminal Justice Act and also to the Juvenile Offenders Act, enables the Magistrate in petty crimes

12. PROCEDURE.—One Justice may issue summons or warrant, to summon or apprehend any person charged on oath with offences punishable under this Act [*Id.* s. 4]; and may remand for further examination, or suffer him to go at large, on finding surety to be bound by recognizance for the appearance of such person for further examination or for trial, which recognizance may be enlarged from time to time. [*Id.* s. 5.] (*a*)

FORFEITURE AND RESTITUTION. (*b*)—No conviction shall be attended with forfeiture, and it shall be lawful for the Stipendiary Magistrate to order restitution of the property to the owner, and if not forthcoming, whether he award punishment or dismiss the complaint, he may ascertain the value thereof in money, and order payment to the owner, either at one time or by instalments, and the sum so ordered may be recovered as a debt in any Court of Law, with costs of suit. [*Id.* s. 12.]

The course of procedure at the hearing may be thus briefly stated :—

1. The Magistrate, after taking the depositions of the prosecutor's witnesses, to say to accused: *The charge against you is for that you, on the —— of ——, did* (*stating offence as in Caption to depositions*, p. 81.)

2. The Magistrate then (pursuant to 13 & 14 Vic., Cap. 37, Sec. 2,) ——, "*I shall have to hear what you wish to say in answer to this charge, but if you wish the charge to be tried by a Jury, you must object now to my deciding upon it at once.*"

(3.) If the accused or his parent do not object, then the

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and in cases of first offences, and in cases of young offenders, to admonish and discharge the offender, instead of perhaps ruining him for life by sending him to jail. (*This is not the same as when a certificate is given.*) In England, and in some of the Colonies, juvenile offenders can be sentenced to so many years in a Reformatory School; such a School is a very valuable institution in large towns, and until such a School is established in St. John's, I never have, and I trust I never will be, compelled to sentence a juvenile offender, under this Act, to imprisonment for a first offence.

(*a*) See Bail, p. 71 & 73.

(*b*) The Magistrate may likewise order the purchaser of the stolen property to be reimbursed out of the monies found on the prisoner; this applies also to Criminal Justice Act. [Imp. Act, 30 & 31 Vic., s. 9.]

Magistrate must say:—*Now, I must ask you, are you guilty or not guilty of the charge?* If he plead *guilty*, consider the punishment; if he plead *not guilty*, hear his defence, and witnesses if any, and consider the judgment.

(4.) If the accused or his parent object, the summary jurisdiction cannot be applied, and the Magistrate must caution him in the usual form directed for an indictable offence, (see pp. 62, 84 & 85); if the evidence be sufficient to send the accused for trial.

APPENDIX OF FORMS UNDER CHAPTER 10.

1. CONVICTION *under Criminal Justice Act and Juvenile Offenders Act.*

——— District, } NEWFOUNDLAND.
——, to wit. }

Be it remembered that on the —— day of ——, in the year ——, at ——, in the said District, A. B., being charged before the undersigned Stipendiary Magistrate for ——, at the Court House at ——, aforesaid, and consenting to my deciding the case summarily, (*add, if the case, and pleading guilty*) is convicted before me, for that he the said A. B., &c., (*stating offence, and the time when and where committed,*) and I adjudge the said A. B., for his said offence, to be imprisoned in the gaol at ——, in the said District, (*and there kept to hard labour*) (*a*) for the space of ——, (*in the case of a juvenile offender ordered to be whipped in prison*) (*b*) *add*, and during said term of imprisonment, to be once privately whipped, —— strokes, with a birch rod, to be inflicted on him, (*in case of punishment being only whipping out of prison*). After the words, I adjudge, &c., for his said offence, add, to be once privately whipped out of prison, by one —— Constable, —— number of strokes to be inflicted on him with a birch rod, (*c*) or I adjudge the said A. B., for his said offence,

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(*a*) *Hard labour* may be added to all sentences of imprisonment, under summary conviction. [Consol. Stat., 231.]

(*b*) *Juvenile Offenders*, see p. 114 & 115, must be under fourteen to be whipped; the words "*not in the opinion of the Justices exceed the age of sixteen*," do not give jurisdiction where proof is adduced that offender is above that age, they are merely intended to dispense with strict proof of age.

(*c*) *Infants*, see also p. 44.—Between the ages of seven and fourteen there is no fixed rule of law as regards the infant's liability; it depends upon the ripeness of his intellect and his capability of discerning between right and wrong; the presumption of law, however, between these ages, is still in the child's favour, which, nevertheless, may be rebutted by evidence of a *mischie-*

to forfeit and pay —— dollars, (*here state the penalty actually imposed*) and in default of immediate payment of the same, to be imprisoned in the gaol at ——, for the space of —— days, unless the same shall be sooner paid.

Given under my Hand and Seal, at ——, aforesaid, the day and year first above mentioned.

2. *Form of Certificate of Dismissal.*

—— District, } NEWFOUNDLAND.
——, to wit. }

I, the undersigned Stipendiary Magistrate for the said District, at ——, (*Magistrate's residence*) do hereby certify that on the —— day of ——, A. D. 187—, A. B. was brought before me, at ——, charged with the following offence, that is to say, (*here state briefly the particulars of the charge*) and I, the said Magistrate, thereupon dismissed the charge.

Given under my Hand and Seal, at ——, aforesaid, the day and year first above mentioned.

FORMS OF STATEMENT OF OFFENCES UNDER CHAPTER 10.

Form No. 3.—Simple Larceny by Juvenile Offender.

For that he the said A. B., on the —— day of ——, at ——, in the said District,* (then being under the age of sixteen years, to wit, of the age of (*twelve*) years*) feloniously did steal (*describing property stolen*) of the value of ——, the monies, goods and chattels of the said C. D., against the Peace, &c. (*When under Criminal Justice Act leave out words between asterisks,*) and be careful about inserting value not exceeding $1.20, under offence No. 1, in Table under that Act.

4. *Attempt to commit Simple Larceny.*

Instead of feloniously did steal, say, "unlawfully did attempt feloniously to steal."

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vous discretion, the capacity to do evil and contract guilt being measured not so much by years as by the strength of the child's understanding and judgment, and upon this principle many children under fourteen years of age have been hung; but in all cases where it is intended to rebut the presumption of law by evidence of a *vicious* discretion, that evidence should be clear and strong, (*Rex* v. *Owen*, 4 C. P. 236,) quoted in *Saunders*, p. 249. In some old authorities it is laid down that an infant cannot be convicted upon his own confession. This doctrine in modern practice is never acted on, and under this Act it is expressly enacted that the child may be convicted upon his own confession. These considerations will, however, strongly weigh with Magistrates in not very readily acting upon a confession of guilt, without strictly examining into the facts of the case. [*Saunders*, p. 249.]

5. Stealing from the Person.

For that he, the said A. B., on, &c., at, &c., feloniously did steal from the person of C. D., (*describing property*) of the value of ——, (*unlimited*) the (monies or property,) goods and chattels of the said C. D., against the peace, &c.

6. Larceny as Clerk or Servant.

For that he, the said A. B., on, &c., at, &c., then being Clerk (or Servant) to C. D., feloniously did steal ——, (*describing property*) of the value of ——, (*unlimited.*)

GENERAL DIRECTIONS.

NEWFOUNDLAND; *and in the left-hand corner,* ——— District,

——, to wit. This should be inserted in all Convictions, Orders, Commitments, and Warrants, &c. The words at the end of the forms, against the Peace, &c., signify "*against the peace of our Lady the Queen, her Crown and dignity.*" The words "*contrary to Statute,*" signifies "*contrary to the form of the Statute in such case made and provided.*" Whilst there is no objection to these abbreviations being used in the proceedings, it is more formal and correct to give them in full always.

In Summons, which are addressed to accused, the statement of the offence will begin "*you,*" instead of "*he,*" the said A. B., as in the foregoing forms, and in all forms of Indictable offences.

In the Table of Indictable Offences, punishments, &c., at the end of this Manual, will be found forms of charges suitable to the principal indictable offences; bearing in mind the foregoing remarks, they will readily be adapted to meet all cases of indictable offences that will probably arise.

NOTE.—With a little care and consideration of the Tabular Statement of the offences under this Chapter, these four forms of statements of offences under Criminal Justice and Juvenile Offenders Acts, can be readily adapted to all the offences under these Acts. The words between the asterisks, in No. 1, must be inserted in all cases under Juvenile Offenders Act. Where the offence specifies a limit of value of the property stolen, value must be carefully stated, and not exceeding the amount limited. In all Forms of Offences throughout this Manual, the charge should be headed as in the above general directions, Newfoundland, &c.

CHAPTER XI.

SMALL PENALTIES' ACT.

Sections	Sections
1.—Application of Act to this Colony.	4.—Construction of its terms.
2.—Object of Act.	5.—Cases to which Act applies.
3.—General application of Act.	6.—Penalty defined.
	7.—Scale of Imprisonment.

1. The Imperial Act 28 & 29 Vic., c. 127, known as the Small Penalties Act, and referred to throughout this Manual, under the initials (S. P.) was made part of the law of this Colony, by the 4th Section of Cap. 39, Consolidated Statutes, p. 226, "so far as the same can be applied."

2. This Act regulates the period of imprisonment in all cases where the penalty does not exceed twenty-four dollars (£5 stg.); the Statute was passed in order to prevent any great disproportion between the amount of the fine and the period of imprisonment, in the event of non-payment, and with this view it prescribes a scale of imprisonment graduated according to the amount of the penalty.

3. It will be seen that this Act "applies to penalties, including costs, recoverable in a summary manner, in pursuance of any Act of Parliament passed before or after the commencement of this Act;" the Magistrate must therefore, in all cases, bear in mind the scale, and proportion the imprisonment to the *aggregate* amount of penalty and costs, that is the sum of money which the penalty and costs together amount to; for instance, if he fined one dollar, and the costs were one dollar, he could not give a longer imprisonment than seven days.

4. Many difficult questions have arisen in England on the construction of this Act, which cannot be discussed here for want of space, and some questions might arise as to the course to be pursued when this Act conflicts with our Local enactments;

but I consider all difficulties will be practically met by invariably proportioning the imprisonment to the penalty, according to the scale here given; penalties are now almost invariably (*a*) stated as *not exceeding* such a sum, a Justice may therefore fine any sum *below* that amount, and so under this scale the imprisonment is not to *exceed* a certain period; a Justice may therefore, in all cases, imprison for a shorter time than the proportionate penalty would give; the scale is a good guide for Justices, in all cases, and should invariably be followed. (*b*)

5. It has been held, that this Act applies only to penalties adjudged upon a *conviction*, as distinguished from an *order* to pay a rate, wages, &c. Mr. Oke considers, however, it applies to all cases where an Act directs sums to be recovered as *penalties*, or in other like terms, (*Oke*, p. 186,) it would apply to the 4th and 5th Sections of Masters and Servants Act, (p. 508, Consol. Stat.,) which gives imprisonment as the alternative for non-payment, although the word "order," is used in the latter part of sec. 6.

6. PENALTY DEFINED.—The word penalty includes any sum of money recoverable in a summary manner. [28 & 29 Vict., c. 127, s. 3.]

7. SCALE OF IMPRISONMENT.—Where, upon summary conviction, any offender may be adjudged to pay a penalty not exceed-

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(*a*) Amongst the exceptions to this rule, see 522 Consol. Stat., where the fine is *not less* than two dollars for each head of game killed, &c. Also, License Act, 1875, sec. 2, where penalty is *not less* than $10 for selling Intoxicating Liquor without License.

(*b*) Some Justices fall into the error of always finding the offender in the full amount given by the Act. This should not be the case, the full amount of fine is only intended to meet bad cases. In cases where the accused is charged for the first time, or there are other circumstances in his favor, or his means are very small, the fine should be proportioned to the circumstances of the offender, and the character of the offence. A wealthy merchant *knowingly* buying a partridge in August, should be fined the largest penalty, whilst a poor fisherman *ignorantly* doing the same thing might be sufficiently fined the least sum. No invariable rule, however, can be laid down as respects the amount of fine. The Justice must decide each case according to its merits and the surrounding circumstances. A fine or penalty should be a *punishment* proportioned to the offence, and the offender's means —of course keeping within the amount prescribed by law.

ing twenty-four dollars, such offender, in case of non-payment thereof, may, *without any* Warrant of Distress, be committed to prison for any term not exceeding the period specified in the following scale :—

SCALE OF IMPRISONMENT.

Penalty not exceeding $2 40.	Imprisonment not exceeding seven days.
Penalty exceeding $2 40, and not exceeding $4 80.	Imprisonment not exceeding fourteen days.
Penalty exceeding $4 80, and not exceeding $9 60.	Imprisonment not exceeding one calendar month.
Penalty exceeding $9 60, but not exceeding $24.	Imprisonment not exceeding two calendar months.

CHAPTER XII.

QUARTER SESSIONS.

Sections	Sections
1.—Quarter Sessions defined.	11.—Form of Precept.
2.—How established.	12.—Opening the Court.
3.—Where to be holden.	13.—Swearing Grand Jury.
4.—Time for holding.	14.—Charge to Grand Jury.
5.—Places named for holding.	15.—Trial of Indictable offences.
6.—Now only held in St. John's, &c.	16.—Appeals under License Act.
7.—Division of Justices' duties.	17.—Appeals in Bastardy.
8.—Offences excluded from jurisdiction.	18.—Regulation of Ferries.
9.—Offences triable at Sessions.	19.—Public Wharves.
10.—Summoning Jury.	10.—Rules for Skating and Sliding.
	21.—Nuisances.

1. Courts of General Quarter Sessions of the Peace are defined to be that species of General Sessions which is held under authority of the Commission of the Peace (*a*) by *two* or

(*a*) Manual, p. 2.

more Justices at some place within the District, fixed by their precept, once in every quarter of a year, as directed by Statute. The Court is a very ancient Court, and was defined by Lord Tenterden in *R. v. Smith and others*, (8 B. & C., 343) to be "a Court of oyer and terminer, and a Court of Record, and not a Court of Inferior Jurisdiction. (*b*).

Commission of the Peace.—In the Central District, following the English practice, there is a General Commission of the Peace for the District in which the Court is held.

2. The Courts of General and Quarter Sessions were established in this Colony by the Imperial Act, 5 Geo. IV, Cap. 67, Sec. 22, known as the Judicature Act, it was therein provided that these Courts shall be holden at Newfoundland and its Dependencies, at such times and places as the Governor shall, by his Proclamation, appoint;—this provision was continued and re-enacted by the Consolidated Statutes with a slight variation, and this is now the Law.

3. Courts of General and Quarter Sessions shall be holden in this Island and its Dependencies at such places with jurisdiction over such extent of District as hath been heretofore appointed, or as may be hereafter appointed, by the Proclamation of the Governor. Consol. Stat. p. 41.

4. The next Section of the Consolidated Statutes provides for the times when the Court shall be holden.

"The Courts of General and Quarter Sessions shall be holden on the first Monday of January, April, July and October, and shall sit, by adjournment, from time to time, until the business pending therein respectively shall be disposed of, and there shall be no necessity *for any Proclamation thereof.*" (*b*)

(*a*) *Dickinson*, p. 63.

(*b*) This means that the Court may be adjourned without a formal Proclamation; but the Justices should always state, if there is adjourned business, to what time they adjourn the Court. The formal way to adjourn is for the Chairman to direct the Crier or Constable to adjourn the Court to such a day. The Constable then calls out in a loud voice,—"This Court stands adjourned until to-morrow, at 11 o'clock. God save the Queen."

5. The *places* where the Proclamation ordered such Courts should be held, are St. John's, Harbour Grace, Carbonear, Brigus, Trinity, Bonavista, Greenspond, Twillingate, Ferryland, Trepassey, St. Mary's, Placentia, Burin, Grand Bank and Harbour Briton.

6. The Courts of Quarter Sessions are now held only in St. John's, Harbour Grace, Carbonear and Brigus, and have fallen into disuse in all the latter places. The machinery of the Quarter Sessions is used in the other Colonies for many useful public purposes, but in order to make this Tribunal of any practical benefit in this Island, it will be necessary in the first place to define the territorial jurisdiction of each Court. (*a*)

7. The duties of Justices at Quarter Sessions are fourfold, 1st. Criminal Jurisdiction. 2nd. Civil Jurisdiction, (*b*). 3rd. Appeals. 4th. Framing Regulations as for Public Wharves and Ferries.

8. The Jurisdiction of the Court of Quarter Sessions in Criminal matters is large, but the following offences are excluded from its jurisdiction; by the Imperial Act, 5 & 6 Vic., c. 38, s. 1, the Sessions have no jurisdiction to try for any of the offences undermentioned, namely:—1. Abduction of women or girls. 2. Bankrupts,—offences against any provision of the laws relating to Bankrupts and Insolvents. 3. Bigamy, and offences against the law relating to marriage. 4. Blasphemy, and offences against religion. 5. Bribery. 6. Concealing or endeavouring to conceal the birth of a child. 7. Conspiracy or combination,—except conspiracies or combinations, to commit an offence of which the sessions have jurisdiction, when committed by one person. 8. Deeds, &c.,—stealing or fraudulently taking or injuring or destroying any document or written instrument,

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(*a*) The Proclamation under which the Courts are now held is a very old one, and no new one has been issued since; but during that time there have been various changes, and now it would be very difficult to define, except in the Central District, where the territorial jurisdiction of each Court of Quarter Sessions commences and terminates.

(*b*) Civil business is mostly done either by the District Courts or by the Magistrate out of Session, under the powers mentioned at page 10.

being or containing evidence of the title to any real estate, or any interest in lands, tenements or hereditaments. 9. Felony, punishable with death. 10. Felony, which (when committed by a person not previously convicted of felony) is punishable with transportation for life. 11. Fire, setting, to crops of corn, grain or pulse, or to any part of a wood, (*a*) coppice or plantation of trees, or to any heath, gorze, furze or fern. 12. Libel, blasphemous, seditious or defamatory,—composing, printing, or publishing. 13. Misprision of treason. 14. Murder. 15. Oaths, unlawful, administering or taking. 16. Parliament, offences against either house of. 17. Perjury and subornation of perjury; also, making or suborning any other person to make a false oath, affirmation or declaration, punishable as perjury or as a misdemeanor. 18. Præmunire, offences subject to the penalty of. 19. Queen's title, prerogative, person, or government, offences against. 20. Records, or documents belonging to any court of law or equity, or relating to any proceeding therein,—stealing, or fraudulently taking, or injuring or destroying them. 21. Treason. 22. Wills or testamentary papers, stealing, or fraudulently destroying or concealing them.

9. The Criminal Jurisdiction of the Quarter Sessions, notwithstanding these exceptions, is very large, and embraces a great variety of (*b*) offences, but as the Indictable offences on

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(*a*) By the Consol. Stat., p. 228,—"If any person shall wilfully or carelessly set on fire any of the woods, forests, trees, or underbush, whether public or private property, he may be tried summarily before a Justice, or indicted before any Court of Record. The Quarter Sessions being a Court of *Record*, it would be triable there notwithstanding this Act."

(*b*) For instance, all cases of *larceny* can be tried before Sessions, except as mentioned before. Stealing deeds or documents, giving title to lands, or stealing Wills and Government Records. Persons armed with offensive weapon, robbing or attempting to rob, or one or more combined for the purpose. [*Oke.* 1,034 to 1,044]; also all assaults, except malicious injuries to shipwrecked persons, &c. [24 & 25 Vic. c. 100, s. 17.] Malicious wounding or shooting, with intent to disable or disfigure or prevent lawful apprehension. [24 & 25 Vic., c. 100, s. 18.] Attempts to choke, suffocate, or strangle. [*Id.* s. 21.] Attempts to injure or disfigure, by explosion of gunpowder, &c. [*Id.* s. 28.]

the Circuits are not numerous, and when any serious crime arises on the Northern Circuit, it is tried either by the Judge on Circuit in or near the locality, or at Harbour Grace, or in the Supreme Court at St. John's; and as there are no Quarter Sessions held in the Southern District, the practice of the Quarter Sessions in Indictable offences, is not extensive even in the few places where it is now kept up. This work, however, would not be complete without some notice of the practice in Criminal cases at Quarter Sessions—it will only be a short summary of some of the principal Rules.

10. As (with the exception of certain special powers given to the Quarter Sessions for the Central District and Harbour Grace) the Quarter Sessions in Indictable offences can only exercise its jurisdiction through the intervention of a Jury, the first point, therefore, will be the summoning of Juries, Grand and Petty. The Grand Jury is summoned by what is called the Precept in the following form, signed by a District Judge, a Police Magistrate, or two Justices, and the Petty Jury by a like form, when required.

11. FORM OF PRECEPT.

——— District, } NEWFOUNDLAND.
—— to wit. }

——— Esquires, two of the Justices of our Sovereign Lady the QUEEN, assigned to keep the peace in the —— District of Newfoundland, and also to hear and determine divers felonies, trespasses and other misdemeanors committed in the same District.

To the Sheriff of the same District, Greeting:

On behalf of our said Sovereign Lady the QUEEN, we command you that you omit not, by any liberty within your Bailiwick, but that you enter therein, and that you cause to come before us or some other Justices assigned to keep the peace in the said District, and also to hear and determine divers felonies, trespasses and other misdemeanors in the said District committed, on —— the —— day of —— now next ensuing, at the hour of Eleven in the forenoon of the same day, at the Court House in —— aforesaid, twenty and four good and lawful men of the body of the District aforesaid, pursuant to the Statutes in that case made and provided; then and there to inquire, present, do, and perform all and singular such things, which on behalf of our said Sovereign Lady the

QUEEN shall be enjoined to them; also that you make known to all Coroners, Keepers of Gaols, Constables, and Bailiffs within the District aforesaid, that they may be then and there to do and fulfil the things which, by reason of their offices, shall be to be done. Moreover, that you cause to be proclaimed through the said District the aforesaid Session of the Peace, to be holden at the day and place aforesaid; and do you be then there, to do and execute those things which belong to your office. And have you then and there, as well the names of the Jurors, Coroners, Keepers of Gaols, Constables and Bailiffs aforesaid, as also this Precept.

Given under our Hand and Seal, at ——, aforesaid, this — day of —— in the year of our LORD one thousand eight hundred and ——.

_____J. P. O

_____J. P. O

On this Precept the Sheriff endorses this form and attaches to it the list of Jurors who have been summoned.

"The Execution of the within Precept appears by the Schedule hereunto annexed".

The answer of ——. _____Sheriff.

12. OPENING OF THE COURT.—The Court should assemble before Twelve, at noon, on the day for which it is summoned, and the Session in England is usually proclaimed by a Bailiff in the following terms:—

"Oyez, Oyez, Oyez. The Queen's Justices do strictly charge and command all manner of persons to keep silence whilst the Queen's Commission of the Peace for the District of ———, is openly read, upon pain of imprisonment."

There were also several Statutes which ought to be read by the Clerk of the Peace in an audible voice, but the ceremony of reading them has fallen into disuse. The Queen's Proclamation is, however, read at the opening of the Court in England. As in most of the Courts of Quarter Sessions in the Colony, there is no regular Commission of the Peace, this part of the ceremony must be dispensed with, and the best form of Proclamation to adopt will be for the Bailiff or Constable to call out,—

"Oyez, Oyez, Oyez. The Court of General Quarter Sessions of the Peace for ———, is now open. GOD SAVE THE QUEEN".

The Clerk of the Peace then calls over the names of the Grand Jury; there should not be less than thirteen, nor more than twenty-three, because every Bill must be found by at least twelve.

18. SWEARING GRAND JURY.—When the Grand Jury have taken their places in the box, the Clerk of the Peace asks them, "Gentlemen, whom do you name for your foreman?"

After they have named their foreman, the following oath is administered to the foreman by the Clerk of the Peace:—

"You, as foreman of this inquest, shall diligently inquire, and true presentment make, of all such matters and things as shall be given you in charge. The Queen's council, your fellows', and your own, you shall keep secret. You shall present no man for envy, hatred, or malice; neither shall you leave any man unpresented for fear, favour or affection, or hope of reward; but you shall present all things truly as they come to your knowledge, according to the best of your understanding. So HELP YOU GOD."

Then the rest of the Grand Jury, three at a time, in order, are sworn in the following manner:—

"The same oath which your foreman hath taken on his part, you and every of you shall well and truly observe and keep on your parts. So HELP YOU GOD."

The Clerk of the Peace then calls over the names of the Grand Jury, and directs them to answer to their names, and say "sworn", if they are sworn; when this is completed he informs the Bench that the Jury are sworn.

14. CHARGE TO THE GRAND JURY.—When the Jury are sworn, it becomes the duty of the Chairman of the Session to deliver his charge to them.

Should there be a Bill of Indictment to lay before the Grand Jury, he should lay the facts before them as disclosed in the depositions, and elucidate the law bearing on the case. In the exercise of a sound discretion he may also advert to general topics, the prevalence or absence of crime, the causes which may induce it, and the means which may be applied by way of prevention. His remarks should be brief, and to the point; and he may conclude by informing the Jury that any presentment they may choose to make, he will be happy to forward to the

Government. After the Grand Jury retire to their room, the witnesses are sworn and sent to the Grand Jury.

15. TRIAL OF INDICTABLE OFFENCES.—It is impossible within the limits of this little work to give more than the briefest outline of the duties of Magistrates at Quarter Sessions; they are contained in a large volume, DICKINSON'S Quarter Sessions, from which the foregoing has been condensed and made applicable. It may suffice, however, to say that the trial of an indictable offence, which must be before a Jury, is, or ought to be, conducted at Quarter Sessions, precisely in the same manner as regards the swearing and challenging of Jury men, the addresses of counsel, and the examination and cross-examination of witnesses, as a criminal case is conducted in the Supreme Court, either in St. John's or on Circuit, and the Chairman has the same duties as the Judge of the Supreme Court, as regards charging the Jury, &c. (*a*)

16. APPEALS UNDER LICENSE ACT.—The only two kinds of Appeals that will probably come before the Sessions, are—*first*, under the License Act, 1875, Sec. 33; (*b*) and *secondly*, in Bastardy cases. The appeal under the License Act, is from the Stipendiary Magistrate's conviction to the Justices sitting in Quarter Sessions, and should be heard and determined by them, or a majority of them. Generally this should be done on the first day of the sitting of the Court, the cause and the matter of the appeal must be given in writing, the Appellant, that is the party appealing against the conviction, will, generally speaking, be confined to the grounds given in his notice, but the Justices in Quarter Sessions should in all cases try the appeal fairly on its merits. The Respondent, who is generally the Police Officer, will commence the case as Plaintiff, and the Appellant, as Defendant, replies; and the case as regards the addresses of Counsel, and the examination, cross-examination and re-examination of witnesses

(*a*) In England the Chairman of the Quarter Sessions is elected by the Justices holding the Session, but in this Colony the Stipendiary Magistrate is always Chairman of the Quarter Sessions.

(*b*) See *Post* under the head "*Intoxicating Liquors*," where the form of Notices and Recognizances are given.

should be heard precisely in the same manner as in a civil case before a Jury. The decision of the Quarter Sessions is the judgment of the majority of Justices present.

17. Appeal in Bastardy Cases.—In these cases the appeal (*a*) comes before a Petty Jury, who must be summoned by the Sheriff for that purpose, and in the usual course should be tried at the opening of the Quarter Sessions. The Mother being the Respondent, will be in the same position as a Plaintiff, and if she has a lawyer he will open the case for her and call her witnesses ; the Appellant (*the putative Father*) will then, at the conclusion of her case, commence his defence ; at the conclusion of the whole case on both sides, the Chairman of the Quarter Sessions will sum up the evidence and charge them, taking care to inform them that if they find the Mother was a *common prostitute*, they should state such finding to the Court, such finding being equivalent to a verdict of not guilty. (*b*)

18. Regulation of Ferries.—Amongst the other powers of the Courts of Quarter Sessions, in the Consolidated Statutes, Chapter 76, it is provided that—" The Court of Sessions nearest to the place where any ferry shall be established may frame rules for the management thereof, and fix a rate of fees to be paid for the transit of passengers, animals, vehicles and articles of any description thereat : Provided, that such rules and rates, respectively, shall be subject to the approval of the Governor in Council before the same shall be put into operation."

"On complaint being made to the Justices in Sessions of any improper conduct or neglect of duty on the part of any ferryman over whom they shall have jurisdiction, such as in the opinion of the Justices to require the suspension and dismissal of such ferryman, the Justices shall take the deposition of the party complaining, or of any other person, with respect to the subject matter of such complaint, and transmit the same to the Colonial Secretary, with their report thereon, and may in the

(*a*) See Chapter on Bastardy, for form of Security, &c.

(*b*) For further information on the subect of Bastardy, see the Chapter on that subject. (*Post*).

meantime suspend such ferryman, and appoint some other person to perform his duties until the decision of the Governor in Council upon matters aforesaid shall have been received."

19. PUBLIC WHARVES.—They may also make regulations for Public Wharves, under Cap. 77, Consolidated Statutes—"The Justices in Session, in the several districts of this colony, may make and establish rules and regulations for the control and management of Public Wharves within their several jurisdictions, and fix and establish fees and rates of wharfage and penalties for violation of same; and such rules and regulations, fees, rates and penalties, after being approved of by the Governor in Council, shall have the force and effect of law."

"Such rules and regulations shall be kept posted up in some conspicuous place adjacent to the wharf for which the same shall be prescribed."

21.—RULES FOR SKATING AND SLIDING.—The Quarter Sessions can also make rules for preventing persons from Skating, Sliding, &c., down hills, or highways, or streets, under Chap. 79, Sec. 8, Consol. Stat. (*a*)

21. NUISANCES.—The Sessions may also make orders for the prevention of Nuisances dangerous to personal safety, or affecting the public health, under Cap. 71, Sec. 5, Consolidated Statutes. (*b*)

(*a*) See Chapter on Municipal Regulations. *Post.*

(*b*) See Chapter on Nuisances. *Post.*

CHAPTER XIII.

SUMMARRY JURISDICTION.

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1. Under the English Criminal Law very large powers have been conferred on Justices of the Peace for the examination and punishment of various offences, in a summary manner, that is to say, without the intervention of a Jury; and in all cases where the English Criminal Law is applicable to this Colony and gives a power to Justices to try summarily, Justices of the Peace in Newfoundland can exercise the same powers as Justices in England.

2. Before exercising this summary jurisdiction, however, it is necessary for the Justice to ascertain whether the English Law, which gives the jurisdiction, is applicable to this Colony, and for this purpose he must carefully bear in mind the observations on the application of English Law to this Colony contained in the sections of Chapter 6, pp. 35 & 36.

3. The power of Justices of the Peace to try offences summarily, is a power founded entirely upon a special authority, conferred and regulated by Statute; the provisions of the Statute, therefore, in all cases which confers the power must be strictly followed, and jurisdiction must always appear upon the face of the summary proceedings; for instance, under the Local Law giving jurisdiction to try summarily cases of stealing codfish, green or cured, of a value not exceeding twenty dollars, the fish must be described in the Warrant, Conviction and Commitment as "a certain quantity of codfish, *dried or green*, as the case may be, of the value of $——," *(must be not exceeding twenty dollars)*, *value* being essential to give summary jurisdiction in such a proceeding.

4. The Act which regulates proceedings under a summary jurisdiction and orders, is one of a series known as Jervis's Act, having been framed and introduced into the Imperial Parliament by Sir JOHN JERVIS, then Attorney General, and afterwards Chief Justice of the Common Pleas. The Preamble recites:

"Whereas it would conduce much to the improvement of the administration of Justice within England and Wales, so far as respects summary convictions and orders to be made by Her Majesty's Justices of the Peace therein, if the several Statutes and parts of Statutes relating to the duties of such Justices in respect of summary convictions and orders, were consolidated, with such additions and alterations as may be deemed necessary, and that such duties should be clearly defined by such positive enactment."

5. In accordance with these objects the Act simplifies and renders uniform the procedure before Justices, relative to summary convictions and orders, prevents technical objections being taken to them, and determines with certainty many doubtful questions; it also gives a table of forms, relating to almost every case which can arise.

6. This valuable Act, which is incorporated into our Local Law, under Section 4, Cap. 49, Consolidated Statutes, (Imperial Act 11 & 12 Vic., Cap. 43), embraces all cases where a Justice has authority to imprison or fine, or otherwise punish, and also all cases where the Justice has authority by Law to make an order for the payment of money.

7. *In England* it does not apply to cases of Bastardy, and it would not do so here, except as regards backing of Warrants. The proceedings in Bastardy are of a special character, and are all regulated expressly by the Statute. *See Chapter on Bastardy.*

8. It does, however, apply to every other case triable before Justices summarily under our Local Laws; for instance, setting fire to the woods, (Consol. Stat. p. 228.) Stealing codfish to the value of $20, (Consol. Stat. p. 228). The only difference being in this last case, is that it must be tried before a Stipendiary Magistrate, and there is a special appeal.

"The License Act, 1875, and the Act of 1875, entitled "An Act for the Amendment of the Criminal Law." (*See Post, Chapter on Master and Servants in the fishery*), specially refer to Jervis Act as regulating the proceedings under these Statutes of the Local Legislature. Malicious injuries to Property should also be tried under its provisions, with the exception, that the action must be commenced within *one month* next after the committing of the injury (*not six months*)."

9. Proceedings in malicious injuries to property are now regulated by the 14 Sec. of the Local Act, 39 Vic., Cap. 12, passed in 1876, given below, with the exception of the provision contained in the Consol. Stat. p. 227, that proceedings must be taken within one month after the committal of the injury. (*a*)

"Whosoever shall maliciously injure, damage, or destroy any real or personal property, either of a public or private nature, shall, on conviction thereof before a Justice of the Peace, either be imprisoned for a period not exceeding Two Months, or else shall forfeit and pay such a sum of money, not exceeding Twenty Dollars, as to the Justice shall seem meet, and also such further sum, not exceeding Twenty Dollars, as shall appear to the Justice to be a reasonable satisfaction and compensation for the injury so committed, which last-mentioned sum of money shall, in the case of private property, be paid to the party aggrieved; and any person found committing any offence against this Section may be immediately apprehended, without a Warrant, by any person, and forthwith taken before a Justice of the Peace, to be dealt with according to law."

10. An important distinction is contained in this Section, that the person found committing the offence may be apprehended without a Warrant, a similar provision is contained in Sec. 3, Cap. 41, Consol. Stat., p. 230, with respect to injuries to electric telegraphs, and nearly the same provisions are contained in the English Larceny Act, 24 & 25 Vic., Cap. 96, Sec. 103, and also in the Malicious Injuries Act, 24 & 25 Vic., Cap. 97, Sec. 61.

11. The person so apprehended is in all cases to be taken forthwith, that is as soon as reasonably may be, before some neighbouring Justice of the Peace, to be dealt with according to law. When either of these courses is duly taken, it is clear that

(*a*) This Section appears to have repealed, Sections 1 & 2 of Chapter 40, Consol. Stat., with the exception of this one point, about proceedings being commenced within one month. This Section gives three distinct remedies—*first*, imprisonment; *second*, a fine; *third*, compensation to the party injured; a party under it may also be fined $20, besides having to pay $20 compensation to the party injured. If the sentence is imprisonment, the Defendant cannot be compelled to pay anything, as it is in the alternative.

there is no necessity, as under Jervis's Act, for a previous information, summons or warrant, the proper course is for the person taking the offender before the Justice to state to him the offence for which he has apprehended the offender, and the Justice may there and then proceed to hear and determine the case or postpone the hearing, to such time and place as in his discretion may seem meet; (*a*) of course when once the offender is so brought before the Justice he has jurisdiction to try and will try it as in ordinary summary cases.

12. There is a distinction made throughout this Act, which should be borne in mind between a summary conviction and an order. The proceeding to obtain a summary conviction in the first place, is called "laying, or exhibiting an *information*," whilst similar proceedings for obtaining an order of Justices, is called "making a *complaint*."

The practical difference between the two is this; *a summary conviction* is the record of an affirmative judgment upon an information for an offence or act, punishable either by penalty or imprisonment.

An *order* of Justices for the payment of money or otherwise, is also the record of a judgment of Justices upon a complaint for non-payment of a sum of money, or for the neglect to do some other act. (*b*)

The following analysis of the Act has been compiled principally from STONES' Justices' Manual, portions of the Act which are inapplicable being omitted—the words of the Act are condensed, but the gist of every Section is given.

ANALYSIS OF ACT.

13. SUMMONS.—In all cases where an information shall be laid before one or more Justices, that any person has committed or is suspected to have committed any offence or act within the jurisdiction of such Justice or Justices, for which he is liable upon a summary conviction to be imprisoned, fined, or otherwise punished, and also in all cases where a complaint shall be made

(*a*) *Greaves*—Notes. Criminal Law, Consol. Acts, p. 370.

(*b*) *Paley* on Convictions, 65. *Oke*, p. 113. Note.

to any Justice, upon which he shall have authority to make any order for the payment of money or otherwise, [in which last case the complaint need not be in writing, (*a*) unless required by some particular Act of Parliament, s. 8], such Justice may issue a summons directed to such person, stating shortly the matter of such information or complaint, and requiring him to appear at a certain time and place before the same or such other Justice as shall then be there to answer to the complaint [11 & 12 Vic., c. 43, s. 1]; but Justices are not to be obliged to issue a summons in any case where the application for any order of Justices is by law to be made *ex parte*. [*Id.* s. 1.] (*b*).

(*a*) The License Act, 1875, 28th Section, requires the information to be in writing, but not on oath.

(*b*) The Justice should bear in mind the observations contained in the notes to pp. 45 & 46. It is nearly always advisable to take the information in writing and on oath. A *warrant*, as has been before observed, cannot be issued, except on a *sworn* information or complaint. The Justice must judge for himself when it is necessary to issue a warrant. Where there is no doubt that the defendant will attend on the *summons*, only a summons should issue. Where he has to be compelled to attend, and probably will not appear on a summons, or where the offence is a serious or disgraceful one and there is a probability of the defendant running away, a warrant should issue in the first instance. In all cases the Justice must use his own discretion as to which course he adopts—he must take care that his proceedings are not unnecessarily harsh.

Costs.—In all cases, where practicable, the Justice or the Clerk of the Peace should make the complainant pay beforehand the costs of the process to be issued; many very trivial cases are constantly brought before Magistrates, and it often turns out that the party who makes the complaint is really the person most to blame. Compelling payment beforehand will have a salutary effect in keeping many trivial cases out of court. The fees and costs are as follows.—[Consol. Stat., p. 43.]

The following fees and costs shall be chargeable and taken in the several Police Offices, and in the several Courts of Session in this Colony:—

FEES PAYABLE TO THE CLERK OF THE PEACE IN CIVIL OR SUMMARY CRIMINAL CASES.

Summons or Subpœna	Cents 25
Hearing of every cause	" 25
Entering proceedings to judgment	" 25
Warrant in execution	" 25

14. SERVICE OF SUMMONS.—Every such summons shall be served by a constable or other peace officer, or other person to whom it shall be delivered, upon the party to whom it is directed, either personally or by leaving it with some person for him at his last or most usual place of abode. [*Id.* s. 1.] (*a*)

Recognizance	"	25
Every oath	"	25

FEES TO CLERKS OF THE PEACE IN CASES OF FELONY OR MISDEMEANOR, BEFORE A JUSTICE OF THE PEACE.

Deposition or examination	Cents	50
Summons	"	25
Subpœna	"	25
Warrant	"	30
Commitment	"	30
Recognizance of prosecuting witness or other person ..	"	30

FEES PAYABLE TO CONSTABLE OR BAILIFF.

For service of summons or subpœna	"	25
Executing every warrant to arrest the person	"	50
If the service or execution of the process or writ shall require the officer to travel beyond the distance of two miles, he shall be allowed for every mile travelled by him for such purpose beyond that distance, the sum of	"	10
For execution of any warrant, order, or final process, of or from a Justice	"	25
When the levy under warrant, order or final process, shall exceed five dollars, then there shall be allowed to such officer on such levy, in addition to the above fee of twenty-five cents, five per cent.		

WITNESSES' FEES.

For each day's attendance of a witness	"	75
All travelling to be computed from the residence of the witness to the place of trial, and then back again, per mile	"	10

FEES OF GAOLER OR KEEPER OF LOCK-UP HOUSE.

For every person committed to gaol..	"	50
For every person discharged therefrom, except insolvents	"	50

Printed Tables of foregoing to be posted up in every Police Office and Court of Sessions for public inspection. Persons taking greater fees than above, to forfeit $50.

(*a*) A summons served on the first day of the month to appear at a petty sessions eight miles distant on the following day to answer a charge of

15. Defect in Form.—No objection shall be allowed to any information, complaint, or summons, for any alleged defect therein in substance or form, or for any variance (*a*) between such information, complaint, or summons, and the evidence on the part of the informant; but if such variance appear to the acting Justices to be such that the party summoned has been thereby deceived or misled by it, the hearing may be adjourned to some future day. [*Id.* s. 1.]

16. If Summons not Obeyed.—If the person so served with a summons do not appear before the Justice, then, after proof by oath or affirmation of the service of the summons a reasonable time before the time therein appointed, such Justice may, upon oath or affirmation substantiating the matter of the information or complaint, issue a warrant to apprehend the party, or the Justice may proceed to the hearing *ex parte*. [*Id.* s. 2.]

17. Warrant in the First Instance.—Upon such information being laid as aforesaid for any offence punishable on conviction, the Justice before whom it is laid may, if he think fit, upon oath or affirmation being made before him, substantiating the matter of such information to his satisfaction, issue a warrant in the first instance instead of a summons. [*Id.* s. 2.]

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assault, was held to be well served, although the defendant was not at home when the summons was left, and did not return till late at night; and that the Justice on the non-appearance of the party was justified in proceeding *ex parte*. [*Ex parte Williams*, 21 L. J. 46.]. If there be an irregularity in the summons, and the defendant appears, he must make his objection to it then, or it will be too late [*R.* v. *Berry*, 23 J. P. 86]; the defendant does not, therefore, waive the objection to an irregularity by appearing, but by appearing and not then objecting. A warrant remains in force until its execution or the Justice's death. (16 J. P. 126.] The mode of service directed by this section will be good, although the statute under which the offence is created prescribes some particular mode of service. [16 J. P. 445.] The summons issued by a Justice of one jurisdiction, may, we conceive, be served in any other jurisdiction in the Colony.

(*a*) A defendant cannot be convicted of a *different* offence from that stated in the information;—the word "variance" points to some difference between the allegation and the evidence, and not to a different offence. —[*Martin* v. *Pridgeon*, 28 L. J. 179.]

18. FORM OF WARRANT.—Every such warrant shall be under the hand and seal of the Justice issuing the same, and may be directed either to any constable or other person by name, or generally to the constables of the District within which the Justice has jurisdiction, and shall state shortly the matter of the information or complaint, and shall name or otherwise describe (*a*) the offender, and it shall order the person to whom it is directed to apprehend the offender, and bring him before one or more Justices to answer the charge, and it shall not be necessary to make such warrant returnable at any particular time, but the same may remain in force until it is executed. [*Id.* s. 3.]

19. EXECUTION OF WARRANT.—Such warrants may be executed by apprehending the offender at any place within the District within which the Justice issuing the same has jurisdiction, or in case of a fresh pursuit, at any place in the adjoining District, within seven miles of the border of the first-mentioned District, without having the warrant backed; and where the warrant is directed to all constables or other peace officers within the jurisdiction of the Justice issuing it, any constable or other peace officer of any place within the jurisdiction may execute it in any part of the District within the jurisdiction for which the Justice acted when he granted the warrant, in like manner as if the warrant had been directed to him by name, although the place where the warrant is executed is not within the District for which he shall be constable or other peace officer. [*Id.* s. 3.]

20. BACKING OF WARRANT.—The provisions of the 11 & 12 Vic., Cap. 42, (*ante*) as to the backing of warrants, are to extend to warrants issued under this Act. [*Id.* s. 3.] (*b*)

21. DEFECT IN WARRANT.—No objection to the warrant shall be allowed for any alleged defect in substance or form, or any variance between it and the evidence adduced; but if the Justice

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(*a*) A warrant describing the offender as —— Wilson, of —— street, in the parish of ——, in the borough of L., shoemaker, whose Christian name is unknown, would be a sufficient identification. [See 21 *J. P.* 779.]

(*b*) See p. 49 & 50, Backing Warrants.

or Justices shall at the hearing think the party charged has been deceived or misled by such variation, he or they may adjourn the case on such terms as he or they may think fit, and in the meantime commit the defendant to prison or place of security, or discharge him on his entering into a recognizance with or without sureties conditioned for his appearance at the time and place of adjournment; and if he fail to appear the Justice then present, upon certifying such non-appearance on the back of the recognizance, may transmit it. [*Id.* s. 3.] (*a*)

22. DESCRIPTION OF OWNERS, ETC.—In any information or complaint, or proceedings thereon, in which it is necessary to state the ownership of any property belonging to or in the possession of *partners, joint tenants, parceners, or tenants in common*, it shall be sufficient to name one of such persons and to state the property to belong to the person so named and another or others (as the case may be), and in any case to describe any partners, joint tenants, parceners, or tenants in common in a similar manner. [*Id.* s. 4.]

23. AIDERS AND ABETTORS.—Every person who shall aid, abet, counsel, or procure the commission of any offence now or hereafter punishable on summary conviction, shall be liable to be proceeded against and convicted for the same, either together with the principal offender, or before or after his conviction, and shall be liable, on conviction, to the same forfeiture and punishment as such principal offender is liable, and may be proceeded against, either in the District or place where the principal offender may be convicted, or in that in which the offence of aiding, &c., may have been committed. [*Id.* s. 5.]

24. ATTENDANCE OF WITNESSES.—If it appear to any Justice, by the oath or affirmation of any credible person, that any person *within his jurisdiction* (*b*) is likely to give material evidence for the prosecutor (*c*), complainant, or defendant, and will not

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(*a*) See *Ante* p. 68 & 69 Recognizances.

(*b*) A Justice cannot be ordered to attend at the house of an infirm witness to take his deposition. [*Ex parte Kimbolton*, 25 *J. P.* 759.]

(*c*) It is doubtful whether a Justice has power to summon an unwilling

voluntarily appear as a witness, such Justice is required to issue a summons under his hand and seal, requiring him to appear as a witness at a time and place therein mentioned; and if the person so summoned shall, without just excuse, refuse or neglect to appear, then (after proof on oath or affirmation of the service of the summons, either personally or by leaving the same for him with some person at his last or most usual place of abode, and that a reasonable sum (*a*) was tendered to him for his costs and expenses, the Justice or Justices, before whom he ought to have appeared, may issue a warrant for bringing him before the Justice issuing the summons, or some other Justice, and which warrant may be backed as before mentioned, in order to its being executed in another jurisdiction: or if the Justice is satisfied, by evidence upon oath or affirmation, that it is probable such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, a warrant may be issued in the first instance, and which, if necessary, may be backed as aforesaid. *Id.* s. 7.]

25. Refusing to be Examined.—If, on the appearance of such person, (either in obedience to the summons or by warrant) he shall refuse to take such oath or to be examined upon oath or affirmation, or having taken such oath or affirmation shall refuse, without just excuse, to answer such questions as are put to him, any Justice present, and having jurisdiction, may, by warrant, commit the person so refusing to the gaol, for not exceeding seven days, unless he shall, in the meantime, consent to be examined, and to answer concerning the premises. [*Id.* s. 7.]

26. Complaints for Order.—Complaints (*b*) upon which an order may be made for the payment of money or otherwise, need

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prosecutor or complainant, the power being limited to persons who can give evidence for them. [35 *J. P.* 190.]

(*a*) If the witness resides in the same town, it will still be necessary to tender a trifling sum for expenses to justify a warrant of apprehension. No tender is directed to be made under 11 & 12 Vict., c. 42, s. 16, *ante*, p. 58, *note*.

(*b*) This clause does not state whether informations need be in writing or not. Under the old law it was not necessary for the information to be reduced

not be in writing, unless required by the Act upon which the complaint is framed. [*Id.* s. 8.] See License Act, 1875, sec. 28; information must be in writing.

27. VARIANCES IN INFORMATIONS.—In all cases of informations for any offences or acts punishable upon summary conviction, any variation between such information and the evidence adduced in support thereof as to the time at which the offence is alleged to have been committed, shall not be deemed material, if it be proved that such information was in fact laid within the time limited by law, or as to the place in which the offence is alleged to have been committed, provided the offence be proved to have been committed within the jurisdiction of the Justice by whom the information shall be heard and determined; and if any such variance, or any variance (*a*) in any other respect between the information and the evidence, shall appear to the Justice present and acting at the hearing to be such that the party charged has been thereby deceived or misled, such Justice may, upon such terms as he may think fit, adjourn the hearing of the case to some future day, and in the meantime commit the defendant to prison, or to such other custody as the Justice may think fit, or may discharge him upon his entering into a recognizance, with or without surety, conditional for his appearance at the time and place to which the hearing is adjourned; and if he fail to appear upon the recognizance, any Justice then present may, upon certifying such non-appearance on the back of the recognizance, transmit the same to be proceeded upon in like manner as other recognizances. [*Id.* s. 9.]

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to writing unless required by the particular statute, but as it will be now requisite to substantiate on oath the matter of the information for the purpose of obtaining a warrant, if the summons should be disobeyed, or of obtaining a warrant in the first instance, it is recommended that, as a general rule, the information should be taken in writing. The provision as to variances between the information and the evidence seems to imply that the information is in writing.

(*a*) A defendant cannot be convicted of a different offence from that stated in the information, this not being a variance within the meaning of the statute. [*Martin* v. *Pridgeon*, 28 L. J. 179; and *R.* v. *Brickhall*, 33 L. J. 156, *ante*, p. 17.

28. INFORMATION OR COMPLAINT.—Every complaint upon which a Justice is or shall be authorized to make an order, and every information for any offence punishable on summary conviction, unless some particular statute shall otherwise require, may be made or laid without any oath or affirmation of the truth, except in cases of information, where the Justice shall issue a warrant in the first instance, and in every such case the matter of the information shall be substantiated by oath or affirmation of the informant, or some witness or witnesses on his behalf, before any such warrant is issued; and every such complaint or information shall be for (*a*) one offence or matter of complaint only, and may be made by the complainant or informant in person, or by his counsel or attorney, or other person authorized in that behalf. [*Id.* s. 10.] When the information is on a statute and the words "unlawfully and maliciously, wilfully, knowingly, &c.," are used in the statute, they should be also used in the information.

29. LIMITATION OF TIME.—In all cases where no time is specially limited, such complaint shall be made or information laid within six calendar months from the time when the matter of it arose. [*Id.* s. 11.] See page 136 note, & 38 Vic., c. 9, s. 5.

30. HEARING.—Every such complaint and information shall be heard and adjudged by one or two or more Justice or Justices, as directed by the statute in that behalf, or, if there be no direction, by any one Justice for the District or place where the matter of such information arose: and the room or place (*b*)

(*a*) The statute was intended to prevent the practice of including several counts in an information, each for a different and distinct offence, and to prevent the joinder of several offences, and not of joint offenders. All persons committing the same offence at the same time and place may be legally inserted in the same information; and it will be for the Justices to determine whether the cases shall be heard together or separately. If desired by the defendants, it will be prudent to hear them separately. [*See R.* v. *Cridland*, 27 L. J. (M. C.) 28; *Ex parte Brown*, 16 J. P. 69; *Ex parte Biggings*, 26 J. P. 244; and *R.* v. *Littlechild*, 35 J. P. 86.]

(*b*) *Time.*—In cases where monies, &c., are to be recovered in manner directed by Jervis's Act, the complaint arises when the demand is made, and the money not paid, and not when the works were completed. [*Labalmon-*

where such Justice or Justices shall sit to hear and try any such complaint and information shall be deemed *an open and public court* (*a*), to which the public may have access, so far as it can conveniently contain them; and the party charged shall be admitted to make his full answer and defence, and to have the witnesses examined and cross-examined by counsel or attorney; (*b*) and every such complainant and informant shall be at liberty to conduct such complaint or information respectively, and to have the witnesses examined and cross-examined by counsel or attorney. [*Id.* s. 12.]

31. NON-APPEARANCE OF DEFENDANT.—If at the time and place appointed by the summons for hearing the complaint or information, the defendant does not appear when called, the constable or other person who served the summons shall then declare upon oath in what manner he served the summons; and if it appear, to the satisfaction of any Justice, that he duly served the summons, such Justice may proceed to hear and determine the case in the absence of the defendant, or may issue his warrant in manner hereinbefore directed, and adjourn the hearing until the defendant is apprehended; and when the defendant is apprehended under the warrant, he shall be brought before the

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diere v. *Addison*, 23 J. P. 261.] The time of limitation will not begin until the matter of complaint is complete [*Jacomb* v. *Dodgson*, 27 J. P. 68, and *Mayer* v. *Harding*, 17 L. T. 140]; and it will not apply in the case of a continuing offence, as for instance, the emission of smoke from the want of an efficient alteration of a chimney. [*Higgings* v. *Northwich Union*, 22 L. T. (N.) 752.] An encroachment by the erection of a fence, is not a continuing offence. [*Ranking* v. *Forbes*, 34 J. P. 486. See *Treat.* 34 J. P. 513.]

(*a*) The Justices may, we have no doubt, pursue the course adopted by the Superior Judges, where decency requires such a step, and exclude women and boys in cases of bastardy, or other similar investigations. In proceedings under 11 & 12 Vict., c. 42, s. 19 (as to indictable offences), the place where the Justices sit is not an open court, and the public may be excluded.

Open Court.—Contempt of Court.—Persons should conduct themselves orderly, otherwise they should be ejected from the Court by the Constable.

(*b*) In *Cobbett* v. *Hudson*, 22 L. J., (N. S.) it was decided a person could act as his own advocate, and afterwards give evidence as a witness—L. T. N. S. 637. *Cockburn*, *C. J.*, said "Justices *might* permit a Police Superintendent to appear, and hear him upon the case, if they thought fit." *Oke* 150.

same or some other Justice of the same District, or place, who shall either by warrant commit (*a*) such defendant to prison, or verbally to the custody of the constable or other person who shall have apprehended him, or to such other safe custody as he or they shall deem fit, and order the defendant to be brought up at a certain time and place before such Justice as shall then be there, of which order the complainant or informant shall have due notice. [*Id.* s. 13.]

32. NON-APPEARANCE OF COMPLAINANT.—If the defendant appears in obedience to the summons, or shall be brought by virtue of any warrant, then, if the complainant or informant, having had such notice, do not appear by himself, his counsel or attorney, the Justice shall dismiss (*b*) the complaint or information, unless for some reason he shall think proper to adjourn the hearing unto some future day, upon such terms as he shall think fit, in which case such Justice may commit the defendant in the meantime to prison, or to such other custody as he shall think fit, or may discharge him upon his entering into a recognizance, with or without sureties, conditional for his appearance at the time and place to which the hearing is adjourned; and if the defendant does not appear, then the Justice who shall have taken the recognizance or any Justice then present, upon certifying such non-appearance on the back of the recognizance, may transmit the same. [*Id.* s. 13.] (*c*)

33. WHEN BOTH PARTIES APPEAR.—If both parties appear, either personally or by attorney, then the Justice shall proceed to hear and determine the complaint or information. [*Id.* s. 13.] (*d*)

(*a*) There is no provision authorizing the Justices to take bail in case of the defendant being apprehended on a warrant after disobedience to a summons.

(*b*) Although a certificate of dismissal cannot be granted under this section, it would seem that the Justices may dismiss the complaint, and under the 18th section order the complainant to pay costs to the defendant. [27 *J. P.* 366.]

(*c*) See *ante*, pp. 68 & 69 Recognizances.

(*d*) COMPROMISING.—At this stage of the proceeding the good offices of

84. WHEN DEFENDANT ADMITS THE CHARGE.—Where the defendant is present at the hearing, the substance of the information or complaint shall be stated to him, and he shall be asked if he have any cause to show why he should not be convicted, or why an order should not be made against him (as the case may be), (*a*) and if he admit the truth of the information or complaint, and shows no cause or no sufficient cause why he should not be convicted, or an order made against him, then the Justice present at the hearing shall convict him, or make an order accordingly. [*Id.* s. 14.]

85. WHEN DEFENDANT DOES NOT ADMIT THE CHARGE.—If the defendant does not admit the truth of the information or complaint, then the Justice shall proceed to hear the prosecutor or complainant, and such witnesses as he may examine, and such other evidence as he may adduce in support of his information or complaint; and also to hear the defendant and such witnesses as he may examine, and such other evidence as he may adduce in his defence, and such witnesses as the prosecutor or com-

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Justices may be properly exerted in many cases in inducing parties to compromise their differences; and if it should be deemed inexpedient to make the attempt at reconciliation, or if the attempt should prove unsuccessful the matter then proceeds in the ordinary way; but the Justices may safely endeavour to bring about a compromise. As regards offences solely of a public nature, and as to which no particular party is injured, so as to enable him to maintain an action, a compromise without leave of the Court would appear from the cases to be illegal. Even in a case of common assault where the parties had compromised and so informed the Justices after the issuing of the summons, Queen's Bench held the Justices had jurisdiction to try and determine the case and that the conviction could not be quashed. *Reg. v. Justices of Wiltshire*, 8 L. T., (N. S.) 242. *Oke* 156, 157.

Generally in such cases under summary jurisdiction where the matter is not of a public nature the Magistrates will not object to a compromise.

Rehearing.—Magistrates are sometimes asked to *rehear* a case. They have no power to do so after having once delivered their judgment. *Stone* 440.

(*a*) The information need not be re-sworn in presence of defendant. The usual way to conduct the case, is for the Clerk of the Peace or Magistrate to read over the complaint to defendant, or when there is no complaint to tell him what the charge is against him—and then to ask him whether he is guilty or not guilty of the charge; if he admits the charge he can be there and then convicted. *Oke* 159.

plainant may examine in reply, if the defendant has examined any witnesses or given any evidence other than as to his (the defendant's) general character; but the prosecutor or complainant shall not be entitled to make any observations in reply upon the evidence given by the defendant, nor shall the defendant be entitled to make any observations in reply upon the evidence given by the prosecutor or complainant in reply; and the Justice or Justices, having heard what each party shall have to say, and the witnesses and evidence, shall consider the whole matter and determine the same, and shall convict or make an order upon the defendant, or dismiss the information or complaint, as the case may be. [*Id.* s. 14.] (*a*)

36.—Where convicted or Order made.—If the defendant is convicted, or an order made against him, a minute or memorandum thereof shall then be made, for which no fee shall be paid, and the conviction or order shall afterwards be drawn up and lodged with the Clerk of the Peace. [*Id.* s. 14.] *When once the order is delivered out, it cannot be altered. Conviction may be altered, see p.* 18.

37. When the Information is dismissed.—If the Justice or Justices shall dismiss the information or complaint, he or they may (if required) make an order of dismissal of the same, and give the defendant (*b*) a certificate thereof, which certificate, upon being produced, without further proof, shall be a bar to any subsequent information or complaint, for the same matter against the same party. [*Id.* s. 14.]

38. Negative Exceptions.—If the information or complaint negative any exemption (*c*), exception, proviso, or condition in

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(*a*) The same strictness and regularity should be pursued in examining and taking down the evidence of the various witnesses as are resorted to in the superior Courts.

No reply allowed.—No reply is allowed upon evidence nor a general reply. The observations being confined to the opening statement of complainant and the statement of the defendant in his defence.

(*b*) The certificate should not be given unless the information was dismissed on the merits; if, therefore, it was dismissed on the ground that it was not laid by a police officer, as required under 23 Vict., c. 27, s. 30, a certificate should not be granted. [See *Foster v. Hull*, 33, *J. P.* 629.]

(*c*) An informer is competent in all cases, irrespective of any question as

the statute on which it is framed, it shall not be necessary for the prosecutor or complainant to prove such negative, but the defendant may prove the affirmative thereof in his defence. [*Id.* s. 14.

39. WHEN PROSECUTORS AND COMPLAINANTS MAY BE WITNESSES.—Every prosecutor of any such information, not having any pecuniary interest in the result, and every complainant, whatever his interest may be, shall be a competent witness to support the information or complaint. [*Id.* s. 15.]

40. EXAMINATION UPON OATH.—Every witness to be examined upon oath or affirmation, and the Justice or Justices shall have full power to administer to every such witness the usual oath or affirmation. [*Id.* s. 15.]

41. ADJOURNMENT.—Before or during the hearing, any one Justice, or the Justices present, may adjourn the hearing to a certain time and place then appointed and stated in the presence and hearing of the parties or their attornies or agents present, (*a*), and in the meantime suffer the defendant to go at large or

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to his pecuniary interest in the result. Defendant may be examined in all summary proceedings if they think fit. See Consol. Stat., p. 150.

(*a*) The Justices can, under this section, adjourn the case when both parties or their attornies or agents are present, and can, under the 13th section, adjourn it when the defendant only appears. There is no limitation of time to which the adjournment may be made, as in case of a remand under 11 & 12 Vict., c. 42, s. 21. [20 *J. P.* 540.] A defendant cannot claim an adjournment as a matter of right to enable him to obtain professional assistance. [*Ex parte Biggius*, 26 *J. P.* 244.]

Ordering Witnesses out of Court.—Before the case is entered into, either party may apply to have the witnesses ordered out of Court, which request is usually complied with. It is unusual, however, to include in this order medical witnesses or those who are merely to speak to mere matters of form or character, and the attornies for the respective parties are always excepted. Should the witnesses violate the rule and come into Court, their testimony cannot on that account be rejected. *Oke*, 151.

Conviction on view.—In the case of *Regina v. Smith*, Lord Denman's observations were these—"We think that a Magistrate empowered to convict upon the view, ought first to call upon the offender for a defence. However rapid the proceedings may be, there must be time for stating a charge and for receiving an answer to it. A driver seen riding upon his waggon is *prima*

commit him to the gaol, or to such other safe custody as the Justice shall think fit, or discharge him upon his entering into a recognizance, with or without sureties, conditional for his appearance at the time and place to which the hearing is adjourned. [*Id.* s. 16.] (*a*).

42. NON-APPEARANCE OF PARTIES.—If at the time and place to which the hearing has been adjourned, either or both of such parties shall not appear personally or by counsel or attorney, the Justice then present may proceed to the hearing as if such party or parties were present; or if the prosecutor or complainant do not appear, the Justice may dismiss the information or complaint with or without costs. [11 & 12 Vict. c. 43, s. 16.]

43. DEFENDANT DISCHARGED ON RECOGNIZANCE NOT APPEARING.—In all cases where a defendant discharged on recognizance as aforesaid does not appear accordingly, the Justice who has

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facie a fit subject for punishment, but if he could shew that he was compelled so to ride by supervening illness, or some accident, the penalty should be remitted. *Oke* recommends a summons or warrant to issue, except perhaps where apprehension without warrant is allowed by statute. *Oke*, p. 151.

(*a*) *Adjournment.*—The Magistrate is not obliged to fix the penalty or imprisonment at the instant of conviction; he may take time to consider his judgment. *Oke*, p. 163.

Conviction.—Having determined to convict or make an order, the Justice should openly pronounce his complete judgment in open Court, and should state in his judgment, the fine, imprisonment, costs, &c., that he adjudges in the case.

Judgment.—With respect to the functions of Justices in summary cases it is thus laid down—"Upon summary proceedings before Magistrates they are placed in the situation of a jury, and the degree of credit to be attached to the evidence is for their consideration and judgment. Since, however, the proceedings before them are usually of a criminal and penal nature, and as they are substituted for a jury, who must, in order to convict, have all been satisfied by the evidence of the criminality of the defendant, the evidence ought to be fully satisfactory and convincing to the mind and conscience of the Magistrate before he pronounces the party to have been guilty—if any reasonable doubt exists in his mind the party charged is entitled to the benefit of that doubt. Such cases differ materially from those where mere civil rights are concerned, and where the mere preponderance of evidence may be sufficient to decide the question. In point of law the evidence will support a conviction

taken the recognizance, or any other Justice then present, upon certifying such non-appearance on the back of the recognizance, may transmit the recognizance. [*Id.* s. 16.]

44. Form of Convictions and Orders.—Where no particular form of conviction or order shall be given by the statute creating the offence or authorizing the order, and in all cases of (*a*) convictions or orders, *under statutes hitherto passed*, whether any particular form shall therein be given or not, the conviction or order may be drawn up in the form mentioned in the schedule to this Act. [*Id.* s. 17.]

45. Notices of Orders.—In all cases where, by statute, authority is given to commit a person to prison, or to levy any sum by distress, for not obeying any order of a Justice, the defendant shall be served with a copy of the minute (*b*) of such order before any warrant of commitment or distress shall issue; and such order or minute shall not form any part of such warrant of commitment or distress. [*Id.* s. 17.]

46. Costs.—In all cases of summary conviction or of orders made by a Justice, he may, at discretion, award and order, in the conviction or order, that the defendant shall pay to the prosecutor or complainant respectively such costs (*c*) as

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by a Magistrate, if there was such evidence as would have been sufficient to have been left to a jury. So if the Magistrate acquit where there seems to be a *prima facie* evidence to convict, his judgment cannot be questioned, for no other Court can judge of the credit due to witnesses who are not examined there." 2 *Starkee Evid.* 331. [*Oke*, pp. 162, 163.]

(*a*) The form given will apply to all convictions and orders made under statutes passed previously to this Act which are not excluded from its operation by virtue of the 35th section. [*R. v. Hyde*, 21 *L. J.* 94, and *Re Allison*, 24 *L. J.* 73.] It will also apply to convictions or orders under statutes passed since, unless they give a different form.

(*b*) The minute may be served before the formal order is signed. The order will have relation back to the time of the verbal adjudication. [*R. v.* J. J. *Huntingdonshire*, 19 *L. J.* 127; *Rait v. Parkinson*, 20 *L. J.* 208.] No minute of a *conviction* need in any case be served. This requirement is confined to orders.

(*c*) The Justices should specify the amount of costs in the conviction or order. [1 *Arch.* 361.] It is not usual in summary proceedings to allow the fee of an attorney, but there seems to be no legal objection against doing so.

to the Justice shall seem reasonable, and in cases where such Justice shall, instead of convicting or making an order, dismiss the information or complaint, it shall be lawful for him at his discretion, by his order of dismissal, to award and order that the prosecutor or complainant shall pay to the defendant such costs as to the Justice shall seem just and reasonable; and the sums so allowed for costs shall in all cases be specified in the conviction or order, or order of dismissal, and be recoverable in the same manner, and under the same warrants, as any penalty or sum of money, adjudged to be paid by such (*a*) conviction or order is recoverable; and in cases where there is no such penalty or sum, then such costs shall be recoverable by distress and sale of the goods of the party [see S. P.], and in default of distress, by imprisonment, with or without hard labour, for any time not exceeding one calendar month [modified as to sums not exceeding five pounds, by S. P.], unless such costs are sooner paid. [*Id.* s. 18.]

47. Warrants of Distress.—Where a conviction adjudges a pecuniary penalty or compensation to be paid, or where an order requires the payment of a sum of money, and by the statute authorizing such conviction or order, such penalty, compensation, or sum of money is to be levied upon the goods and chattels of the defendant by distress and sale; and also in cases where, by the statute in that behalf, no mode of raising or levy-

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[26 J. P. 748.] See *Oke*, p. 174, where fee to Attorney is allowed; also, *Saunders*, p. 99, where same rule is laid down. Unless there be a conviction or order the defendant cannot be ordered to pay costs to the complainant. In trivial cases it is not, however, unusual for the Justices to allow the information to be withdrawn on the defendant consenting to pay expenses. In case of a first conviction under 24 & 25 Vict., c. 96, or 97, the Justice is empowered by those Acts to discharge the offender on his making satisfaction to the party aggrieved for damages and costs or either of them as ascertained by the Justice.

(*a*) Where imprisonment only is awarded in a conviction for assault, in the first instance, the secretary of state considers it doubtful whether a further term of imprisonment can be ordered in respect of the costs of conviction and commitment, and that it is the better course not to imprison for costs only. [30 J. P. 591; 31 J. P. 639; and p. 30, *post.*]

ing such penalty, compensation, or sums of money, or of enforcing payment thereof, is provided, the Justice making such conviction or order, or any Justice of the same District, may issue a warrant of distress for levying the same. [*Id.* s. 19.]

48. MAY BE BACKED.—If after delivery of such warrant of distress to the constable or constables to whom it is directed, sufficient distress shall not be found within the jurisdiction of the Justice granting it, then, upon proof alone on oath of the handwriting of the Justice granting the warrant, before any Justice of any other District, such last-mentioned Justice shall make an endorsement on the warrant signed by him, authorizing the execution of such warrant within his jurisdiction, and the penalty or sum and costs, or so much thereof as have not been levied or paid, may be levied in such other District. [*Id.* s. 19.]

49. WHERE NO GOODS OR DISTRESS RUINOUS.—Whenever it shall appear to any Justice to whom application is made for any such warrant of distress, that the issuing thereof would be ruinous to the defendant and his family, or whenever it shall appear, by the confession of the defendant or otherwise, that he has no goods or chattels whereon to levy the distress, such Justice may, instead of issuing a warrant of distress (*a*), commit the defendant to the gaol, to be imprisoned, for such time and in such manner as such defendant might be committed in case such warrant of distress had issued and no goods could be found. [*Id.* s. 19.]

50. CUSTODY OF DEFENDANT UNTIL RETURN OF DISTRESS WARRANT.—When a Justice issues such warrant of distress (*b*) he may suffer the defendant to go at large, or verbally, or by a written warrant, order the defendant to be kept in safe custody until the return be made to such warrant of distress, unless the

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(*a*) The power of commitment in default of distress, seems to apply only where the defendant might be imprisoned for the offence of which he is convicted.

(*b*) Where the penalty, including the costs, does not exceed five pounds, Justices may now commit, without issuing any warrant of distress. See "SMALL PENALTIES' ACT," p. 122.

defendant give sufficient security, by recognizance or otherwise, to the satisfaction of the Justice, for his appearance before him at the time and place appointed for the return of the warrant, or before such Justice as may then be there; and if the defendant shall give security by recognizance, and fail to reappear, any Justice then present, upon certifying such non-appearance on the back of the recognizance, may transmit the same. [*Id.* s. 20.]

51. WHERE NOT SUFFICIENT DISTRESS.—If, at the time and place appointed for the return of any such warrant of distress, the constable who shall have had the execution of the same shall return that he could find no goods or no sufficient goods whereon he could levy the sum therein mentioned, and costs of levying it, the Justice before whom it is returned may issue a warrant of commitment directed to the same or any other constable, reciting the conviction or order shortly, the issuing the warrant of distress and the return thereto, and requiring such constable to convey the defendant to the gaol, there to be imprisoned in such a manner and for such time as directed by the statute on which the conviction or order was founded, unless the sum or sums adjudged to be paid, and all costs of the distress and of the commitment, and of conveying the defendant to prison, if the Justice shall so order (the amount being ascertained, and stated in the commitment), shall be sooner paid. [*Id.* s. 21.]

52. WHERE THE STATUTE PROVIDES NO REMEDY IN DEFAULT OF DISTRESS.—In all cases where Justices are authorized to issue warrants of distress to levy penalties, or other sums recovered before them, but no further remedy is thereby provided in case no sufficient distress be found; and in all cases of convictions or orders where the statute on which they are founded provides *no remedy*, in case it shall be returned to a warrant of distress that no sufficient goods can be found (*a*), the Justice to whom

(*a*) This section extends to cases where the statute on which the conviction order is founded, provides no mode of raising or levying the penalty, compensation, or sum of money adjudged or ordered to be paid, or of enforcing payment of the same, as well as to cases where the statute on which the con-

such return is made, or any other Justice of the same District, may, by warrant, commit the defendant to gaol for not exceeding three calendar months (modified where the sum does not exceed five pounds stg., by the Small Penalties Act), unless the sum adjudged to be paid, and all costs of the distress, commitment, and of conveying the defendant to prison (the amount being ascertained and stated in the commitment), shall be sooner paid. [*Id.* s. 22.]

53. Commitment in the First Instance for Non-payment of Penalty or Money.—In all cases where the statute by virtue of which a conviction for a penalty or compensation, or an order for the payment of money, is made, makes no provision for such penalty or compensation or sum being levied by distress, but directs that if the same be not paid forthwith, or within a certain time therein mentioned, or to be mentioned in such conviction or order, the defendant shall be imprisoned, or imprisoned unless the same shall be sooner paid, in every such case the same shall not be levied by distress; but if the defendant do not pay the same, with costs, if awarded, forthwith, or at the time specified in the conviction or order, the Justice making such conviction or order, or any other Justice of the same District, may issue a warrant of commitment requiring the constable to whom it is directed, to convey the defendant to gaol, to be imprisoned, for such time as the statute on which the conviction or order is founded shall direct, unless the sum adjudged to be paid, and the costs of conveying the defendant to prison (if so ordered), shall be sooner paid. [*Id.* s. 23.]

54. Where the Conviction or Order directs Imprisonment only.—Where a conviction does not order the payment of any penalty, but that the defendant be imprisoned for his offence, or where an order is not for the payment of money, but for the doing of some other act, and directs that in case of the defendant's neglect or refusal to do such act he shall be imprisoned, and the defendant neglects or refuses to do such act, then the

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viction or order is founded authorizes the issuing thereon of a warrant of distress. 21 & 22 Vict., c. 73, s. 5.

Justice making the conviction or order, or some other Justice, may issue a warrant of commitment for conveying the defendant to the gaol, to be imprisoned for such time as the statute on which the conviction or order is founded shall direct; and in all such cases where, by such conviction or order, any sum for costs shall be adjudged to be paid by the defendant to the prosecutor or complainant, such sum may, if the Justice think fit, be levied by warrant of distress in manner aforesaid, and in default of distress the defendant may be committed to gaol, to be imprisoned for not exceeding one calendar month [see S. P.], to commence at the termination of the imprisonment he shall then be undergoing, unless the sum for costs and all costs of the distress, commitment, and of conveying the defendant to prison (if so ordered), shall be sooner paid. [*Id.* s. 24.]

55. Consecutive Imprisonments.—Where a Justice upon any information or complaint as aforesaid, shall adjudge the defendant to be imprisoned, and such defendant shall (*a*) then be in prison or undergoing imprisonment upon a conviction for any other offence, the warrant of commitment for such subsequent offence shall be forthwith delivered to the gaoler to whom it is directed, and the Justice issuing the same may order therein that the imprisonment for such subsequent offence shall commence at the expiration of the imprisonment to which the defendant has been previously sentenced. [*Id.* s. 25.]

56. Recovery of Costs when Information dismissed.—When any information shall be dismissed with costs, the sum awarded for costs in the order of dismissal may be levied by distress on the goods of the prosecutor or complainant, and in default of distress, the prosecutor or complainant may be committed to the gaol for not exceeding one calendar month [see S. P.,] unless such sum, and the costs of the distress, of the commitment, and of conveying him to prison (the amount being ascertained and stated in the commitment), shall be sooner paid. [*Id.* s. 26.]

(*a*) This section applies equally to a case where a defendant is at one and the same time sentenced for several offences, as to a case in which he is already in prison. [*R.* v. *Cutbush*, 2. *L. R.* (*Q.* B.) 379, and *Treat.* 31 J.P. 433.]

57. DISTRESS WARRANT AFTER APPEAL.—After an appeal against any such conviction or order, if decided in favour of the respondents, the Justice who made the conviction or order, or any other Justice of the same District, may issue such warrant of distress or commitment for execution, as if no such appeal had been brought. [*Id.* s. 27.]

58. COSTS OF APPEAL.—If upon such appeal the court of quarter sessions shall order either party to pay costs, the order shall direct such costs to be paid to the Clerk of the Peace, to be by him paid over to the party entitled to them, and shall state within what time such costs shall be paid; and if the same are not paid within the time limited, and the party ordered to pay them is not bound by recognizance conditioned to pay such costs, the Clerk of the Peace shall, upon application of the party entitled to the costs, or any person on his behalf, and on payment of a fee of twenty-four cents, grant to the party applying a certificate that the costs have not been paid; and upon production of the certificate to any Justice, he may enforce the payment of such costs by warrant of distress; and in default of distress may commit the party against whom the warrant was issued for not exceeding three calendar months, unless the costs, and all costs of the distress, and of the commitment and conveying the party to prison, if so ordered (the amount being ascertained and stated in the commitment), shall be sooner paid. [*Id.* s. 27.] (*a*)

59. PAYMENT OF PENALTY, COSTS, ETC.—Where any person against whom a warrant of distress shall issue as aforesaid, shall pay or tender to the constable having the execution thereof the sum or sums mentioned in the warrant, with the amount of expenses of the distress up to the time of payment or tender, the

(*a*) *Fine or Imprisonment.*—In some cases, such as malicious injuries to property, assaults, &c., the Magistrates can either fine or imprison; on the question as to whether the Magistrate will find or imprison, he will be guided by the circumstances of each case; for instance, in a case of aggravated assault on a woman, the punishment in all bad cases should be imprisonment; so also should cases of assault on Constables, where the attack is wanton and unprovoked and the injury serious. The flagrancy of the offence, its public nature, and other considerations, will weigh with the Justice in deciding as to whether he will fine or imprison.

constable shall cease to execute the same ; and in all cases where any person shall be imprisoned for non-payment of any penalty or other sum, he may pay to the keeper of the prison the sum mentioned in the commitment, with the costs and expenses (if any) also mentioned therein, and the keeper shall receive the same and discharge such person, if he be in his custody for no other matter. [*Id.* s. 28.] (*a*)

60. One Justice may receive Informations and grant Warrants of Execution, etc.—In all cases of summary proceedings before a Justice upon any information or complaint as aforesaid, *one* Justice may receive the information or complaint, and grant a warrant or summons thereon, and may issue his summons or warrant for the attendance of witnesses, and do all other necessary acts and matters preliminary to the hearing, even in cases where by the statute such information or complaint must be heard and determined by two or more Justices ; and after the case has been heard and determined one Justice may issue all warrants of distress or commitment thereon. [*Id.* s. 29.]

61. Another Justice may hear.—The Justice who so acts before or after such hearing, need not be the Justice or one of the Justices before whom the case shall be heard and determined, but where by statute it is required that any information or complaint shall be heard and determined by two or more Justices, or that a conviction or order shall be made by two or more Justices, such Justices must be present and act together during the whole of the hearing and determination of the case. [*Id.* s. 29.]

62. Payment of Penalties, etc.—In every warrant of distress, the constable or other person to whom it is directed shall be

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(*a*) *Distress Warrant how executed.*—In executing a distress warrant, Constable cannot break open doors, but must wait until he can obtain admittance ; he may, however, break open the doors of another person if the goods of the person against whom the warrant is directed have been removed there to avoid seizure, but if the goods are not found he will be a trespasser and must abide the consequences ; no prudent Constable would run such a risk. The Constable should make the person, on whose behalf the distress is made, point out the goods to be levied on ; he is bound to shew his warrant to the person whose goods are distrained, if he be so required, and to permit a copy to be taken, but he must not part with the warrant out of his possession.

thereby ordered to pay the amount of the sum to be levied to the Clerk of the Peace, and if received by the constable or the gaoler, the same are to be paid over by him to the clerk. [*Id.* s. 31.]

68. FORMS.—The forms in the schedule, or forms to the like effect, are to be valid. [*Id.* s. 32.]

IMPERIAL ACT 11 & 12 VICTORIA, CAP. 43.

APPENDIX OF FORMS.

No. 1.

Summons to the Defendant upon an Information or Complaint.

——— District, } NEWFOUNDLAND.
—— to wit. }

To A. B. of ——, Fisherman.

Whereas information hath this day been laid [*or complaint hath this day been made*] before the undersigned Justice of the Peace for the said District, for that you [*here state shortly the matter of the information or complaint*]: These are therefore to command you, in Her Majesty's name, to be and appear on ——, at —— o'clock in the forenoon, at ———, before such Justices of the Peace for the said District as may then be there, to answer to the said information or complaint, and to be further dealt with according to Law.

Given under my Hand and Seal, this —— day of ——, in the year of our Lord ——— at ——— in the District aforesaid.

J. S. (L. S.)

No. 2.

Warrant where the Summons is disobeyed.

To the Constable of —— and to all other Constables in the said District.

Whereas on —— last past information was laid [*or complaint was made*] before the undersigned, Justice of the Peace for the said District

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NOTE.—All the forms here given should be headed like this first one. Newfoundland, &c., and all should have the seal of the Justice.

for that A. B. [*&c., as in the summons*]: And whereas I then issued my summons unto the said A. B., commanding him, in Her Majesty's name, to be and appear on at o'clock in the forenoon at before such Justices of the Peace for the said District as might then be there, to answer to the said information or complaint, and to be further dealt with according to Law: And whereas the said A. B. hath neglected to be or appear at the time and place so appointed in and by the said summons, although it hath now been proved to me upon Oath that the said summons hath been duly served upon the said A. B.: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before some Justice of the Peace for the said District, to answer to the said information or complaint, and to be further dealt with according to Law.

Given under my Hand and Seal, this day of , in the year of our Lord at in the District aforesaid.

J. S., J. P. (L. S.)

No. 3.

Warrant in the First Instance.

To the Constable of District, &c.

Whereas information on oath hath this day been laid before the undersigned Justice of the Peace for the said District, for that A. B. [*here state shortly the matter in the information*]: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before me or one of Her Majesty's Justices of the Peace for the said District, to answer to the said information, and to be further dealt with according to Law.

Given under my Hand and Seal, this day of , in the year of our Lord at in the District aforesaid.

J. S., J. P. (L. S.)

No. 4.

Warrant of Committal for safe Custody during an Adjournment of the Hearing.

To W. T., Constable of and to the Keeper of the Gaol at .

Whereas on last past information was laid [*or complaint was made*] before the undersigned Justice of the Peace for the said District

for that [*&c., as in the summons*]: And whereas the hearing of the same is adjourned to the day of instant at o'clock in the forenoon at and it is necessary that the said A. B. should in the meantime be kept in safe custody: These are therefore to command you the said Constable, in Her Majesty's name, forthwith to convey the said A. B. to the gaol at , and there deliver him into the custody of the Keeper thereof, together with this Precept; and I hereby command you the said Keeper to receive the said A. B. into your custody in the said gaol, and there safely keep him until day of instant, when you are hereby required to convey him the said A. B. at the time and place to which the said hearing is so adjourned as aforesaid, before such Justice of the Peace for the said District as may then be there, to answer further to the said information or complaint, and to be further dealt with according to Law.

Given under my Hand and Seal, this day of in the year of our Lord at in the District aforesaid.

J. S., J. P. (L. S.)

No. 5.

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

Proceed as in Form, (S. 1), page 88, and then endorse this condition.

The condition of the within written Recognizance is such, that if the said A. B. shall personally appear on the day of instant at o'clock in the forenoon at before such Justice of the Peace for the said District as may then be there, to answer further to the information [*or complaint*] of C. D. exhibited against the said A. B., and to be further dealt with according to Law, then the said Recognizance to be void, or else to stand in full force and virtue.

No. 6.

Summons of a Witness.

To E. F. of in the said District of .

Whereas information was laid [or complaint was made] before the undersigned Justice of the Peace for the said District, for that [*&c., as in the summons*]; and it hath been made to appear to me [upon oath] that you are likely to give material evidence on behalf of the [prosecutor, or complainant, or defendant] in this behalf: These are therefore to require you to appear on the day of at o'clock in the forenoon

at before such Justice of the Peace for the said District as may then be there, to testify what you shall know concerning the matter of the said information [or complaint.]

Given under my Hand and Seal, this day of in the year of our Lord at in the District aforesaid.

T. WILLS, J. P. (L. S.)

No. 7.

Warrant where a Witness has not obeyed a Summons.

To the Constable of and to all other Constables in the said District.

Whereas information was laid [*or complaint was made*] before the undersigned Justice of the Peace for the said District, for that [*&c., as in the summons*]; and it having been made to appear to me upon oath that E. F. of in the said District, *Labourer*, was likely to give material evidence on behalf of the [*prosecutor*], I did duly issue my summons to the said E. F., requiring him to be and appear on at o'clock in the forenoon of the same day at before such Justices of the Peace for the said District as might then be there, to testify what he should know concerning the said A. B., or the matter of the said information [*or complaint*]: And whereas proof hath this day been made before me upon oath of such summons having been duly served upon the said E. F., and of a reasonable sum having been paid [*or tendered*] to him for his costs and expenses in that behalf: And whereas the said E. F. hath neglected to appear at the time and place appointed by the said summons, and no just excuse hath been offered for such neglect: These are therefore to command you to take the said E. F., and bring him on at o'clock in the forenoon at before such Justice of the Peace for the said District as may then be there, to testify what he shall know concerning the matter of the said information [*or complaint*].

Given under my Hand and Seal, this day of in the year of our Lord at in the District aforesaid.

T. WILLS, J. P. (L. S.)

No. 8.

Warrant for a Witness in the first instance.

To the Constable of and to all other Constables in the said District.

Whereas information was laid [*or complaint was made*] before the undersigned Justice of the Peace for the said District, for that [*&c., as in the summons*]; and it being made to appear before me upon oath that E. F. of [*Labourer*] is likely to give material evidence on behalf of the [*prosecutor*] in this matter, and it is probable that the said E. F. will not attend to give evidence without being compelled so to do: These are therefore to command you to apprehend and bring the said E. F. before me on the day of at o'clock in the forenoon at or before such other Justice of the Peace for the said District as may then be there, to testify what he shall know concerning the matter of the said information [*or complaint.*]

Given under my Hand and Seal, this day of in the year of our Lord at in the District aforesaid.

T. WILLS, J. P. (L. S.)

No. 9.

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

To W. T., Constable of in the said District of and to the Keeper of the Gaol at .

Whereas information was laid [*or complaint was made*] before the undersigned Justice of the Peace for the said District, for that [*&c., as in the summons*]; and one E. F., hereinafter called the witness, now appearing before me such Justice as aforesaid on at and being required by me to make oath or affirmation as a witness in that behalf, hath now refused so to do [*or being now here duly sworn as a witness in the matter of the said information or complaint, doth refuse to answer certain questions concerning the premises which are now here put to him*], without offering any just excuse for such his refusal: These are therefore to command you the said Constable to take the said witness and him safely convey to the gaol at aforesaid, and there deliver him to the said keeper thereof, together with this Precept; and I do hereby command you the said keeper to receive the said witness into your custody in the said gaol, and there imprison him for such his contempt for the space of days unless he shall in the meantime

consent to be examined and to answer concerning the premises; and for your so doing this shall be your sufficient warrant.

Given under my Hand and Seal, this day of in the year of our Lord at in the District aforesaid.

J. S., J. P. (L. S.)

No. 10.

Warrant to remand a Defendant when apprehended.

To W. T., Constable of and to the keeper of the gaol at .

Whereas information was laid [*or complaint was made*] before the undersigned Justice of the Peace in and for the said District of , for that [*&c., as in the summons or warrant*]: And whereas the said A. B., hereinafter called the defendant, hath been apprehended by warrant upon such information [*or complaint*], and is now brought before me as such Justice as aforesaid: These are therefore to command you the said Constable, in Her Majesty's name, forthwith to convey the said defendant to the gaol at and there to deliver him to the said keeper thereof, together with this Precept; and I do hereby command you the said keeper to receive the said defendant into your custody in the said gaol, and there safely keep him until next, the day of instant, when you are hereby commanded to have him at at o'clock in the forenoon of the same day, before such Justice of the Peace of the said District as may then be there, to answer to the said information [*or complaint,*] and to be further dealt with according to Law.

Given under my Hand and Seal, this day of in the year of our Lord at in the District aforesaid.

J. S., J. P. (L. S.)

No. 11.

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

Be it remembered that on the day of in the said District, A. B., [*hereafter called the Defendant*] is convicted before me, the undersigned Justice of the Peace for the said District, for that [he the said Defendant, &c., *stating the offence, and the time and place when and where committed*]; and I do adjudge the said Defendant for his said offence, to

pay the sum of , [*stating the penalty, and also the compensation, if any,*] to be paid and applied according to law, and also to pay to the said C. D. the sum of for his costs in this behalf; and if the said several sums be not paid forthwith [or on or before next] *I order that the same be levied by Distress and sale of the Goods and Chattels of the said Defendant, and in default of sufficient Distress* I adjudge the said Defendant to be imprisoned in the Gaol at , for the space of , unless the said several sums, and all costs and charges of the said Distress [*and of the commitment and conveying of the said Defendant to the said Gaol*], shall be sooner paid.

Given under my Hand and Seal, the day and year first above mentioned, at aforesaid.

T. WILLS, J. P. [L. S.]

* *Or where the issuing of a Distress Warrant would be ruinous to the Defendant or his family, or it appears that he has no Goods whereon to levy a Distress, then, instead of the words between the Asterisks* **, say, "then, inasmuch as it hath now been made to appear to me [that the issuing of a Warrant of Distress in this behalf would be ruinous to the said Defendant and his family," *or*, "that the said Defendant hath no Goods or Chattels whereon to levy the said sums by Distress], I adjudge," &c., *as above, to the end.*

No. 12.

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

to wit. { Be it remembered, that on the day of , in the year , at , in the said [District] A. B., [*hereafter called the Defendant*] is convicted before the undersigned Justice of the Peace for the said District, for that [he the said Defendant, &c., *stating the offence, and the time and place when and where it was committed*]; and

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Note to Form, No. 11.—This form is used when the Magistrate orders the amount to be levied by distress; in all such cases a distress warrant should issue in the Form, No. 16.

Note to Form, No. 12.—This Form will be the one commonly used by a Magistrate, as by the S. P., p. 122. Justices may commit without issuing warrant of distress in all cases where the penalty, including costs, does not exceed $24, most cases will be under that amount, and when the pressure of imprisonment wont force the defendant to pay the fine, it is scarcely probable that it will be recovered under a distress warrant which in ordinary practice is seldom resorted to.

I do adjudge the said Defendant for his said offence to pay the sum of [*stating the penalty, and the compensation, if any*], to be paid and applied according to law, and also to pay to the said C. D. the sum of for his costs in this behalf; and if the said several sums be not paid forthwith [*or* on or before next] I adjudge the said Defendant to be imprisoned in the Gaol at for the space of , unless the said several sums [and the costs and charges of conveying the said Defendant to the said Gaol, shall be sooner paid.

Given under my Hand and Seal, the day and year first above mentioned, at aforesaid.

T. WILLS, J. P., [L. S.]

No. 13.

Form of Order (General.)

Be it remembered, that on complaint was made before the undersigned Justice of the Peace for the said District for that [*stating the facts entitling the complainant to the Order, with the time and place when and where they occurred*]; and now, at this day, to wit, on at the parties aforesaid appear before me the said Justice [*or the said C. D. appears before me the said Justice, but the said A. B.* (hereafter called the Defendant) *although duly called, doth not appear by himself, and it is now satisfactorily proved to me on Oath that the said Defendant has been duly served with the Summons in this behalf which required him to appear here on this day to answer the said complaint, and to be further dealt with according to law*]; and now, having heard the matter of the said complaint, I do adjudge, &c.; then follow the forms of convictions for Penalties 11 & 12, according to the circumstances of the case from the words "I do adjudge."

No. 14.

Order of Dismissal of an Information or Complaint.

Be it remembered, that on Information was laid [*or* Complaint was made] before the undersigned Justice of the Peace for the said District of for that [*&c., as in the Summons to the Defendant*], and now at this day, to wit, on at , both the said parties appear before me in order that I should hear and determine the said information [*or* complaint], [*or the said A. B. appeareth before me, but the said C. D.* (the complainant) *although duly called, doth not appear*]; whereupon the matter of the said information [or complaint] being by me duly considered, [it manifestly appears to me that the said information [or complaint] is

not proved and*] I do therefore dismiss the same, and do adjudge that the said C. D. do pay to the said A. B. the sum of for his costs incurred by him in his defence in this behalf; and if the said sum for costs be not paid forthwith [or on or before], I order that the same be levied by Distress and sale of the goods and chattels of the said C. D., and in default of sufficient distress in that behalf I adjudge the said C. D. to be imprisoned in the Gaol at for the space of , unless the said sum for costs, and all costs and charges of the said distress shall be sooner paid.

Given under my Hand and Seal, this day of , in the year of our Lord at in the District aforesaid.

J. S. (L. S.)

* *If the Informant or Complainant do not appear, these words may be omitted.*

No. 15.

Certificate of Dismissal.

I hereby certify, that an information [or complaint] preferred by C. D. against A. B., for that [&c., *as in the summons*], was this day considered by me, the undersigned Justice of the Peace for the said District, and was by me dismissed with costs.

Dated this day of , 18 .

J. S.

No. 16.

Warrant of Distress upon a conviction for a Penalty.

To the Constable of , and to all other Constables in the said District.

Whereas A. B., late of , [*Fisherman*] (hereafter called the Defendant) was on this day [or on last past] duly convicted before me the undersigned Justice of the Peace for the said District, for that [*stating the offence as in the conviction*], and it was thereby adjudged that the said Defendant should pay [&c., *as in the conviction*], and also pay the sum of for costs; and that if the said several sums should not be paid [*forthwith*] the same should be levied by distress and sale of the goods and chattels of the said Defendant; and that in default of sufficient distress the said Defendant should be imprisoned in the Gaol at , for the space of , unless the said several sums, and all costs and charges of the said distress, and of the commitment and convey-

ing of the said Defendant to the said Gaol, should be sooner paid: And whereas the said Defendant being so convicted as aforesaid, and being [*now*] required to pay the said sums of and hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said Defendant, and if within the space of days next after the making of such distress the said sums, together with the reasonable charges of taking and keeping the Distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising by such sale unto the Clerk of the Peace (*a*) [*if no Clerk of the Peace*, say *to me*] at , in the said District, that he (*or I*) may pay and apply the same as by law is directed, and may render the overplus, if any, on demand, to the said Defendant; and if no such distress can be found, then that you certify the same unto me, to the end that such further proceedings may be had thereon as to the law doth appertain.

Given under my Hand and Seal, this day of , in the year of our Lord at District aforesaid.

J. S. (L. S.)

No. 17.

Constable's Return to a Warrant of Distress.

I, W. T., Constable for the District, hereby certify to THOMAS WILLS, Esquire, Justice of the Peace of the said District, that by virtue of this warrant I have made diligent search for the goods and chattels of the within-mentioned A. B., and that I can find no sufficient goods and chattels of the said A. B. whereon to levy the sum within mentioned.

Witness my hand 187 .

W. T.

No. 18.

General Form of Warrant of Commitment.

To the Constables of the District and to Keeper of the Gaol at .

Whereas on &c., A. B., hereafter called the defendant, appeared before me the undersigned Justice of the Peace for the said District, to

(*a*) Where there is no Clerk of the Peace, a Justice may act as Clerk of the Peace, p. 12.

answer the complaint of C. D. [*here state complaint*] and on the consideration of the said complaint, I adjudged the said defendant * to pay the sum of dollars forthwith (or on) and also to pay dollars, costs to the said C. D., [*to be levied by distress and sale of the defendant's goods and chattels, and that in default of sufficient distress, defendant should be imprisoned for months, and no sufficient distress whereon to levy said sums having been found*] * (*omit these words when no distress warrant is issued.*) *Or when the punishment is imprisonment only, omit all the words between the asterisks.** I adjudged the said defendant should be imprisoned in the said gaol for months (*unless the said sums should be sooner paid,*) (*omit these words where the punishment is imprisonment only*). These are therefore to command you the said Constable to convey the defendant to the said gaol and deliver him to the keeper thereof, with this warrant; and I command you the said keeper to receive the defendant in the said gaol, and there imprison him (*and keep him at hard labour*) for the space of months (*unless the said sums should be sooner paid*). And for your so doing this shall be your sufficient warrant.

Given under my Hand and Seal, this day of 187 , at aforesaid.

T. WILLS, J. P. (L. S.)

No. 19.

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

To the Constables of District.

Whereas on last past information was laid [*or complaint was made*] before the undersigned Justice of the Peace for the said District, for that [*&c., as in the order of dismissal*]; and afterwards, to wit, on at both parties appearing before me, and the said complaint [*or information*] being by me duly heard and considered, and it manifestly appearing to me that the said information [*or complaint*] was not proved, I therefore dismissed the same, and adjudged that the said C. D., hereafter called the complainant, should pay to the said A. B. the sum of for his costs incurred by him in his defence in that behalf; and I ordered that if the said sum for costs should not be paid [*forthwith*] the same should be levied of the goods and chattels of the said complainant, [and I adjudged that in default of sufficient distress in that behalf the said complainant should be imprisoned in the gaol at [*and there kept to hard labour*], for the space of

unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said C. D. to the said gaol, should be sooner paid]:* And whereas the said complainant being now required to pay unto the said A. B. the said sum for costs, hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you, in Her Majesty's name, forthwith to make distress, then follow the words in form 16, substituting *complainant* for *defendant*.

No. 20.

Commitment for Non-payment of Costs.

This can readily be adapted from the general form of commitment, altering the words after "*on consideration of the complaint*," into, *and on the hearing of the said complaint, I adjudged the same not to be proven and dismissed the said complaint, and adjudged the complainant to pay the defendant dollars for the costs incurred by him in his defence*, &c., to be levied by distress, &c., as in form 18, substituting complainant for defendant.

CHAPTER XIV.

PRESERVATION OF THE PUBLIC PEACE.

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4.—Who may make Complaint.
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6.—Summons or Warrant to issue.
7.—Form of Summons.
8.—Form of Warrant.
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10.—Entering into Recognizance.
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23.—Assault, occasioning actual bodily harm.
24.—Assault, Common Indictment.
25.—Assault on any Constable.
26.—Riot defined.
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28.—Apprehension of Offenders.
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31.—Oath of Special Constable.
32.—Refusing to be Sworn. Penalty.
33.—Notice of Special Constable's appointment to be sent to Governor.
34.—Constable may call on Bystander.
35.—Military Force.
36.—Closing Public Houses.

1. One of the most important duties of a Justice of the Peace is to preserve the Peace, and to that end he has various powers conferred upon him; one of the most ancient and most important of those powers is the authority to bind over parties to keep the peace. The general authority is contained in the Commission in the following words,—

"And to cause to come before you all those who, to any one or more of Our 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 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."

Binding over parties to keep the peace is a very useful remedy, and will be found suitable to a great variety of cases; it tends to prevent fights and breaches of the peace, and in matrimonial differences, where threats are used, it is almost the only remedy a Justice of the Peace can apply; it may not always secure peace between the contending parties, but it will at least tend to prevent them coming to blows.

2. If a party has sustained violence from another, and has reason to believe that it will be repeated, or if without actual violence having been committed, he has been threatened with it, either by words or gestures, and therefore goes in bodily fear, he may compel the offender to enter into a recognizance, with or without sureties, to keep the peace towards him. *(Surety for good behaviour is now not used, because the sureties for the peace include sureties for good behaviour.)*

3. To warrant an application against another for sureties to keep the peace, the applicant must make it appear from reasonable evidence that the party against whom he applies intends personal violence against him. But actual violence, or even threats, will not be essentially requisite to furnish the evidence; it may consist in the looks, gestures, or conduct of the party; but in such case it is necessary for the complainant to depose to his belief that such conduct, in fact, amounts to a threat of personal violence, and that *he is afraid the defendant will do him some bodily injury.* The complaint should be made soon after the cause of fear has arisen (*a*).

4. One Justice, upon complaint on oath being made before him, that from threats, &c., used within his jurisdiction towards complainant, or from threats used against complainant's wife or child, or from threats used by a wife against husband, or husband against wife, the complainant fears another person will do him, his wife, or child, some personal injury, may issue his summons or warrant against the party complained of.

5. FORM OF COMPLAINT.—

——— District, } NEWFOUNDLAND.
—— to wit. }

The complaint, on oath, of A. B., of , in the said District [Fisherman] before me, the undersigned Justice of the Peace for the said District, who saith on the day of last, C. D., of , [Fisherman] (*here state the threats or other acts of violence of which the complainant complains, in his very words, according to the facts, as they took place*) and that from the above and other threats used towards me by the said C. D., I am afraid that the said C. D. will do me some bodily injury. I therefore pray that the said C. D. may be required to find sureties to keep the peace and be of good behaviour towards me.

(Sd.) A. B.

Sworn before me, this day of , }
A. D. 187 , at , aforesaid. }

T. WILLS, J. P.

(*a*) The right to apply for sureties to keep the peace, exists only where personal violence is apprehended. Not injury to man's property, (except setting fire to his house).

6. If the Justice is satisfied that the complaint is *bona fide*, and there is any reasonable ground for apprehension of personal violence, he will issue the summons or warrant for the appearance of the defendant.

7. FORM OF SUMMONS.—(*a*)

District, } NEWFOUNDLAND.
, to wit. }

To C. D.

You are hereby required to appear in your proper person before the undersigned Justice of the Peace for the said District, at aforesaid, on the day of by of the clock in the forenoon of the same day, to answer the complaint of A. B. [*here state shortly the complaint*], and to find sureties to keep the peace and be of good behaviour towards Her Majesty and all Her liege people, and especially towards said A. B., and to be further dealt with according to Law.

Given under my Hand and Seal, this day of A. D. 187 , at aforesaid.

T. WILLS, J. P. (L. S.)

8. FORM OF WARRANT.—(*b*)

——— District, } NEWFOUNDLAND.
——, to wit. }

To the Constables of the said District.

Whereas complaint on oath has this day been made before me, one of the Justices of the Peace for the said District, by A. B. of Fisherman, that [*here state the whole complaint in third person*]: These are therefore to command you forthwith to arrest the said C. D., and bring him before me or some other Justice for the said District to answer the said complaint and to be further dealt with according to Law.

Given under my Hand and Seal, this day of A. D. 187 , at aforesaid.

T. WILLS, J. P. (L. S.)

9. Upon the party being brought before the Justice, the complaint is read over to him and he is asked if he have any cause to shew why he should not give the required sureties. The practice is, to conduct the hearing as an ordinary case of summary conviction (*c*).

(*a*) Service should be personal.

(*b*) A verbal complaint will do even when party is before the Justice on another charge. [24 L. T. (N. S.) 547. *Oke*, 1474.] It is only when warrant is to issue that information need be in writing and on oath.

(*c*) It is said that the party complained of cannot be allowed to contro-

10. The recognizance can only be to keep the peace and be of good behaviour for *Twelve months.* The defendant cannot be convicted of an assault as well (if one was committed at the time) against the complainant's protest, but if a complaint for an assault is dismissed, and the Justice thinks, from the evidence, that such a precaution is necessary, he may require the defendant to keep the peace. [*Oke*, 1,474.] If sureties are required, and the defendant is not prepared with them, the case should be adjourned, to enable him to get them.

11. The amount of the recognizance should be proportioned to the condition in life of the parties, and the circumstances of the case. In default of entering into recognizance, with surety or sureties, the defendant is committed to jail; it must not be for more than twelve months [16 & 17 Vic., c. 30, s. 3], and in practice will hardly ever exceed three months. The recognizance may be in the following form:

12. FORM OF RECOGNIZANCE.—Follow the form S. 1, page 88, and then write on the back of Recognizance,—

"The condition of this recognizance is such, that if the above bounden C. D. shall keep the peace and be of good behaviour towards the Queen and all her liege people, and especially towards , of , aforesaid, Fisherman, [*the complainant*] for the term of twelve months now next ensuing, then the said recognizance shall be void, or else to remain in its full force."

13. FORM OF COMMITMENT FOR WANT OF SURETIES TO KEEP THE PEACE.—

——— District, } NEWFOUNDLAND.
to wit. }

To the Constables of the said District, and the Keeper of the Gaol at .

Whereas A. B., &c., [*here recite the complaint as in the warrant*] and

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vert the truth of the facts stated in the complaint. [*R.* v. *Doherty*, 13 *East* 171.] All he is allowed to do, being to shew that the complaint is preferred from malice only, or explain parts of the case that may be ambiguous.

Costs.—*Oke* holds that the defendant, when ordered to enter into Recognizance, must pay the fees for it, or Clerk of the Peace (*or Magistrate where no Clerk*) may refuse to prepare it until such fees are paid, and if not paid, the defendant stands committed in default of Recognizance. [*Oke. Note*, 1473.] It is doubtful whether 11 & 12 Vic., c. 43, is applicable.

whereas the said C. D. was this day brought before me, Thomas Wills, a Justice of the Peace for the said District, at , to answer the said complaint; and I the said Justice have ordered and adjudged that the said C. D. shall enter into his own recognizance in the sum of dollars, with two sureties in the sum of dollars each, to keep the peace and be of good behaviour towards Her Majesty and all her liege people, and particularly towards the said A. B., for the term of months now next ensuing, and inasmuch as the said C. D. hath refused or is unable to enter into the said recognizance with such sureties, I hereby command you the said Constables or one of you forthwith to convey the said C. D. to the said Gaol and to deliver him to the Keeper thereof with this warrant; and I command you the said Keeper to receive the said C. D. into your custody in the said Gaol, and there safely keep him for the space of months, unless in the meantime he enter into the said recognizance with such sureties.

Given under my Hand and Seal, at , aforesaid, this day of , A. D. 187 .

T. WILLS, J. P.

14. ASSAULT DEFINED.—An assault is an attempt by force, or violence, to do bodily injury to another. It is an act of aggression done against or upon the person of another without his consent; not necessarily against his will, if by that is implied an actual resistance or expression of objection made at the time. It is not necessary that the party should receive an injury, as striking or throwing a stone, or riding at another, or striking a horse whereon another is riding, whereby he is thrown, or holding up the hand in a threatening manner, or any other circumstances denoting at the time an intention, coupled with a present ability, of using actual violence against the person, will constitute an assault. If the person be actually struck or even touched, the offence is a battery, which includes an assault. But in order to constitute an assault punishable by the criminal law, the act must have been done with a hostile intention; for instance, placing the hand on another person's shoulder to call his attention to the hose of a fire engine, is not such an assault. Mere words do not amount to an assault. A breach of the peace can only be justified when used to prevent a breach of the peace, although the circumstances of the provocation may be taken into consideration in awarding the punishment. It is clearly

established by the recent case of *R.* v. *Pearson*, 39 L. J. (M. C.) 76, and 22 L. T. (N.) 126, that Justices have no summary jurisdiction in any case of assault where a question of title arises, although there may have been an excess of force or violence in the assault. The remedy will be by indictment. In a prosecution for assaulting the constable, it is sufficient to prove that he acted in that character without producing his appointment, although he may have been appointed under a local Act. [*Berryman* v. *Wise*, 4 T. R. 366, and *Butler* v. *Ford*, 1 C. & M. 622.] *Stone*, p. 62.

15. Common Assault.—Where any person shall unlawfully (*a*) assault or beat any other person, two Justices of the Peace upon complaint (*b*) by or on behalf of the party aggrieved, may (*c*) hear and determine such offence—*Punishment*, on conviction, at the discretion of the Justices, either by imprisonment in gaol for not exceeding two months (*d*), or else such fine as shall appear to them to be meet, not exceeding, together with costs (if ordered), the sum of twenty-four dollars; and if not paid,

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(*a*) Where stones were thrown by a mob at a Constable, but no evidence was given showing from which of ten persons who were summoned the blow proceeded, it was held that the Justices were right in dismissing the complaint, and that in such a case the rule that all were equally guilty participators did not apply. [*Tuckey* v. *Little*, 27 *J. P.* 135.]

(*b*) The complaint, under the 42nd and 43rd sections, need not be upon oath unless a warrant be granted; the proceedings being, under the 76th section, regulated by Jervis's Act, and there being nothing in that Act which requires the information on which a summons issues to be on oath. The complaint under s. 42, may be "by or on behalf of the party aggrieved," thus enabling a parent or a friend to complain on behalf of a child, and under s. 43 by the "party aggrieved or otherwise," *i. e.*, either the party or a stranger. [25 *J. P.* 658.]

(*c*) The jurisdiction of the Justices will not be taken away by the parties settling the matter without the sanction of the Justices. They can still hear, and if the evidence be sufficient, convict of the offence. [*Ex parte Bryant*, 27 *J. P.* 332.]

(*d*) If an assault on a Constable be such as might be justified in point of law, if the complainant had not been acting in the execution of his duty as a Constable, it will be necessary to proceed for the offence of assaulting him in the execution of his duty.

either immediately after conviction or within such period as the said Justices shall appoint, imprisonment in gaol, with or without hard labor, (*a*) for not exceeding two months (*b*), unless such fine and costs be sooner paid. [24 & 25 Vic., c. 100, s. 42.] No appeal.

16. AGGRAVATED ASSAULT ON WOMEN AND CHILDREN.—When any person shall be charged before two Justices of the Peace (*c*) or a Stipendiary Magistrate with an assault or battery upon any male child, whose age shall not, in the opinion of such Justices, exceed fourteen years, or upon any female, either upon the complaint of the party aggrieved or otherwise, the said Justices, if the assault or battery is of such an aggravated nature (*d*) that it cannot in their opinion be sufficiently punished under the provisions hereinbefore contained as to common assaults and batteries, may proceed to hear and determine the same in a summary way—*Punishment*, on conviction, by imprisonment in gaol, with or without hard labor, for not exceeding six months, or a fine not exceeding (together with costs) ninety-six dollars, and in default of payment, imprisonment in gaol, for not exceeding six months (but not exceeding two months if the penalty does not exceed five pounds, see S. P.), unless such fine and costs be sooner paid; and if the Justices shall so think fit, in any of the said cases, shall be bound (*i. e.*, in a specific sum), to keep the peace and be of good behaviour for any period not exceeding

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(*a*) Consol. Stat. p. 231. In all sentences of imprisonment under summary convictions, such sentence of imprisonment may be with hard labour during the term of imprisonment, in the discretion of the convicting Justice.

(*b*) The term of imprisonment is now regulated by the amount of the penalty. (See "SMALL PENALTIES ACT," Cap. 13 p. 121.)

(*c*) See p. 9, Manual, as to power of J. P. when Stipendiary Magistrate absent, &c.

(*d*) A conviction may be sustained, although evidence may be given in support of a higher offence than that of assault, as rape, as the Justice may consider such evidence insufficient or untrue. If, however, a felony be proved, the offender should be committed for trial. [*Ex parte Thompson*, 30 *L. J.* 19, and *Wilkinson* v. *Dutton*, 32 *L. J.* 152.]

six (*a*) months from the expiration of such sentence. [*Id.* s. 48.] No appeal.

17. CERTIFICATE OF DISMISSAL.—If the Justices upon the hearing of any such case of assault or battery *upon the merits*, where the complaint was preferred by or on behalf of the party aggrieved, under either of the last two preceding sections, shall deem the offence not to be proved, or shall find the assault or battery to have been justified, or so trifling as not to merit any punishment, and shall accordingly dismiss the complaint, they shall forthwith make out a certificate (*b*) under their hands, stating the fact of such dismissal, and shall deliver such certificate to the party against whom the complaint was preferred. [*Id.* s. 44.]

18. RELEASE.—If any person shall have obtained such certificate, or having been convicted, shall have paid the whole amount adjudged to be paid, or shall have suffered the imprisonment, or imprisonment with hard labor, awarded, in every such

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(*a*) If an offender who has been adjudged to pay a fine, and in default to be imprisoned, and to enter into a recognizance to keep the peace at the expiration of his sentence, should pay the penalty, after having been in prison for some time, the recognizance must be entered into immediately on the payment of the penalty, this being the expiration of his sentence; and the warrant of detention, consequent on his refusal to be so bound, should, it seems, be contained in the warrant of commitment for the assault. It is doubtful whether the convicted party can be ordered to find sureties for his good behaviour.

(*b*) The Justices cannot refuse to grant this certificate, but it is not necessary to draw it up unless applied for [*Hancock* v. *Somes*, 29 *L. J.* 196]; and the word "forthwith" means "forthwith upon application." [*Costar* v. *Hetherington*, 28 *L. J.* 198.] The certificate can be granted in those cases only where the complaint is dismissed upon the merits, *i. e.*, after a hearing of the case; the decisions in *Tunnecliffe* v. *Tedd*, 12 *J. P.* 249, and *Bradshaw* v. *Vaughton*, 25 *J. P.* 102, will therefore cease to be of any authority under the present statute. [25 J. P. 658.] This certificate cannot be granted unless the complaint is preferred "by or on behalf of the party aggrieved." The certificate will be a bar to an indictment for unlawfully wounding [*R.* v. *Elrington*, 31 *L. J.* 14]; but not to an indictment for manslaughter. [*R.* v. *Morris*, 31 *J. P.* 516.] The certificate will not prevent Justices ordering the defendant to enter into a recognizance to keep the peace. [*Ex parte Davis*, 35 J. P. 551.] As to the assault charged in an indictment being the same as that referred to in the certificate, see *R.* v. *Westley*, 22 J. P. 487.

case he shall be released (*a*) from all further or other proceedings, civil or criminal, for the same cause. [*Id.* s. 45.]

19. OUSTER OF JURISDICTION.—In case the Justices should find the assault or battery complained of to have been accompanied by any attempt to commit felony, or be of opinion that the same is, from any other circumstance, a fit subject for a prosecution by indictment, they shall abstain from any adjudication thereupon, and shall deal with the case, in all respects, in the same manner as if they had no authority finally to hear and determine the same: Provided also, that nothing herein contained shall authorize any Justice to hear and determine any case of assault or battery in which any question shall arise as to the title (*b*) to any lands, tenements, or hereditaments, or any interest therein or accruing therefrom, or as to any insolvency or any execution under the process of any court of justice. [*Id.* s. 46.]

20. ASSAULTING CLERGYMEN, ETC.—Whosoever shall, by threats or force, obstruct or prevent, or endeavour to obstruct or prevent any clergyman or other minister in or from celebrating divine service, or otherwise officiating in any church, chapel, meeting-house, or other place of divine worship, or in or from the performance of his duty in the lawful burial of the dead in any churchyard or other burial-place, or shall strike or offer any violence to, or shall, upon any civil process, or under pretence of executing any civil process, arrest any clergyman or other

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(*a*) But if there be neither a dismissal with a certificate thereof, nor a conviction, but merely an order for the defendant to enter into his recognizance to keep the peace and pay the costs thereof, no release can be pleaded. [*Hartley* v. *Hindmarsh*, 35 L. J. 254.] Conviction, with payment of the fine, is an answer to an action for injuries to business occasioned by the assault. [*Solomon* v. *Frinigan*, 30 J. P. 756.]

(*b*) There must be some colour of title, the bare assertion of right being insufficient to oust the jurisdiction of the Justices. (See cases under "OUSTER OF JURISDICTION," title "PRACTICE," *post*, and pages 14 and 15 Manual.) Justices cannot convict where the assault has arisen from any of the causes mentioned in the proviso to the 46th section, although there may have been excess of force or violence. [*R.* v. *Pearson*, 34 J. P. 582.] If the summary jurisdiction is ousted, the Justices may commit for trial at the Supreme Court or Quarter Sessions.

minister who is engaged in, or to the knowledge of the offender is about to engage in, any of the rites or duties in this section aforesaid, or who to the knowledge of the offender shall be going to perform the same, or returning from the performance thereof, shall be guilty of a *misdemeanor*.—Pun. imprisonment not exceeding two years. [*Id.* s. 36.] Indict. offence.

21. Assaulting Magistrate, etc., on account of Wreck.—Whosoever shall assault and strike or wound any magistrate, officer, or other person whatsoever lawfully authorized, in or on account of the exercise of his duty in or concerning the preservation of any vessel in distress, or of any vessel, goods, or effects wrecked, stranded, or cast on shore, or lying under water, shall be guilty of a *misdemeanor*.—Pun. imprisonment not exceeding two years. [*Id.* s. 37.] Indict. offence.

22. Assault with Intent to Commit Felony, or on Peace Officers, etc.—Whosoever shall assault any person with intent to commit felony, or shall assault, resist, or wilfully obstruct any peace officer in the due execution of his duty, or any person acting in aid of such officer, or shall assault any person, with intent to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence, shall be guilty of a *misdemeanor*.—Punishment under foregoing section not exceeding two year's imprisonment.—Indict. offence.

23. Whosoever shall be convicted upon an indictment for any assault occasioning actual bodily harm.—Punishment imprisonment not exceeding one year.

24. Whosoever shall be convicted upon an indictment for a common assault.—Punishment imprisonment not exceeding one year.

25. Assault on any Constable.—Where any person is convicted of an assault on any constable when in the execution of his duty (*a*), such person shall be guilty of an offence against this Act,

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(*a*) It is sufficient in the case of all peace officers to prove that they acted in that character, without producing their appointment [*Berryman* v. *Wise*, 4 T. R. 366]; and in *Butler* v. *Ford*, 1 C. & M. 622, the Court held that proof of acting was sufficient, although the constable was appointed under a

and shall in the discretion of the court, be liable either to pay a penalty not exceeding ninety-six dollars, and, in default of payment, to be imprisoned, with or without hard labor, for a term not exceeding six months, or to be imprisoned for any term not exceeding six months, or in case such person has been convicted of a similar assault within two years, nine months, with or without hard labor. [34 & 35 Vict., c. 112, s. 12] (*a*).

26. RIOT DEFINED.—A riot is a tumultuous disturbance of the peace by three or more persons assembling together with an intent to assist each other in the execution of some enterprise of a private nature, and afterwards actually executing the same in a violent and turbulent manner to the terror of the people, whether the act intended were of itself lawful or unlawful. If, after so assembling, they do not proceed to execute their purpose, it is an unlawful assembly only—if they proceed to execute the act, but do not execute it, it is called a rout. The distinction between a riot, rout, and unlawful assembly, has thus been

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local Act. In *R.* v. *Forbes and another*, 10 *Cox C. C.* 382, the defendant was convicted before the Recorder of London for assaulting two police officers who were in plain clothes, although the prisoners contended that they did not know that the men were constables. A person charged in the information with assaulting a constable in the execution of his duty, cannot be convicted of a common assault on the hearing of such information [*R.* v. *Brickhall*, 33 L. J. 156]; but a fresh information may be laid. On an indictment for assaulting a constable in the execution of his duty, it appeared that the assault was committed whilst the constable was attempting to arrest the accused on suspicion of having stolen trees under the value of one pound which the accused was carrying—to show that the constable was justified in suspecting and arresting the accused, the constable was allowed to be examined in chief as to the general character of the accused, but not as to the ground of his suspicion. [*R.* v. *Tuberfield*, 11 L. T. 385.]

(*a*) This section does not *create* the offence of assaulting a constable; but when any person is summarily convicted of an assault on a constable under any of the several statutes relating to borough, county, special, or other constables, then the penalty or imprisonment authorized by this section is substituted for the punishment imposed by any former statute. The right of appeal given by any statute does not appear to be affected. The punishment for the offence of "resisting a constable in the execution of his duty" is not altered by this section.

stated:—A riot is a tumultuous meeting of persons who are guilty of actual violence; a rout where they endeavour to commit an act which would make them riotous; and an unlawful assembly where they meet with an intention to make a riot, but neither carry their purpose into effect nor make any endeavours towards it. [2 *Ch. Crim. Law*, 2nd ed. 481, *notes citing* 3 *Inst.* 176; *Hawk. b*, 2, c. 65, ss. 1, 8, 9.]

It is laid down by Boothby, that any meeting whatever of great numbers of people with such circumstances of terror as cannot but endanger the public peace, or excite alarm amongst persons of reasonable firmness and courage, is unlawful. The jury should consider whether the circumstances are such as that persons having families and property there, would have reasonable ground to fear a breach of the peace; and evidence was held to be receivable from a superintendent of police, that persons had complained to him of being alarmed by the meeting which defendant had attended, and where violent speeches were delivered, and that it was not necessary to call the persons who made the complaint.—[*Boothby's Syn.*, p. 385.]—But the exhibition and demonstration of physical force, that is, the mere display of numbers, without any evidence that such force was used or threatened to be used, or without other circumstances calculated to produce alarm, as, for instance, being armed with bludgeons, &c., will not render a meeting illegal, provided the object of such meeting be not in itself unlawful. [*O'Connell's Case.*] The persons engaged in an unlawful assembly, rout, or riot, may be required to enter into sureties to answer an indictment for a misdemeanor, at the Quarter Sessions or Supreme Court, and be punished on conviction by fine or imprisonment, or both; but if the offenders amount to twelve in number, and do not disperse after proclamation as hereinafter mentioned, it is a felony.

27. Persons not Dispersing after Proclamation.—If any persons to the number of twelve or more, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, and being required by any justice, sheriff, mayor, bailiff, &c., by proclamation in the King's name

(in the exact form (*a*) mentioned in the 2nd section, except the substitution of the "Queen" for the "King," *R.* v. *Child*, 4 C. and P. 442), to disperse themselves, and peaceably depart, shall, to the number of twelve or more, unlawfully, riotously, and tumultously remain or continue together, for one hour after such proclamation—*Felony* [1 Geo. 1, stat. 2, c. 5, s. 1], and not triable at the sessions. Opposing or obstructing by force any person making such proclamation; and persons so being riotously assembled, to the number of twelve or more, to whom proclamation should have been made, if the same had not been hindered, and not dispersing within one hour, having knowledge of such hindrance—*Felony* [1 Geo. 1, stat. 2, c. 5, s. 5], and not triable at the sessions.

28. APPREHENSION OF OFFENDERS.—Persons so assembled, and not dispersing within one hour after proclamation, may be seized by any justice, sheriff, mayor, peace officer, or other person commanded by them respectively to assist, and forthwith carried before a justice. [1 Geo. 1, stat. 2, c. 5, s. 3.]

29. RIOT OR AFFRAY GENERALLY.—Persons guilty of a riot, affray, or other disturbance of the public peace, may be apprehended at the time without a warrant, and conveyed before a justice, who may bind them over to keep the peace, or commit them for trial for a misdemeanor.

30. Whenever it shall be found that the ordinary constabulary force is insufficient to maintain the public peace of any locality, any stipendiary Magistrate, or in his absence a Justice, may call on and appoint such number of persons as may be

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(*a*) The Justice of the Peace or other person authorized by this Act to make the said proclamation, shall among the said rioters or as near to them as he can safely come, with a loud voice command or cause to be commanded, silence to be whilst proclamation is making, and after that shall openly and with loud voice make, or cause to be made, proclamation in these words, or like in effect:—*Our Sovereign Lady the Queen chargeth and commandeth all persons being assembled, immediately to disperse themselves, and peaceably to depart to their habitations or to their lawful business upon the pains contained in the Act made in the first year of King George, for preventing tumults and riotous assemblies.* GOD SAVE THE QUEEN. [1 *Geo.* 1 *St.* 2, *c.* 5, *sec.* 2.]

deemed necessary to act as special constables in such locality; and every stipendiary Magistrate or Justice may administer to every person so appointed, the following oath:

31. I, ——, do swear that I will well and truly serve our Sovereign Lady the Queen in the office of special constable for the district of ——, without favor or affection, malice or ill-will; and that I will, to the best of my power, cause the peace to be kept and preserved, and prevent all offences against the persons and properties of Her Majesty's subjects; and that I will discharge the duties of my said office faithfully, according to law. So help me God. Cap. 38, s. 7, Consol. Stat.

32. And if any person, being so called on or appointed a special constable, as aforesaid, shall refuse to take said oath when required by the stipendiary Magistrate or Justice so appointing him, he shall be liable to be convicted thereof forthwith, before the stipendiary Magistrate or Justice so requiring him, and to forfeit and pay such sum of money, not exceeding twenty dollars, as to said Magistrate or Justice may seem meet, or imprisonment for a period not exceeding two calendar months.

33. Whenever it shall be deemed necessary to nominate and appoint such special constables, notice of such nomination and appointment, and of the circumstances which rendered such nomination and appointment necessary, shall be forthwith transmitted by the stipendiary Magistrate or Justice making such appointment, to His Excellency the Governor in Council. Idem., Sec. 8,

34. Any constable, in the execution of his duty, may call [illegible]any by-stander, in the Queen's name, to aid him in preventing a breach of the peace, whenever a breach of the peace is imminent, or to aid him in arresting and detaining in custody any person who is riotous or disorderly, or is committing a breach of the peace; and if any by-stander shall refuse or neglect to aid such constable when so called upon, he shall be deemed guilty of a misdemeanor, and may be tried for such offence in a summary manner before a stipendiary Magistrate, and, on conviction, may be fined a sum not exceeding ten dollars, or be

imprisoned for a period not exceeding ten days. (39 Vic., Cap. 12, Sec. 13.)

35. Military Force.—If it should be found that the civil power is insufficient, the military may be called upon by the Magistrates to act. It is scarcely necessary to observe, that their active services should not be required unless it is evident that the constabulary force is inadequate to maintain the peace. It may, however, be expedient to request the military to hold themselves in readiness, as the knowledge of such a step having been taken by the Magistrates, will frequently prevent an outbreak, by convincing the parties of the power and determination of the Magistrates to suppress any disturbance which may arise. The officer in command requires a written application to be made for the aid of the military, in order that he may be enabled to produce it at any future time as his protection against personal responsibility.

36. Closing Public Houses.—By Section 24, License Act, 1875,—Any two Justices of the Peace, or any Stipendiary Magistrate, acting for any district or place where any riot or tumult happens, or is expected to happen, or where any election may be taking place, or is about to take place, may order every Licensed Person, in or near the place where such riot or tumult happens or is expected to happen, or where such election is taking place or is about to take place, to close his premises during any time which the Justices or Magistrate may order; and any Person who keeps open his premises for the sale of Intoxicating Liquors during any time during which the Justices have ordered them to be closed, shall be subject to a penalty not exceeding one hundred dollars; and it shall be lawful for any person, acting by order of any such Justices or Magistrate, to use such force as may be necessary for the purpose of closing such premises.

CHAPTER XV.

MAGISTERIAL ENQUIRIES.

Sections	
1.—Office of Coroner abolished.	4.—Powers of Magistrates in such enquiries.
2.—Reasons for its abolition.	5.—Fees and expenses.
3.—How enquiries into sudden deaths should be conducted; importance of Magistrate's duties.	6.—Enquiries respecting Fires.
	7.—Powers of Justices.

1. The Local Act 38 Vic., Cap. 8, Sec. 1, abolished the office of Coroner and did away with Coroners' Juries; and in the second section it is provided that in place of a Coroner's Inquest, an enquiry respecting the death shall be held by a Stipendiary Magistrate (*a*), who for that purpose has all the powers of a Coroner.

2. The Coroner's Inquest was only a preliminary enquiry, and for the purposes of investigating into crime, it was found a cumbersome, expensive and unsatisfactory machinery. In many instances, after all the investigation had gone on before the Coroner's Jury, the Depositions had to be taken over again before a Magistrate; it was, therefore, very wisely abolished. It was a very ancient institution, and in its day had been of good service, but for the detection of crime, a Magisterial enquiry, conducted, when *necessary*, with secrecy, and with promptitude, is found much more efficient and economical.

(*a*) The Magistrate could only investigate where there was some criminal charge. The Coroner could hold an inquest in all the cases mentioned in the 4th section, even where there was not the smallest suspicion of crime. It is in the interest of society that every sudden death should be investigated; in the majority of instances the causes of death is clear, and then the enquiry will be a mere matter of form; but sometimes there may be suspicious circumstances, and in those cases the Justice should use every precaution not to let the suspected or guilty party escape. When the enquiry shapes itself into a criminal charge, the Magistrate will proceed to take the depositions as for an indictable offence, as directed in Chapters 8 & 9.

3. Enquiries into sudden deaths are amongst the most difficult and responsible duties a Magistrate has to perform, they are also nearly always of an unpleasant nature. The investigating Magistrate should in all cases see the body of the deceased; it is not absolutely necessary that he should hold his enquiry as the Coroner was bound to do, "*in view of the body of —— deceased, then and there lying dead;*" but it is advisable in all cases that he should see the body, and in all cases he should have the body identified. Sometimes these enquiries, even when they do not involve a criminal charge, are of a very important public nature; they may, as the *Tigress* enquiry, or the recent *Thunderer* enquiry in England did, involve the question respecting the safety of boilers, sometimes, as in the *Mayaguezana* enquiry, questions of seamanship and the duties of pilots, questions as to the proper working of mines, and a variety of other questions may be involved. In all such cases the Magistrate is expected to conduct the enquiry with intelligence and discretion, and above everything to act independently, "*without fear, favor or affection*" towards any one.

4. "That, in all cases of persons slain, drowned, suddenly dead, *felo de se*, or dead in prison, or in cases where the Medical Attendant on any deceased person shall refuse to certify that such deceased person died from natural causes, an enquiry respecting the death of such person shall be held by a Stipendiary Magistrate; and for that purpose, in addition to all other powers possessed by him as such Stipendiary Magistrate, he shall have and exercise all the powers, excepting the power of summoning Juries, which now is or may hereafter be vested in a Coroner under the law of England; and the proceedings in such enquiry, and all depositions connected therewith, shall be transmitted to the Attorney or Solicitor General for such further proceedings as may be required by law." (*a*). 38 Vic., c. 8, sec. 2.

These powers include authority to summon and compel by warrant the attendance of all necessary witnesses and the production of all papers, &c. To enter all places where the dead bodies may be, and also, when *necessary*, to disinter the body.

(*a*) It is nearly always advisable for the Magistrate in forwarding the depositions to write to the Attorney or Solicitor General fully on the subject.

5. The following fees shall be allowed and paid on such enquiries, viz. :—

Fee for one medical witness	$5 00
Every necessary post mortem examination...	5 00
Every necessary witness (each day's attendance)	0 75

And reasonable expenses actually incurred and authenticated by proper accounts and vouchers. The Government shall defray any further reasonable and necessary charge that may be incurred in special cases. (*a*). Idem. Sec. 3.

6. As the power of a Magistrate to hold an enquiry depends upon a charge being made that some person has either committed or is suspected to have committed some offence, it was deemed advisable to give Justices the power to hold an investigation into the causes or origin of all fires; the necessity for this power arises from the fact that arson is essentially a secret crime, nearly always very difficult to detect and always very difficult to prove. On the grounds of public safety, therefore, this extra power has been conferred on Stipendiary Magistrates and Justices by Sec. 9, Consol. Stat. Cap. 13, as follows :—

7. Whenever any building or property shall be injured or destroyed by fire, the Stipendiary Magistrate or Justice for the District in which such fire shall occur, or such Justice as the Governor in Council may appoint therefor, shall make such investigation to ascertain the origin or cause of the fire; and such Magistrate or Justice may enforce the attendance of such persons to give evidence before him as he may require, by summons or warrant, and examine them under oath, and the proceedings and all depositions connected therewith, shall be returned to the Attorney General for such further proceedings as may be prescribed by law. (*b*)

(*a*) All the vouchers should be certified by the Magistrate holding the enquiry; he should not request the Doctor to hold a post mortem examination unless there is an absolute necessity for it, and some important information to be gained by it. The Magistrate gives the authority to hold the post mortem.

(*b*) Should the investigation prove a *prima facie* case against any person for arson, the investigating Magistrate should proceed as for an indictable offence in the manner prescribed in Chapters 8 & 9, taking care always to acquaint the Attorney General with his proceedings promptly.

CHAPTER XVI.

INTOXICATING LIQUORS.

SECTIONS

1.—Effect and object of the Act.—Construction.
2.—Penalty for sale without License.
3.—Licenses may be granted by Magistrates; Proviso on refusal.
4.—Licenses Wholesale and Retail.
5.—Licenses—form of; Proviso; Licensing days.
6.—Fees on Licenses.
7.—Payment of License; Bonds.
8.—Occupier to be Licensed.
9.—Registry by Clerk of Peace or Magistrate; Licensed Persons—list of.
10.—Wholesale License—less than 2 gallons not to be sold; Not to be drunk on premises; penalty.
11.—Name of Licensed party, &c., to be painted over outer door; penalty for non-compliance.
12.—Penalty for exhibiting signs, &c., by Persons not Licensed.
13.—Penalty for adulteration.
14.—Penalty for possession of adulterations.
15.—Penalty in case of Persons under 16.
16.—Habitual drunkards—Magistrate may prohibit sale to; Penalty for supplying after notice.
17.—Sale or pawn of Goods for Liquor; Restitution and Penalty.
18.—Recovery or set-off for Liquor; Securities for, void.
19.—Close of Licensed houses; Penalty for non-compliance.

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20.—Penalty for presence on premises after hours.
21.—Penalty for games, disorderly conduct, sale to drunken Persons, &c.
22.—Harboring Constables—penalty for.
23.—Powers of Person licensed; penalty for refusal to quit.
24.—Power of Justices to close houses; Penalty.
25.—Constables to visit Unlicensed houses; Penalty for interruption.
26.—Penalty for offences against Act not specified.
27.—License may be granted for short periods.
28.—Prosecutions to be commenced within 6 months; Triable under 11 and 12 Vic., Cap. 43, Imprisonment.
29.—Nature of proof required.
30.—Use of bottles, &c., or Persons drinking or drunk, sufficient *prima facie* case.
31.—Burden of proof; Judgment may go notwithstanding variance; Proviso for surprise.
32.—Act of wife, &c., presumptively act of husband, &c.
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34.—Conviction not to be quashed for want of form.
35.—Licenses may be forfeited.
36.—Liability of married women, &c.

SECTIONS
37.—Appropriation of fines.
38.—Repeal.
39.—License Act, 1875.
40.—Rules made by Magistrates, St. John's.
41.—Form of Wholesale License.
42.—Form of Retail License.
43.—Form of Bond—Retail License.
44.—Form of Complaint.
45.—Summons.
46.—Conviction.
47.—Notice of Appeal.
48.—Bond in Appeal.

1. The Act 38th Victoria, cap. 6, cited in all proceedings as "License Act, 1875," consolidates the law on the subject of granting licenses for the sale of intoxicating liquors, repeals cap. 50, Consol. Statutes, "Of Licenses for the sale of Intoxicating Liquors," and makes great amendments in the old law. One most important amendment is as regards the proof required to convict a person of selling without license; the old law not only required proof of consumption but also evidence that money actually passed; the whole burthen of proof was thus thrown on the prosecutor, and the effect was, that except in very flagrant cases, the guilty escaped. The new law (sec. 30) provides that the possession of bottles, &c., usually employed for holding liquor recently used, or the presence of persons drinking or drunk, shall be *prima facie* evidence of selling without a license. Sec. 29. There is no necessity for proof of money having passed or that liquor was actually consumed; all that is required is that there shall be evidence to satisfy the Magistrate that a transaction in the nature of a sale took place. This great change in the law would, at first sight, appear to be very harsh and unfair, but it must be borne in mind that where liquor is sold without license it is always sold in secret and in what are commonly known as "shebeen" shops; that many tricks and devices are adopted to evade the law, and that if the license law is not to be a mockery, exclusive and peculiar powers must be given to Magistrates and Constables, in order that they may deal effectively with unlicensed houses, which produce very great mischief. The present law treats the sale of liquors as a noxious traffic, that for the sake of public morality must be kept within the strictest bounds. The main objects of the Act are

two-fold ; *first*, to regulate the sale in licensed houses ; *secondly*, to prevent, by all means, unlicensed persons from selling. Even with the extensive powers given by this Act, the shebeen shop still flourishes. The carrying out of this law justly, vigorously and impartially, is one of the Magistrate's most important duties, and one in which he renders the most valuable services to the moral welfare of the community in which he resides. The first section of the Act provides that,—

"Intoxicating liquors, in this Act and the Schedules thereto, shall be construed to signify ale, wines, malt and spirituous liquors of every kind."

2. No intoxicating liquor shall be sold unless by license, under a penalty of not less than ten dollars, nor more than one hundred dollars, for every offence. (*a*)

3. Licenses may be granted by the Stipendiary Magistrates to such Persons resident within their jurisdiction as shall be approved of by them. Provided, that where a license is refused by such Magistrates, the Governor in Council, on good and sufficient reasons being shewn, may order the said license to be granted. The said Magistrates may make rules respecting the application for and the terms and modes of granting licenses in accordance with the provisions of this Act, subject to the approval of the Governor in Council. (*b*)

4. Licenses shall be of two kinds, wholesale licenses and retail licenses.

5. All licenses shall be in the forms in Schedule A, and shall be held on the terms and conditions in such forms mentioned, and shall continue for one year from the date thereof. Provided, that whenever, by rules made under the third section of this Act, the Magistrate shall fix a certain day or days in the year for the granting of license, the licensing Magistrate may, in the case of any licenses existing at the time of the making of such rules and expiring before any of the said licensing days, grant to the holder thereof a license, to continue and be in force

(*a*) The summons for selling without a license should state a breach of this section.

(*b*) A copy of the rules adopted in St. John's, and which are found to work well, is given in sec. 40.

till the next regular licensing day, at a charge in proportion to the annual charge for such license, and subject in all other respects to the provisions of this Act in relation to annual licenses.

6. The charge for such licenses shall be as follows:—For the wholesale license, one hundred dollars; for wholesale license to sell malt liquors only, fifty dollars; retail licenses not more than seventy dollars nor less than ten dollars. The amount shall be in the discretion of the Magistrates granting such retail licenses, and be regulated by them according to the situation of the licensed premises and their annual value for the purposes of such licenses. (*a*)

7. Every person to whom a retail license shall be granted, shall, before receiving the same, pay the license money for one year, and all persons applying for retail licenses shall, before obtaining such licenses, enter into a bond with two approved sureties in the form in Schedule B, which bond shall be prepared by the Clerk of the Peace, or by the Magistrate where there shall be no Clerk of the Peace, and when executed shall be filed by the said Clerk of the Peace or Magistrate.

8. No retail license shall be granted to any one but the occupier of the premises on which the said intoxicating liquors shall be sold, exposed or offered for sale; but in case of the death or insolvency of the person licensed, a Magistrate may make such order thereon as shall suit the circumstances of such case. (*b*)

9. The Clerk of the Peace in every District, and where there is no Clerk of the Peace, the Magistrate, shall register in a book a list of licenses with the dates thereof, the names, additions, and residences of the parties licensed, and a memorandum of the houses or shops for which the licenses are granted, and of the bonds taken, and the license money, and fines, and penal-

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(*a*) The amount should be regulated by the business done or likely to be done in selling liquor.

(*b*) In carrying out this section, Magistrates will be guided by the same consideration, as to the fitness and respectability of the person, as in granting a license.

ties paid: and shall make returns embracing the foregoing particulars, at the end of each quarter, to the Receiver General, and pay to him the amounts collected, less the commission to be allowed on the license money, under a penalty of not exceeding one hundred dollars; and the list of persons so licensed, with their places of residence, shall be published half-yearly in the *Royal Gazette*.

10. No person, holding a wholesale license, shall sell, barter, or exchange, less than two gallons of intoxicating liquors at any one time, and no part of such intoxicating liquors shall be drunk on the premises where the same shall have been sold; and any person who shall violate the conditions of his said wholesale license, or the provisions of this Act, in respect of such wholesale license, shall forfeit and pay a sum not exceeding one hundred dollars, with the costs, to be recovered and appropriated as hereinafter mentioned.

11. Every person holding a retail license shall, within ten days after obtaining the same, cause to be painted in letters, publicly visible and legible, upon a board to be placed over the outer door of the house or premises in which the said intoxicating liquors are sold by retail, the christian and surname of the person mentioned in such license, at full length, together with the words "Licensed to sell Ale, Wines, and Spirituous Liquors;" and such person shall preserve and keep up such name and words so painted, as aforesaid, during all the time that such person shall continue so licensed; and every person in any respect making default herein, shall forfeit and pay for every offence a sum not exceeding twenty-five dollars, and the neglect to do so, for every ten days after every conviction, shall be deemed a fresh offence.

12. If any person without a retail license shall keep up or exhibit, in, about, or near any house, outhouse or building, any sign-board or sign containing any words, or shall show any emblem or sign used or intended or calculated to intimate that any intoxicating liquors are for sale, barter, or traffic therein, or on the premises, the owner or occupier thereof knowingly or wilfully offending herein, shall be subject to a fine not exceeding fifty dollars.

13. Every person who mixes, or causes to be mixed, with any intoxicating liquor, sold or exposed for sale by him, any deleterious or noxious ingredient, and every person who knowingly sells, keeps or exposes for sale any intoxicating liquor mixed with any such deleterious or noxious ingredient, shall, on conviction for a first offence under this section, be subject to a fine not exceeding eighty dollars, or imprisonment not exceeding thirty days, with or without hard labor, and the forfeiture of all adulterated liquor in his possession and of his license, and such person shall thereafter be incapable of again holding a license.

14. Any person having possession of any adulterated liquors or deleterious ingredient, unless he can account for the possession of the same to the satisfaction of the Justices, shall be deemed knowingly to have exposed the same for sale, and the Inspector of Police, or other Policeman, authorized in writing by a Stipendiary Magistrate, may procure samples of liquor on payment or tender of their value, and have the same analyzed.

15. Any holder of a retail license who shall permit any intoxicating liquors to be drunk on his premises by any person apparently under the age of sixteen years, shall be liable to a penalty not exceeding fifty dollars. (*a*)

16. When it shall be proved on oath, to the satisfaction of any Stipendiary Magistrate, that any person is an habitual drunkard or is injuring his health by excessive drinking, or neglecting his family, it shall be lawful for the said Magistrate to cause a written or printed notice to be given to all Licensed publicans within his jurisdiction, prohibiting all such persons from supplying such habitual drunkard with any intoxicating liquor

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(*a*) The burthen of proof that a child apparently under sixteen is really above that age will lie on the defendant. *Stone* 228.

Note to Sec. 16.—A notice under this section may be given in the following form :

Northern District, } NEWFOUNDLAND.
Island Cove. }

To Licensed Publican, at in the said District.

Whereas it has been proved on oath to my satisfaction, that of Fisherman, is an habitual drunkard (*or is injuring his health by excessive*

for any term not exceeding two years; and if any person shall, after the receipt of such notice, supply such habitual drunkard with any intoxicating liquor, the person who so supplies shall be liable to a penalty not exceeding one hundred dollars or imprisonment for a period not exceeding thirty days.

17. If any person holding a license shall purchase from any person any wearing apparel, tools, implements of trade or husbandry, fishing gear, household goods, or furniture, made up, either by way of sale or barter, directly or indirectly, for intoxicating Liquor, (*a*) or shall receive from any person any goods in pawn, any Stipendiary Magistrate, on sufficient proof on oath being made before him of the facts, may issue his warrant for the restitution of all such property, and for the payment of costs: and in default thereof, the warrant shall contain directions for levy and sale of the offender's goods for the amount of such property so pawned, sold or bartered, and the offender shall also be liable to a penalty not exceeding ten dollars.

18. No person shall recover, or be allowed to set off, any charge for intoxicating liquor in any quantity less than one gallon delivered at one and the same time; and all specialities, bills, notes or agreements, given in whole or in part to secure such charge, shall be void as respects such charges.

19. All licensed houses shall be absolutely closed, and no business whatever done therein, and no intoxicating liquor delivered or consumed, between the hours of ten, p. m., and six,

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drinking, or is neglecting his family, as the case may be.) I therefore prohibit you from supplying said with any intoxicating liquor for the term of under a penalty not exceeding $100, or imprisonment not exceeding 30 days.

June , 187 .

T. WILLS,
Stipendiary Magistrate for the said District.

On the trial of any person who after this notice sells to the habitual drunkard, the notice and service should be proved, and if the accused is convicted, the fine should be heavy unless there are mitigating circumstances.

(*a*) Requiring the purchaser to give up all the clothing, and lose payment for the liquor sold, will, in general, be sufficient punishment, only in bad cases a fine should be inflicted.

a. m., from the first day of April to the thirty-first day of December, both inclusive; and between the hours of nine p. m., and seven, a. m., from the first day of January to the thirty-first day of March, both inclusive. No intoxicating liquor whatever shall be sold, delivered, or consumed, in any licensed premises on Sunday, Christmas Day, or Good Friday, under a penalty not exceeding forty dollars for the first offence, and not exceeding eighty dollars for any subsequent offence.

20. If, during any period in which any licensed premises are required to be closed, under the provisions of this Act, any person is found on such premises, he shall, unless he satisfies the Court or Justice that he was an inmate, servant or lodger, in such premises, or that his presence there was not in contravention of this Act, be subject to a fine not exceeding ten dollars.

21. If any person, licensed under this Act, permits drunkenness, or any violent, quarrelsome, riotous, or disorderly conduct, to take place on his premises, or sells or delivers intoxicating liquor to any drunken person, or permits any drunken person to consume any intoxicating liquor on his premises (*a*), or permits and suffers persons of notoriously bad character to assemble or meet on his premises, or suffers any gaming or any unlawful game to be carried on in his premises (*b*), he shall be subject to a penalty not exceeding forty dollars.

22. If any licensed person knowingly harbors, or knowingly suffers to remain on his premises, any constable during any part of the time appointed for such constable to be on duty, unless for the purpose of keeping or restoring order, or in execution of his duties, or supplies any liquor or refreshment whatever, by way of gift or sale, to any constable on duty, unless by authority of some superior officer of such constable, or bribes, or attempts to bribe any constable, he shall be subject to a penalty not

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(*a*) Selling liquor to a drunken person or permitting him to consume liquor on the premises are offences which, when proved, should be punished severely.

(*b*) Playing cards for money or moneys worth is gaming.

exceeding eighty dollars. (*It is an offence to allow a constable to remain on the premises though no liquor is supplied to him.*)

23. Any licensed person may refuse to admit to, and may turn out of, the premises in respect of which his license is granted, any person who is drunken, violent, quarrelsome, or disorderly, and any person whose presence on his premises would subject him to a penalty under this Act; and any such person who, upon being requested, in pursuance of this section, by such licensed person, or his agent, or servant, or any constable, to quit such premises, refuses or fails to do so, shall be subject to a penalty not exceeding twenty dollars—and all constables are required, on demand of such licensed person, his agent, or servant, to expel or assist in expelling every such person from such premises, and may use such force as may be required for that purpose.

24. Closing licensed houses at elections, &c. This section will be found at p. 186.

25. All constables or policemen, within their respective districts, may, at such times as they may think fit, visit all unlicensed houses where there shall be reasonable grounds to suspect intoxicating liquors are sold, also the shops and public rooms of persons holding licenses, to see that the several provisions of this Act are complied with; and they are hereby required and commanded to prosecute all offenders under this Act, under pain of being dismissed from their respective offices, or of being fined a sum not exceeding fifty dollars; and in case any person or persons, keeping licensed or unlicensed public houses or shops, or public rooms, or any persons being in or about such shops, rooms, licensed or unlicensed public houses, at the time any constable or policeman may be visiting the same, shall interrupt or assault such constable while in the execution of the provisions of this Act, or shall refuse or fail to admit such constable demanding to enter in pursuance of this section into any premises or place occupied by or under control of such licensed or unlicensed person, or who, having admitted such constable, refuses or fails to allow him to take an account of any intoxicating liquor found therein, or to furnish him with

such light or assistance as he may require, shall be subject to a penalty not exceeding forty dollars.

26. If any person, holding a retail license, shall be guilty of a violation of any of the provisions of this Act, or of the terms or conditions of his license for which a penalty or punishment is not herein provided, he shall be liable to a penalty, for every offence, not exceeding twenty-five dollars.

27.—Whenever a Stipendiary Magistrate may deem it expedient, he may grant a retail license to any person to sell intoxicating liquors for a period not exceeding six consecutive days, and upon such terms as regards payment and hours of closing as the said Magistrate may specify in the said license. The tent, booth, room, or other place where such intoxicating liquor shall be sold under such license, shall be deemed to be a licensed premises, within the meaning of this Act, and the person so temporarily licensed, shall be subject in all respects, except as to the amount of license fee and hours of closing, to the provisions of this Act.

Legal Procedure.

28. All prosecutions under this Act for penalties, fines or forfeitures, shall be commenced within six calendar months after the same shall have been incurred, and shall and may be recovered upon view by a Justice of the Peace (*a*), or upon the complaint in writing of any person who may inform and sue for the same (*b*); and all such cases shall be tried according to the practice of Justices in summary cases under the Imperial Act 11 and 12 Victoria, Chapter 43, except as provided for in this Act, with the same powers of adjudicating in cases of default, and of compelling the attendance of witnesses, and also a power of distress and sale of the goods and chattels of all persons convicted under this Act; and if such penalties are not paid immediately, such persons so convicted may be committed by

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(*a*) See p. 150, as to mode of proceeding for *conviction on view*.

(*b*) The complaint need not be on oath but must be in *writing*; usually the policeman is the informer and prosecutor.

the convicting Justice to the nearest gaol for a period not exceeding thirty days. (*a*)

29. In proving (*b*) the sale or consumption of intoxicating liquor for the purpose of any proceeding relative to any offence under this Act, it shall not be necessary to show that any money actually passed, or any intoxicating liquor was actually consumed, if the court, hearing the case, be satisfied that a transaction in the nature of a sale actually took place, or that any consumption of intoxicating liquor was about to take place; and proof of consumption, or intended consumption, of intoxicating liquor on premises to which a license under this Act is attached, by some person other than the occupier of, or a servant in, such premises, shall be evidence that such liquor was sold to the person consuming, or being about to consume, or carrying away the same, by or on behalf of the holder of such license.

30. Upon the trial (*c*) of any person for selling intoxicating liquor without a license, if it shall be proved that bottles, or decanters, or tumblers, or glasses, or other vessels which are usually employed for holding and using intoxicating liquor, were found in and upon the premises of such accused person, and had been recently used, or that persons were found drinking or drunk on the said premises, this shall be deemed sufficient *prima facie* evidence of violation of the second section of this

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(*a*) All the powers given to Justices by 11 & 12 Vic., C. 43, (see *Summary Jurisdiction*), may be exercised in carrying out this Act. On the non-payment of the fine, a distress warrant may issue, when under $24 the S. P. applies and imprisonment may follow non-payment without a distress warrant, and when the judgment is that the fine be paid immediately, and it is not paid immediately, then the defendant may be committed to jail without issuing a distress warrant—this latter portion of the section giving this express power. The proportion of imprisonment should correspond with the amount of the fine. In St. John's we generally make the dollars and days correspond, for instance, fine, $10; imprisonment, 10 days. Persons should never be imprisoned under this Act, unless there is no other means of punishing them, and the case is a flagrant one.

(*b*) To justify a conviction, there must be sufficient evidence to satisfy the Justice's mind that there was a violation of the License Law.

(*c*) The mode of conducting the case will be as stated in Note *a*, 148.

Act, and to cause such accused person to account for the purposes for which such articles were on his premises, and to require him to establish his innocence by proof. (*The defendant may give evidence if he chooses; he cannot be compelled to do so.*)

31. In any proceeding instituted for a breach of the provisions of this Act, the defendant, if claiming any exemption, exception, proviso, excuse or qualification, may set up the same as a defence, in which case the burden of proof shall be thrown on such defendant, and it shall not be necessary in the summons to specify the particular kind of liquor sold, nor to whom, nor the time when sold; but it shall be sufficient in the summons to charge the party accused with the breach of some section of this Act, and no judgment shall be withheld on account of variance between proof and summons, if it appears to the satisfaction of the Magistrate or Court that the defendant was aware of the real cause of complaint; but if the defendant make affidavit that he has been taken by surprise, the Magistrate or Court may grant him further time to make a full defence on the merits, and no judgment shall be set aside for any variance, or from any formal objection.

32. Any sale of intoxicating liquor made on the premises of any person by the wife, child or servant of such person, shall be considered presumptively as the act of the husband, parent, or master, and shall be punished in the same way as if such sale had been made by such husband, parent, or master, in person.

33. All persons convicted under this Act, who shall think themselves aggrieved by such conviction, may appeal (*a*) against the same to the next Court of Quarter Sessions of the Peace holden in or nearest to the place where such conviction shall have been made: Provided that such person shall give, to the convicting Justice, notice in writing of his intention to appeal, and of the cause and matter thereof, within five days next after such conviction; and shall also, within such five days, enter

(*a*) See p. 130, as to how such appeals should be conducted.

into recognizance, with two approved sureties, before the Justice so convicting, conditional to appear at such session and try such appeal, and to abide the judgment of the Court thereon, and to pay such costs as by the Court shall be awarded; and the judgment of the said Court shall be final and binding to all intents and purposes.

84. No conviction or order shall be quashed for want of form, and no warrant of commitment shall be held void by reason of any defect therein, provided that there is a valid conviction to maintain such warrant, and it is alleged in the warrant that the party has been convicted. (*a*)

85. In all cases where a person is convicted of a breach of the provisions of this Act, the Justice before whom such conviction is had, may, in addition to or in substitution for any penalty, declare the license of every such person so convicted to be forfeited. (*This valuable provision should seldom be put in force for a first offence. The defendant should be warned that he will lose his license for a second conviction.*)

86. Married women and servants concerned in any breach of the provisions of this Act, shall be liable for the penalty thereto attaching, as if they were unmarried women or principals, but the husband or master of the person so offending shall not be liable to be also sued for the same offence; but in the case of married women, distress may issue against the property of the husband.

87. Every fine and penalty, recoverable under this Act, shall be appropriated in the following manner: one-half to the Informer, and the other half to the Receiver General for the use of the Colony.

88. The Fiftieth Chapter of Title Fourteen, of the Consolidated Statutes, entitled "Of Licenses for the Sale of Intoxicating Liquors," is hereby repealed.

89. This Act may be cited for all purposes as the "License Act, 1875."

(*a*) A case may be stated for the opinion of the Supreme Court. See Chap. 5, p. 25.

40. RULES *made by the Stipendiary Magistrates for the Central District, respecting the applications for, and the times and modes of granting, Licenses for the sale of Intoxicating Liquor, under the provisions of the Third Section of the "License Act*, 1875."

1.—Licenses shall be granted only during the first seven days in April and October, in each year, of which due notice shall be given in the *Royal Gazette* and one other local newspaper, and all the said licenses shall be made to terminate on the first days of May and November in each year.

2.—The Clerk of the Peace in the Central District, shall, on or before the 15th day of March and the 15th day of September in each year, publish in the *Royal Gazette* a list of all licenses which will expire on the next first day of May or November.

3.—All applications for retail licenses shall be in writing, and in such application the name, occupation and residence of the applicant shall be stated, also a particular description of the premises for which a license is applied for, and the names of the persons who are proposed as his securities.

4.—Applicants for new retail licenses shall make their applications to the Clerk of the Peace for the Central District, prior to the fifteenth day of September and the fifteenth day of March in each year; and the list of such applicants shall be affixed to the Court House door, for two weeks prior to the first days of October and April in each year.

5.—All parties who have any objections to make against the granting of any retail license may attend before Magistrates and state their objections on the said first weeks in April and October.

St. John's, May 10, 1875.

FORMS.

SCHEDULE A.

41. FORM OF WHOLESALE LICENSE.—

NEWFOUNDLAND,
District, S. S.

License is hereby granted to of , in the District of , to sell intoxicating liquors or malt liquors, as the case may be, in quantities

not less than two gallons, but no part thereof shall be consumed on the premises. This license to remain in force until the day of , A.D. 18 , and to be held on the terms and conditions contained in the License Act, 1875, or other Acts which shall be in force during the continuance of this license, respecting such wholesale licenses for the sale of ale, wines, and spirituous or malt liquors.

Given under our hands (or my hand), this day of , A. D. 18 .

A. B., Stipendiary Magistrate,
C. D., Stipendiary Magistrate,
for the District.

Received from the said the sum of dollars, being the amount due for such wholesale license for one year, from the day of A. D. 18 , to day of , A. D. 18 .

Dated day of , A. D. 18 .

E. F. (Clerk of the Peace, or J. P.)

42. FORM OF RETAIL LICENSE.—

NEWFOUNDLAND, }
District. }

By virtue of the powers vested in us (or in me), under the License Act, 1875, we, two (or I, one) of Her Majesty's Stipendiary Magistrates for the said District, do hereby license of , in the said District, to sell by retail in the premises now occupied by the said , situate at (here describe particularly the situation of the premises), and not elsewhere, ale, wines, spirituous and malt liquors, for the period of one year from the date thereof; subject, in all respects, to the provisions of the said License Act, 1875, or any License Act to be passed during the continuance of this License, and all rules and regulations made thereunder.

Given under our hands (or my hand), at , in the said District, this day of , A. D. 18 .

A. B., Stipendiary Magistrate,
for District.
C. D., Stipendiary Magistrate,
for District.

Received from the said the sum of dollars, being the license money for the above retail license for one year from this date.

E. F., Clerk of the Peace,
for District.
or J. P., for District.

SCHEDULE B.

43. BOND.

NEWFOUNDLAND.

Know all men by these presents, that we are held and firmly bound unto our Sovereign Lady Queen Victoria, Her Heirs and Successors, in the sum of two hundred dollars, for which payment we jointly and severally bind ourselves, our executors and administrators, firmly by these presents. In witness whereof we have hereunto set our hands and seals, the day of , Anno Domini eighteen hundred and seventy- . Whereas, the above bounden hath applied for and obtained a license for the sale by retail of ale, wines, and spirituous liquors, in the house kept by him, situate . Now the condition of this obligation is such, that if the said shall, during all the time that he may hold any retail license to be granted to him, pay all fines and all penalties which he may be condemned to pay for any offence against the law relative to the granting of licenses for the sale of wines, spirituous or malt liquors, and also shall at all times well and truly observe and comply with all and singular the provisions of any Act or Acts of the Legislature, which now are, or which may hereafter be, passed during the continuance of the license as aforesaid granted to the said for regulating the sale by retail of ale, wines, and spirituous liquors aforesaid; and shall also well and truly observe all rules and regulations made, or to be made, by the Magistrates under the provisions of the said Act or Acts, and shall further comply with the several conditions contained in the certificate of license granted to the said , then and in such case the foregoing obligation shall be void, otherwise to remain in full force and effect.

Signed, sealed and delivered in presence of }

44. FORM OF COMPLAINT.—

——— District, } NEWFOUNDLAND.
—— to wit. }

Be it remembered that on this day of , 187 , in the District, came before me, the undersigned Stipendiary Magistrate for the said District, and informed me that on the day of , 187 , at

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Note.—The constable should always furnish full information to the Magistrate, or Clerk of the Peace, respecting the case before the summons is issued, so that the Magistrate may judge whether the case is a fit one for prosecution. It is not advisable to proceed with cases in which there is *no chance* of a conviction.

, in the District, a breach of the section of the License Act, 1875, was committed by .

T. JONES, Constable.

Taken and acknowledged before me, on the day and year and at the place first above written.

T. WILLS, Stipendiary Magistrate.

45. FORM OF SUMMONS.—

District, , to wit. } NEWFOUNDLAND.

To , Greeting:

Upon the complaint of you are hereby required to appear in your proper person before the undersigned, one of Her Majesty's Stipendiary Justices of the Peace for the said District, at aforesaid, on the day of by of the clock in the forenoon of the same day, for that you the said on the day of did commit a breach of the section of the "License Act, 1875," by which you have made yourself liable to a penalty not exceeding dollars.

Dated this day of .

——— Stipendiary Magistrate.

46. FORM OF CONVICTION.—

——— District, to wit. } NEWFOUNDLAND.

Be it remembered that on the day of , in the year , at in the said District, A. B., hereafter called the defendant, is convicted before the undersigned [*stipendiary*] Justice of the Peace for the said District, for that he the said defendant at on the day of 187 , did commit a breach of the section of the License Act, 1875; and I do adjudge the said defendant for his said offence to pay the sum of dollars, to be paid and applied according to law; and also the sum of dollars costs, and if the said sums be not paid forthwith, I adjudge the said defendant to be imprisoned in the gaol at for the space of days, unless the said sums shall be sooner paid. (*If the Magistrate decides to levy the fine by distress, follow the latter part of Form No.* 11, *p.* 165, *from the first asterisk.*) (*Commitment may readily be framed from the form given in the Appendix of Forms, under Summary Jurisdiction.*)

Given under my hand and seal, &c.

47. FORM OF NOTICE OF APPEAL.—

To T. W., Esquire, Stipendiary Justice of the Peace at .

Take notice, that I, of , do intend to enter and prosecute an appeal at the next General Quarter Sessions of the Peace, to be holden at against a certain conviction made by you the said Justice, bearing date the day of whereby I the said was convicted of having

on the day of at committed a breach of the section of the License Act, 1875, and for which said breach you adjudged that I should pay a penalty of dollars, and that if not paid immediately, I should be imprisoned at for the period of days (*this must be stated as in conviction*), and further take notice that the grounds of my appeal are (*here state all the grounds of appeal.*)

Dated at this day of 187 .

(Signed) ——

48. FORM OF BOND IN APPEAL.—

——— District, } NEWFOUNDLAND.
——, to wit. }

Be it remembered that on this day of , Anno Domini eighteen hundred and seventy , A. B., of , licensed dealer, C. D., also of , trader, and E. F. of , personally came before me, the undersigned Stipendiary Justice for the said District, and acknowledged themselves to owe to our Sovereign Lady the Queen, the following sums, that is to say, A. B. the sum of dollars and (*the two sureties*) each the sum of dollars, to be made and levied of their goods and chattels, lands and tenements, respectively, to the use of our Lady the Queen, her heirs and successors, if the said A. B. shall make default in the condition underwritten.

The condition of the above recognizance is such that if the said A. B. shall appear at the next Court of General Sessions of the Peace to be holden at , and there enter and prosecute an appeal against a certain conviction, bearing date the day of , and made by me the said Justice, whereby he was convicted of having on the day of committed a breach of the section of the License Act, 1875; and further if the said shall abide by the judgment of the Court thereon, and pay such costs as by the Court shall be awarded, then this recognizance shall be void, else to remain in full force and virtue.

CHAPTER XVII.

BASTARDY.

SECTIONS

1.—Introductory observations.
2.—Object of Bastardy Law.
3.—Paternity, real question.
4.—Widows and Married Women.
5.—Defence ; Immorality of Woman.
6.—Reconciling Parties.
7.—Imprisonment.
8.—Twins.
9.—Time of gestation.
10.—Consol. Stat., Cap. 112, proceedings on Complaint.
11.—Consol. Stat., Cap. 112, provisions of Cap. 108 to apply.
12.—Consol. Stat., Cap. 112, party charged relieved by payment, $100.
13.—Consol. Stat., Cap. 112, Mothers refusing to support child.
14.—Consol. Stat., Cap. 112, continued refusal.
15.—Consol. Stat., Cap. 112, appeal.
16.—Consol. Stat., Cap. 112, punishment for false charge.

SECTIONS

17.—Consol. Stat., Cap. 112, Commissioners of Poor to control bastards.
18.—Laying the Complaint.
19.—Form of Complaint where child unborn.
20.—Form of Complaint where child born.
21.—Warrant.
22.—Form of Warrant.
23.—Arrest and proceedings thereon.
24.—Form of Bond to appear.
25.—Hearing to be after birth of child.
26.—Witnesses' costs.
27.—Hearing, when paternity not disputed.
28.—Proceedings at hearing, when paternity disputed.
29.—Judgment.
30.—Affiliation Order.
31.—Bond to support child.
32.—Commitment.
33.—Proceedings on Appeal.
34.—Bond to appeal.

1. The local law upon this subject is contained in the 108th and 112th chapters of the Consolidated Statutes, and is given in full in the following pages. As a considerable part of the duty of Magistrates in the Outports consists in dealing with such cases, and as they are generally of a very disagreeable nature, and sometimes very perplexing, I have considered it advisable to enter very fully into this subject, and to state the law and the practice in reference thereto minutely.

2. The object of the law is to prevent the colonial revenue from being burthened with the support of bastard children, when the father can be discovered.

3. Bearing this in mind, the Magistrate must remember that it is the question of *paternity*, and not the question of morality, that he is trying. It is not an offence in *law* to be the father of an illegitimate child, but it is an offence under the 112th chapter of the Consolidated Statutes, to neglect or refuse to support such child.

4. As the words of the chapter are, "any woman charging any person with having gotten her with child;" a widow, therefore, can make the complaint, and so also can a married woman, who at the time of making the complaint, is living apart from her husband. In the case of a married woman, it is essential that the non-access of the husband should be proved; and it is a presumption of law that the child of a married woman is legitimate, but it may be rebutted by evidence disproving the paternity of the husband. That evidence, however, should be very clear and very conclusive. (*a*)

5. In bastardy cases a very common defence is, that the woman making the complaint is a person of immoral character, if not a common prostitute. If the evidence shows that she is a common prostitute, that is, a woman openly lewd and profligate, having common sexual intercourse with men, the complaint should be summarily dismissed; and even if the case shews that she has had illegitimate children before by different fathers, or that she is immodest and loose in her conduct, the evidence should be received with great caution and sifted with the greatest care, and there should be clear evidence of paternity before the child is affiliated. Sometimes there are cases where the woman's conduct is not shewn to have been previously bad, but there is satisfactory evidence that she has had sexual intercourse with one or more men, besides the party charged, about the time that she became pregnant. Such evidence would create

(*a*) Non-access of the husband cannot be proved by the wife. [*R.* v. *Sourton*, 5 *A.* & *E.* 180.]

a doubt as to the paternity of the child, and whenever the evidence raises an honest, substantial doubt in the mind of the Magistrate respecting the paternity, he should dismiss the complaint.

6. The Magistrate may often, by his advice and influence, reconcile the parties, and sometimes, where the woman is respectable and the paternity not disputed, or where the woman is seduced under a promise of marriage, he may induce the man to marry her; sometimes, also, he may induce the parties to settle the matter out of court, and in all cases where he is satisfied that the child will be supported and well cared for, there can be no objection to his doing so; should there, however, be any doubt on his mind respecting the care and safety of the child, he should take security.

7. The imprisonment of the party charged is only intended as a means to compel the putative father to support his child, and should only be resorted to as a last resource, when all other means of getting him to maintain his child have failed.

8. Should there be twins, it is advisable to have a separate complaint and a separate affiliation order for each child, as, should one die, a distinct sum may appear on the face of the order, payable for the other; one complaint and order, however, would suffice.

9. With regard to the time within which the child may be born, the ordinary rule is nine calendar months, in some cases a week earlier and in others a week later; sometimes, however, the period of gestation, in the opinion of many eminent medical men, may be protracted for two, three, or even four weeks, though rarely beyond eight or ten days; and it is also a well known fact that a child may be born alive with the power of being reared and of coming to manhood, at the end of about seven calendar months.

CONSOLIDATED STATUTES, CHAPTER 112, "OF ILLEGITIMATE CHILDREN."

10. Whenever a complaint, on oath, shall be made before any Justice, by any woman charging any person with having gotten her with

child, which child is likely to be born a bastard, and become chargeable to the colony; and whenever a complaint, on oath, shall be made by any person charging any other person with being the father of an illegitimate child, chargeable, or likely to become chargeable, to the colony; such Justice shall issue his warrant, and cause the party charged to be brought before him; and if, upon inquiry, such charge shall be sustained, and it shall not appear that the mother of the child was a common prostitute, such Justice shall make an order affiliating such child upon the party charged, and requiring security, by bond to the stipendiary Commissioner of the Poor at St. John's, and his successors in office, to be given for the support and maintenance of such child until it shall have arrived at the age of ten years, or shall die, or be satisfactorily provided for; and in case such order shall not be forthwith obeyed, such Justice may sentence the party charged to imprisonment in the common gaol, with hard labor, for any period not exceeding six months: Provided that if, after committal, the party charged shall give such security, he shall be forthwith discharged; and where the Justice shall deem it reasonable, in the case of a child not already born, final order upon the charge may be postponed until after the birth of the child, the party charged giving security to abide any order to be made against him. [Sec. 1, Consol. Stat.]

11. The provisions and proceedings mentioned and contained in the second and third sections of chapter 108, Consol. Statutes, shall be applicable and may be put in force and carried out in all cases coming within the operation of the first section of this chapter (*a*). [Sec. 2.]

12. Any person upon whom an order of affiliation shall have been made as aforesaid, may relieve himself from all obligation thereunder by the payment to such Justice, for the Receiver General of the colony, of the sum of one hundred dollars. [Sec. 3.]

13. Every mother of an illegitimate child who, having the ability to labor, or any means of supporting it, shall neglect or refuse to support and maintain such child, or shall abandon, desert, or leave it in any place, shall, upon conviction, in a summary manner, before any Justice, be subject and liable, and may be sentenced, to imprisonment, with or without hard labor, in the common gaol, for any period not exceeding six months; and such Justice may, upon complaint on oath being made before him of the commission, by any woman, of such offence, issue his warrant for her apprehension, in order to a conviction for the same [Sec. 4.]

(*a*) The meaning and effect of this Section, and also forms for carrying it out, are given in the Chapter on "Deserted Wives and Children;" the forms can easily be adapted to meet bastardy cases.

14. The continued neglect or refusal to support and maintain such child by its mother, for any subsequent month after a first conviction for such offence, shall be held and deemed to be a new offence, and shall be dealt with and punished in the manner hereinbefore provided with respect to such first offence. [Sec. 5.]

15. Any person charged by any woman or other person with being the father of an illegitimate child, and being convicted thereof by a Justice, may, upon giving security to abide the final determination of the case and to pay the costs thereof, if finally convicted, appeal from the order of affiliation to the Court of General Quarter Sessions for the District, before whom the matter in issue shall be determined by the jury in attendance for the trial of other matters: Provided also, that if, upon such trial, it be satisfactorily proven that the mother of the child was a common prostitute, and the jury shall find such fact, such finding shall be equivalent to a finding of not guilty on the main charge. [Sec. 6.]

16. If any mother of an illegitimate child or any other person shall falsely and fraudulently charge any person with being the father of such child, such mother or other person, upon conviction of such offence in a summary manner before any Stipendiary Justice, shall be sentenced to imprisonment in the common gaol, with hard labor, for any period not exceeding six months (*a*). [Sec. 7.]

17. The Stipendiary Commissioner of the Poor shall have the control and management of the illegitimate children supported by the colony, and apprentice them when of competent age, or otherwise provide for them. [Sec. 8.]

18. The usual practice is for the woman who is with child to make the complaint, on oath, in the following form; but any person aware of the facts can make the complaint for her:

19. FORM OF COMPLAINT IN BASTARDY.—

Northern District,
Island Cove,
to wit: } NEWFOUNDLAND.

The complaint of Anna Higgs, of Island Cove, aforesaid, single woman, taken upon oath, who saith,—I am now with child by Job Giles, of Island Cove, fisherman, and the said child is likely to be born a bas-

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(*a*) Cases under this Section will be prosecuted in the usual manner under Summary Jurisdiction, see Chapter *post*, "Summary Jurisdiction." Form of offence is given in Appendix of Forms.

tard and become chargeable to the colony; I therefore pray a warrant for the apprehension of the said Job Giles. (*a*)

her
ANNA ⋈ HIGGS,
mark.

Sworn before me, at Island Cove, aforesaid, this day of , A. D. 187 , having first been read over and explained.

T. WILLS, J. P.

20. Should the child have been born, the form will be altered thus;—instead of the words "I am now with child," it should be:—

"On the day of , 187 , I was delivered of a male (or female) bastard child. Job Giles, of Island Cove, aforesaid, fisherman, is the father of the said child, which is likely to become chargeable to the colony; I therefore pray a warrant, &c."

21. When the complaint is sworn to, the Justice fills up his warrant, which is in the following form, and gives it to the constable to execute; it must in all cases be a warrant:

22. FORM OF BASTARDY WARRANT.

Northern District, Island Cove, to wit: NEWFOUNDLAND.

To the Constables of the Northern District.

Whereas Anna Higgs, of Island Cove, aforesaid, single woman, has this day complained on oath, before the undersigned, a Justice of the Peace for the said District, that she is now with child by Job Giles, of Island Cove, fisherman, and that the said child is likely to be born a bastard and become chargeable to the colony. (Should the child be already born, follow form in sec. 20, down to the word "colony.") These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said Job Giles, and to bring him before me or some other of Her Majesty's Justices of the Peace in and for the said District, to answer unto the said charge, and to be further dealt with according to law.

Given under my hand and seal, at Island Cove, aforesaid, this day of , in the year of our Lord one thousand eight hundred and seventy- .

T. WILLS, J. P. [L. S.]

(*a*) It is advisable for the Magistrate to make a note of the time when the woman expects to be confined on the complaint, as time is a most important element in such enquiries when contested.

23. ARREST AND PROCEEDING THEREON.—When the party charged is arrested and brought before the Magistrate on the warrant, the Magistrate should read over the complaint to him ; (*a*) and if the child is not born, he should inform him that he may be released on giving security to answer the complaint when child is born, (*see Form of Bond to appear*) or he may, instead of giving a bond, deposit one hundred dollars with the Magistrate, or if he admits the charge, he may there and then relieve himself of all liability by payment to the Justice of $100 (*b*) [*ante*, sec. 12.] Should the party charged be unable to obtain security, of course he must be detained in custody until the birth of the child, but in no case beyond six months. This latter, however, is an extreme course, and should never be adopted unless there is actual danger that the party charged will run away.

24. BOND IN BASTARDY CASES TO APPEAR.—

Northern District,
Island Cove,
to wit:

NEWFOUNDLAND.

Be it remembered that on the day of in the year of our Lord one thousand eight hundred and seventy- , Job Giles, of Island Cove, aforesaid, fisherman, and , also of same place, fisherman, personally came before me, Thomas Wills, one of Her Majesty's Justices of the Peace for the District aforesaid, and acknowledged themselves to owe unto our Sovereign Lady the Queen the following sums, that is to say, Job Giles the sum of one hundred dollars, and the sum of one hundred

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(*a*) If it is possible for the Magistrate to obtain the attendance of the woman he should endeavour to do so when the party charged is brought before him on the warrant ; the woman should be then sworn in his presence, and her statement with respect to her being with child by him, should then and there be taken down, written out, signed and sworn to, in presence of the party charged, and he should be asked if he wishes to put any questions to her, and his questions and the answers written down as in a deposition on a charge ; it is advisable to adopt this precaution as in the event of the woman dying before the hearing and her child surviving, the deposition thus taken would be evidence against the party charged.

(*b*) The Magistrate should not pay over this money until after the birth of the child ; as, should the child die at birth, defendant is entitled to receive it back.

dollars, to be made and levied of their goods and chattels, lands and tenements, respectively, to the use of our said Lady the Queen, Her Heirs and Successors, if the said Job Giles shall make default in the condition under written.

The condition of the above recognizance is such, that whereas Anna Higgs, of Island Cove, aforesaid, single woman, has declared upon oath before me, the said Justice, that (*she is now with child,*) that the said Job Giles, aforesaid, did get her with child, and she fears that said child will be born a bastard and become chargeable to the colony. If therefore the said Job Giles do and shall appear before me the said Justice, or such other Justice of the Peace as may be present, when and where required in this District (*or at the Court House, in aforesaid,*) and abide by such order as shall be made in the premises, and to be further dealt with according to law, then the said recognizance to be void; otherwise to remain in full force and virtue.

JOB GILES. O

———. O

Acknowledged (the day and year aforesaid) before me, }

T. WILLS, J. P.

When the child is born, instead of the words in brackets, insert "she has recently been delivered of a child."

25. HEARING.—By the latter part of the first section of the Consolidated Statutes if will be seen, that in the case of "*a child not already born*, final order upon the charge may be postponed until after the birth of the child." It is not the practice in St. John's ever to determine such cases until after the birth of the child, and the reasons for such a practice are obvious (*a*); 1st, no claim can be made upon the putative father for the payment of money for the child until after its birth; 2nd, the child may be born dead, or may die immediately after birth, in both which cases the father would be discharged; 3rd, a full and fair enquiry cannot be had in such cases until after the birth of the child. When the child is born, as soon as the mother is able to attend before the Magistrate, she should, if she has not already done so, make a deposition in the form given in section

(*a*) Justice bearing in mind to take the Mother's deposition in presence of accused as before suggested at page 214, *note a*.

20; the Magistrate should then fix a time for the hearing (*a*) and issue his summons for any witnesses the woman or the party charged may require.

26. WITNESSES' COSTS.—There is no provision in the Consolidated Statutes respecting costs in Bastardy cases except as mentioned below in *note b*, nor for the payment of witnesses, (*b*) but they are clearly entitled to be paid 75 cents a day for each day's attendance as a witness before the Magistrate, and 10 cents a mile from their residence to place of trial and back again; where the woman is a pauper and unable to pay for her witnesses, the Poor Commissioner appears to be the person who should pay them. The party charged, however, must pay his own witnesses, and they are not bound to attend without being paid.

(*a*) Accused should be summoned to a given time and place by summons, as in Form given below.

Northern District,
Island Cove,
to wit: } NEWFOUNDLAND.

To Job Giles, Greeting:

You are hereby required to appear in your proper person before the undersigned, one of Her Majesty's Justices of the Peace for the said District, at Island Cove, in the District aforesaid, on the day of , by of the Clock in the forenoon of the same day, to answer the complaint of Anna Higgs, who charges you with being the father of a bastard child, recently begotten of her, which child she fears will become chargeable on the colony.

Dated this day of , 187 .

T. WILLS, J. P.

(*b*) The following, however, is contained in p. 44, Consol. Stat.:

BASTARDY CASES.

Fees to be received by the Clerk.

For the examination of the party complaining	25 cents.
Warrant to apprehend Mother or reputed parent	50 "
Bond to appear, to maintain or perform Order of Filiation ..	$1 25 "
Order of Filiation	50 "
Every Commitment	40 "
Oath	25 "

27. When both parties are present before the Magistrate the woman making the complaint and the man who is charged with being the father of the child, the Magistrate should first read over the woman's complaint to the party charged, and also her second complaint as to the time at which she was confined; he should then ask him if he denies the charge. If he then admits being the father of the child, all the Magistrate need do is to swear the woman in his presence, let her state briefly the facts that she was delivered of the child, (naming its sex,) at such a time, and the party charged is the father. The Magistrate then makes a note in his book of the admission of the charge, and then proceeds to make out the order of affiliation, as in the following form:—

28. Proceedings at Hearing where Paternity disputed.—When the paternity is disputed, after reading the complaints, and the party charged being asked as above, denies the charge, the Magistrate then administers the oath to the woman, thus,—

"The evidence you shall give in the present enquiry shall be the truth, the whole truth, and nothing but the truth. So help you God."

The mother of the illegitimate child gives her evidence first, she is then cross-examined by the party charged or his lawyer, and her witnesses called and examined by her or by the Magistrate, and cross-examined by the party charged or his lawyer. It is usual to examine the midwife or a medical man, if he delivered her, as to the date of birth and sex of child. When the whole of the complainant's case is gone through, the party charged or his lawyer may ask the Magistrate to dismiss the case, and should the Magistrate (bearing in mind the advice given in section 5) feel that evidence is contradictory, and the question of paternity doubtful, he may dismiss the case without calling upon the defendant or his witnesses to give their evidence. If, however, the evidence satisfies his mind that a case has been made out against the party charged, (*that he is the father of the child,*) he will then ask the defendant if he wishes to be examined. He cannot be compelled to be examined. Before he gives his evidence, he, or his lawyer for him, can make a speech to the Magistrate, commenting on the complainant's case and also

explaining what his own defence is, and the same course is then followed with him and his witnesses as with the complainant and her witnesses.

29. The Magistrate should carefully note down all the evidence given in the case, both on direct and cross-examination. The Magistrate need not deliver his judgment at once, but he should decide as soon as possible, for the convenience of all parties; he may adjourn the hearing from time to time, and sometimes, when the case is hard fought, it will be necessary to do so in order to obtain the evidence of witnesses in corroboration of facts which are stated by one side or the other. No unnecessary delay, however, should take place in finishing the enquiry. When the Magistrate gives his judgment, either to affiliate the child upon the party charged or to dismiss the charge, he need not give his reasons for so doing. After judgment he makes out the following order:—

30. AFFILIATION ORDER.—

Northern District,
Island Cove,
to wit: } NEWFOUNDLAND.

The order of Thomas Wills, Esquire, one of Her Majesty's Justices of the Peace for the said District, concerning a (male or female) bastard child, lately born of the body of Anna Higgs. Whereas it hath appeared unto me that on the day of she was delivered of the said bastard child, and that said child is likely to become chargeable to the colony, and that she charged Job Giles, of Island Cove, aforesaid, with being the father of said child. And whereas the said Job Giles hath been brought before me by warrant to answer the premises, but hath not shewn sufficient cause why he shall not be deemed to be the father of the child. Wherefore, upon an investigation of the matter, as well upon the oath of the said Anna Higgs as otherwise, I hereby adjudge the said Job Giles to be the father of such child, and thereupon I order, as well for the relief of the colony as for the sustenance of such child, that the said Job Giles shall forthwith enter into a bond, with sureties, to the Stipendiary Commissioner of the Poor at St. John's and his successors in office, for the support and maintenance of such child until it shall have arrived at the age of ten years, or shall die or be satisfactorily provided for, or relieve himself from all obligation thereunder by the payment to me the

said Justice, or some other Justice of the aforesaid District, for the Receiver General of the colony, of the sum of one hundred dollars.

Given under my hand and seal, this day of , A. D. one thousand eight hundred and .

T. WILLS, J. P. O

31. BOND IN BASTARDY CASES TO THE POOR COMMISSIONER TO SUPPORT CHILD.—

Know all men by these presents, that we, Job Giles, of Island Cove, in the Northern District of Newfoundland, fisherman, and , of , also in the said District, aforesaid, fisherman, are held and firmly bound to the Stipendiary Commissioner of the Poor at St. John's, and his successors in office, in the sum of one hundred dollars each, to be paid to the said Stipendiary Commissioder of the Poor and his successors, for which payment to be made, we bind ourselves, and each of us, by himself, firmly, by these presents.

Sealed with our seals, dated this day of A. D. 187 , at Island Cove aforesaid.

The condition of the above recognizance is such, that whereas by an order of affiliation made by me, the undersigned Justice, in the matter of a (male or female) bastard child, lately begotten on Anna Higgs, the said Job Giles hath been adjudged to be the father of such child, and to obey such order of filiation. If therefore he the said Job Giles do and shall support and maintain such child until it shall have arrived at the age of ten years, or shall die, or be satisfactorily provided for, or shall pay, or cause to be paid, to me the said Justice, or some other Justice for the District aforesaid, for the Receiver General of the colony, the sum of one hundred dollars, then this obligation shall become void.

his
JOB ⋈ GILES. O
mark

O

Signed, sealed and delivered, in presence of }

T. WILLS, J. P.

32. FORM OF COMMITMENT IN BASTARDY CASES.—

Northern District, Island Cove, to wit: } NEWFOUNDLAND.

To the Constables of the Northern District aad to the Keeper of the Gaol at , in the said District.

Whereas complaint, on oath, was made before me by Anna Higgs,

of Island Cove, single woman, that she was delivered of a male (or female) bastard child, that the child was likely to become chargeable to the colony, and that the said Job Giles was the father of the said child; and whereas the said Job Giles was brought before me on a warrant to answer the said complaint, and upon an enquiry into the said matter as well upon the oath of the said Anna Higgs as otherwise, in the presence of the said Job Giles, I adjudge the said Job Giles to be the father of the said child, and thereupon ordered him to enter into a bond to the Stipendiary Commissioner of the Poor at St. John's, to be given for the support and maintenance of such child, until it shall arrive at the age of ten years, or die, or be satisfactorily provided for; and whereas the said Job Giles has not complied with such order, and was thereupon sentenced by me, the said Justice, to imprisonment in the common gaol at , in the said District, with hard labor, for the period of months, or until he shall give the said security. These are therefore to command you the said constable, or any one of you, forthwith to convey the said Job Giles to the said gaol, and for you the said keeper to receive him into the said gaol and there imprison him and keep him at hard labor for the space of months, or until he shall give the said security.

Given under my hand and seal, at Island Cove, this day of , A.D. one thousand eight hundred and .

T. WILLS, J. P.

33. APPEAL.—It will be seen by section 15 of this chapter, (Consol. Stat., sec. 6,) that the party charged may appeal from the order of affiliation to the next Quarter Sessions for the District. Appeals under this section are not common; should the party charged appeal, he must give the convicting Justice notice of his intention to appeal, and also of the parties who he will give as security. The Magistrate need not accept the security unless he is satisfied with their solvency, and the surety should be a resident householder. He should put in the bond one hundred dollars, and also a sum sufficient to cover costs of appeal, expenses of witnesses, &c.; in the Form I have put one hundred and *fifty* dollars. The Magistrate or Clerk of the Peace who prepares the bond for appeal is entitled to receive $1.25 for it. The bond, when signed, should be forwarded, as soon as possible, to the Clerk of the Peace or Stipendiary Magistrate resident at the locality where the Quarter Sessions is to be holden.

Other matters connected with the appeal are referred to under head of "Quarter Sessions."

34. BASTARDY BOND TO APPEAL.—

Northern District,
Island Cove,
to wit: } NEWFOUNDLAND.

Be it remembered, that on the day of , in the year one thousand eight hundred and seventy- , Job Giles, of Island Cove, aforesaid, fisherman, and , also of Island Cove, , personally came before me, the undersigned, one of Her Majesty's Justices of the Peace for the said District, and acknowledged themselves to owe to our Lady the Queen the following sums: Job Giles, one hundred and fifty dollars, and one hundred and fifty dollars, to be made and levied of their goods and chattels, lands and tenements, respectively, to the use of our said Queen, if the said Job Giles fail in the condition endorsed.

The condition of this recognizance is such, that whereas by an order of affiliation made by me on the day of , one thousand eight hundred and seventy , I adjudge the said Job Giles to be the father of a bastard child, by Anna Higgs, and whereas the said Job Giles hath given notice to me of his intention to appeal against the said order to the next General Quarter Sessions of the Peace, to be holden at , in the said District. Now the condition of this recognizance is such, that if the said Job Giles do appear at the said Court at its next sittings and duly prosecute his said appeal and abide by the judgment of the said Court and pay such costs as shall be by the said Court awarded, then this recognizance to be void. (*a*)

T. WILLS, J.P.

(*a*) Should the Bond be forfeited by defendant's not appearing and prosecuting his appeal, the Justice's course is to act as in the case of forfeited Recognizances. See pp. 68 & 69.

CHAPTER XVIII.

DESERTED WIVES AND CHILDREN.—(Consol. Stat., Cap. 108.)

SECTIONS

1.—Justices may apprehend any husband, &c., abandoning his wife, &c., and order security for maintenance.

2.—In certain cases Justices may order the appropriation of portion of property, &c., for the support of party the subject of the order.

3.—Justices may compel the attendance of witnesses.

SECTIONS

4.—Meaning of terms in this Chapter.

5.—Husband dissipating his property, may be summoned by Justices.

6.—Order affecting landed property to be registered.

7.—Assignments to defeat Chapter, void.

8.—Forms.

1. Whenever a complaint on oath shall be made by a Commissioner of the Poor, or any other person, before any Stipendiary Justice, (*a*) that any husband has left destitute, abandoned, or deserted, or is about to leave destitute, abandon or desert his wife; that any parent has left destitute, abandoned or deserted, or is about to leave destitute, abandon or desert his infant (*b*) child; or that any child has left destitute, abandoned or deserted, or is about to leave destitute, abandon or desert his aged or infirm parent, the person so left destitute, abandoned or deserted, or about to be left destitute, abandoned or deserted, being destitute of the means of support, and likely to become a burden on the Colony, (*c*) and the party so leaving destitute, abandoning or deserting, or about to leave destitute, abandon or desert,

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(*a*) An Honorary Magistrate in the absence, &c., of the Stipendiary Magistrate could act, see p. 8.

(*b*) The term infant here means a person under Twenty-one years of age.

(*c*) The object of this Act is to make people who can afford to do so support their poor relations, and the Magistrate, whether he acts solely as a Justice of the Peace or as Poor Commissioner, should do all in his power to prevent the Colony from being burthened with the support of paupers whose

having the means or ability to maintain such wife, child or parent, aforesaid, such Justice may, by summons or by warrant, cause the party so charged to be brought before him, and thereupon, if upon inquiry such complaint shall be sustained, such Justice may require the party charged as aforesaid to give security by bond to the Stipendiary Commissioner of the Poor at St. John's, and his successors in office, for the support and maintenance of the person in relation to whom the charge is made; and in default of such order being forthwith obeyed, may sentence the party charged to imprisonment, with or without hard labor, for any period not exceeding thirty days: Provided that if after committal the party charged shall give such security, he shall be forthwith discharged; and every subsequent month's abandonment or desertion as aforesaid, shall be deemed a repetition of the first offence.

2. In any case where, upon any such complaint, it shall be made to appear upon such inquiry, and whether the party charged shall have been brought before such Justice or not, (*a*) that the party charged has any property or money within the jurisdiction of the said Justice, or that he is in the receipt of any salary, allowance, pension or wages, such Justice may, if such order aforesaid be disobeyed, or cannot be made by reason of the party charged not being brought before such Justice, make an order directing the appropriation of so much of such money or property as may be necessary, or the payment of a reasonable proportion of such salary, allowance, pension or wages, towards the maintenance and support, from time to time, of the

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relations can be compelled under this Act to support them. The relations mentioned in the Chapter are the only ones who can be so compelled by this Law.

(*a*) This second section gives the Justice authority to make an order *whether the party charged shall have been brought before such Justice or not;* in the first section the party charged should be brought before the Justice, and there must be an enquiry held by him in presence of the party charged before the Justice can make an order. The proceedings under 1st section should be conducted in the manner prescribed in Chap. 13, Summary Conviction, and the Forms No. 13, &c., will be applicable. Forms to suit sec. No. 2 are special, and I have given them at the end of the Chapter.

party the subject of such order; and such order shall be binding and obligatory upon all persons having notice thereof; and every employer or other person having the payment of such money, salary, allowance, pension or wages, shall conform to and obey the same, and in default of conformity and obedience thereto, may be compelled to pay the amount from time to time payable thereunder, with costs, in an action of debt to be brought and determined in a summary manner, in the name of the Stipendiary Poor Commissioner at St. John's, before any Stipendiary Justice.

3. The Justice may, for the purpose of such inquiry, compel the appearance by summons, and if necessary by warrant, of any third person, and examine such person upon oath as to any such money, property, allowance, pension or wages aforesaid.

4. The term "parent" in the preceding sections shall include a grand-parent, and the term "child" a grand-child.

5. Upon complaint upon oath being made before any Stipendiary Justice that any husband or father having property is by habits of drunkenness dissipating his property, so as to expose his wife or children to the danger of destitution, such Justice may summon such husband or father before him, and inquire into the matter of such complaint, and if upon enquiry the same shall appear to be well founded, may make an order requiring such husband or father to give security to the Stipendiary Commissioner of the Poor at St. John's, and his successors in office, for the maintenance of his family, and in default of such order being obeyed, may commit the offender to prison until he shall conform to such order or be discharged by due course of law. And the said Justice, where such security as aforesaid shall not be given, may, in lieu of committing such offender to prison, order that so much of the property of such offender as may be necessary be taken and applied to the maintenance of his family; and such last-mentioned order shall be carried into effect under the direction of the Stipendiary Poor Commissioner, and shall be a justification in law for his proceedings thereunder; and the provisions of the second and third

sections of this chapter shall be applicable to the object of this section. (*a*)

6. Every such order made by a Stipendiary Justice, affecting landed property, shall be registered in the Registry of Deeds for the District where such land may be situated; and, from the time of such order being deposited for registration, shall have the effect of a conveyance of such land by the owner thereof, for the purposes of such order: Provided that any Stipendiary Justice of the District aforesaid may rescind any such order upon receiving such security as to him may appear sufficient, and also in cases in which it may not be deemed necessary longer to continue the operation of such order. (*b*)

7. All deeds, assignments and conveyances of any lands or other property made, done or executed with the intent and purpose of defeating any attachment made in pursuance of this chapter, shall be, and the same are hereby declared void, except in the case of a *bona fide* purchaser or grantee, for a valuable consideration, who shall not have been aware of or a party to such intent and purpose.

8. FORM OF COMPLAINT.—

Northern District, } NEWFOUNDLAND.
Island Cove,
to wit: }

The complaint, on oath, of Ann Giles, wife of Job Giles, of Island Cove, fisherman, who saith,—"My husband, Job Giles, has abandoned and deserted me, and left me and my children destitute of the means of support, and I am likely to become a burthen upon the Colony (*or I am now receiving poor relief.*) I am the mother of children by the said

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(*a*) By the latter part of this section it would appear that an order may be made though the party charged was not before the Justice. However, his presence should always be procured if possible.

(*b*) An order to sell land might be made in the following form, after reciting the complaint that the husband or father is dissipating his property, &c. I, the said Justice, by virtue of the power vested in me under the 5th section of Chapter 108, Consolidated Statutes of Newfoundland, do order and direct that the land, with the dwelling house thereon, (*the property of the father or husband,*) situate at , bounded as follows, belonging to be sold, and that out of the proceeds of such sale, dollars be appropriated towards the maintenance and support of (*wife or child*) under the direction of the Stipendiary Poor Commissioner at .

Job Giles; the eldest child a boy *(or a girl)* is years of age, the youngest is years. My said husband has dollars due to him by John Smith, planter, of Island Cove, for wages, *(or has fish or has rent, &c., as in order)* and I pray that an order may be issued to stop the said money in the hands of John Smith, and to have the sum appropriated towards the support of myself and my children."

Sworn, &c.

FORM OF ORDER UNDER SECTION 2.—

Northern District, Island Cove, to wit: } NEWFOUNDLAND.

Whereas on the day of last, complaint, on oath, was made before me, the undersigned Stipendiary Justice of the Peace for the said District, by Ann Giles, wife of Job Giles, of Island Cove, aforesaid, fisherman, that the said Job Giles had deserted and abandoned her and her children, and that she was left destitute of the means of support and likely to become a burthen upon the Colony. *(If receiving poor relief say, and has become a burthen upon the Colony.)* And whereas, I issued my warrant upon the said complaint for the apprehension of the said Job Giles, but the said Job Giles has not been arrested or brought before me, and I am therefore unable to obtain security from the said Job Giles for the support of his family, pursuant to the first section of chapter 108 of the Consolidated Statutes of Newfoundland; and whereas it has been made to appear to me, upon oath, that the said Job Giles has certain monies in the hands of John Smith, planter, of Island Cove, *(or he has certain wages due to him, Job Giles, by , or he, Job Giles, receives dollars rent for a certain piece of land with a dwelling house thereon, situate at , bounded, &c., as the case may be.)* Therefore, by virtue of the power vested in me under the second section of the said chapter, I order and direct the said John Smith to pay over *(to the Clerk of the Peace at , or, to the Stipendiary Commissioner of the Poor, if there be one in the place, or if neither, then say, to , the constable, who briugeth this order)* the sum of dollars, to be appropriated (*a*) towards the maintenance and support of the said Ann Giles and her children.

Witness my hand and seal, at Island Cove, aforesaid, this day of , 187 .

T. WILLS,
Stipendiary Magistrate.

To Mr. John Smith, Planter,
Island Cove.

(*a*) The Poor Commissioner or Magistrate will appropriate the money towards the support of the wife and family in the manner most beneficial to them. John Smith should be summoned or arrested if he will not attend or pay over the money.

CHAPTER XIX.

MINORS AND APPRENTICES.

SECTIONS

1.—Justices shall approve by writing indentures of apprenticeship. Effect thereof.

2.—Proceedings where Master ill-uses indentured apprentice or apprentice misbehaves. Penalty.

SECTIONS

3.—Executor or administrator of deceased master not bound to maintain apprentice beyond one month after death of master.

4.—Penalty for harboring apprentice.

5.—Application of penalties.

6.—Form of Indentures.

1. Any Justice shall, upon application made to him, consent to and approve by writing, under his hand, of an indenture of apprenticeship that shall be produced before him (*a*): Provided upon examination he shall be satisfied of the good moral character and other requisite fitness of the proposed master or mistress; whereupon such indenture shall be as binding upon the master or mistress, apprentice and all parties concerned, as if such master or mistress, apprentice or other parties had been at the time of the execution of such indenture of full age.

2. If any master or mistress of an indentured apprentice shall mis-use or ill-treat his or her apprentice (*b*), or if the apprentice shall not do his or her duty, or if either party shall have cause of complaint against the other, any Justice within the town or district where the master or mistress resides shall, upon such complaint being made upon oath before him, cause the parties and their witnesses to be brought before him by summons or warrant, and if, upon enquiry into such complaint, default shall be found in the master or mistress, such Justice may either impose a fine upon him or her not exceeding five dollars,

(*a*) Unless there are written indentures, approved by a Magistrate, he should not issue a summons or warrant under this chapter.

(*b*) Master or mistress illtreating apprentice, or not furnishing him with sufficient food, also punishable, criminally, under Imp. Act, 24 & 25 Vic., s. 26.

to be levied by distress and sale of the offender's goods and chattels, or discharge such apprentice from his apprenticeship, upon which discharge being made in writing under the hand of such Justice, the indenture shall be void; and if default shall be found in the apprentice, such Justice shall order such abatement to be made out of his or her wages or allowance, or cause the apprentice (if a male) to be imprisoned, with or without hard labor, for any period not exceeding ten days; and in addition to such abatement or imprisonment, such Justice may discharge the apprentice by writing under his hand, whereupon the indenture shall be void.

3. Nothing in any indenture of apprenticeship shall be of any force or effect to require the executor or administrator of a deceased master or mistress to keep or maintain the apprentice more than one month after the death of such master or mistress, and at the expiration of such month the indenture shall be void.

4. Any person harboring an indentured apprentice after notice, shall be liable to a penalty not exceeding fifty dollars, to be recovered before any Justice in a summary proceeding, and by levy under his warrant of the offender's goods and chattels; and if such warrant shall not be satisfied, the Justice may commit such offender to gaol for any period not exceeding twenty days.

5. All penalties imposed under this chapter shall be paid to the party making the complaint, or on whose behalf the same shall have been made.

6. FORM OF INDENTURE.—

This Indenture, made at , in the Island of Newfoundland, the day of , in the year of our Lord one thousand eight hundred and seventy- , between .

Witnesseth that the said by and with the consent and approval of , Esquire, a Justice of the Peace, for the Island aforesaid, testified by his signing these presents, hath put, placed, and bound, and by these presents doth put, place, and bind himself unto the said , to dwell and serve after the manner of an apprentice, for, during, and until the full term and time of years, to be computed from the during all which time the said apprentice his said master faithfully shall serve, his secrets keep, and all his lawful commands everywhere gladly do; hurt to

his said master he shall not do, nor waste, nor embezzle his goods, nor suffer such things to be done by others, without to the utmost of his power giving notice of and preventing the same. At cards, dice, or other unlawful games, he shall not play; ale houses, taverns, or houses of ill-fame, he shall not frequent; nor absent himself by day or by night without leave first had and obtained; but in all things towards his said master and those of his family as a good, honest and faithful apprentice demean himself; and the said doth hereby covenant and agree to teach and instruct, or cause the said apprentice to be taught and instructed, in the trade, art, or mystery of a , and also during the said term provide for and give the said apprentice good and sufficient meat, drink, and lodging; and shall pay or cause to be paid to said apprentice during the said term, wages as follows; that is to say,

In witness whereof the said parties to these presents, their hands and seals interchangeably have set, the day and year first above written.

Signed, sealed and delivered, in the presence of }

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———. O
———. O

Approved of June 10, 187 .

T. WILLS, J. P. O

CHAPTER XX.

MASTERS AND SERVANTS IN THE FISHERY.

SECTIONS

1.—Contract and penalty for breach.
2.—Absence of servant.
3.—Master neglecting to perform his part of agreement.
4.—Mode of proceeding, and penalty to be imposed on master.
5.—Balance of wages to be paid in money.
6.—Penalty for harboring servant.
7.—Penalty for sealer refusing to perform his agreement at sea.
8.—Prices of outfits.
9.—Employer not to deduct charge for liquor out of wages.
10.—Medicine chest.
11.—How sealing agreements to be executed, and with whom deposited.
12.—Application of penalties.
13.—Fisherman, &c., taking boats, &c., used in fishery, guilty of misdemeanor.

SECTIONS
14.—Party charged may be tried summarily under 12 Vic., Cap. 43; Punishment.
15.—Compensation may be made.
16.—Venue.
17.—Prosecutions to be within twelve months.
18.—No conviction to be quashed for want of form; Proviso.
19.—Forms and procedure.

1. When any person who shall have entered into a contract or *agreement in writing*, which shall be signed by both parties or their agent, and of which there shall be two parts so signed, one to be in the possession of the employer, and the other in the possession of the servant, for the performance of any duty within this Colony, as fisherman, shoreman, shareman, sealer, or any other kind of service, whether agricultural, mechanical, or otherwise, (*a*) shall fail or refuse to perform such contract or agreement, any Justice may, upon complaint on oath of the employer of any such person or his agent being made before him, issue his warrant and cause such person to be apprehended and brought before him, and in case such person shall refuse to perform such contract or agreement, without showing sufficient excuse or cause therefor, such Justice may commit such person to prison for a period not exceeding thirty days: Provided that should such person, at any time before the expiration of the time for which he shall be committed, consent to perform such contract or agreement, and his master consent to receive him back into his service, the said Justice shall forthwith discharge such person out of custody.

2. Any fisherman, shareman, shoreman, mechanical or other servant, who shall absent himself from his employer's service without leave, or refuse or neglect to perform his duty without sufficient cause, shall, for every day's absence, refusal or neglect, forfeit and pay to his employer, who may deduct the same from his wages, a sum equal to twice the rateable proportion of his wages stated in his agreement in writing, for such time as he shall be absent or refuse or neglect to perform his

(*a*) All servants are included under these words, but no servant can be arrested unless there is an agreement in writing, commonly known as a *shipping paper.*

service (*a*) in addition to any special damage and expenses which the employer shall have sustained by reason of such absence, refusal or neglect, and which such employer may also deduct in manner aforesaid.

3. Any employer who shall, without reasonable cause, refuse or neglect to pay any fisherman, shareman, or other servant, the amount or balance of his wages within three days after the same shall have been earned and become due, according to his agreement, (the same having been demanded,) shall forfeit and pay to such servant the wages current at the time for the number of days he may be kept out of his wages or balance, in addition to any special damage and expenses which such servant shall sustain by such refusal or neglect, to be recovered before any Court of Record or a Justice.

4. Should the employer of any such servant neglect or refuse to perform his part of such contract or agreement, any Justice shall, upon complaint being made upon oath by such servant, issue his summons, and in default of appearance cause such employer or agent to be brought before him; and in case such employer or agent shall refuse to perform such contract or agreement, without shewing a sufficient excuse therefor, such Justice may impose upon such employer a penalty not exceeding twenty dollars, to be levied on the goods and chattels of such employer by warrant of such Justice; and in case such warrant shall not be satisfied, the said Justice may issue his warrant to apprehend said employer and commit him to prison for a period not exceeding thirty days.

5. On the performance of such contract or agreement on the part of the servant, the balance of wages due thereon shall be paid in lawful current money of this Colony to the person entitled thereto, any contract or agreement to the contrary notwithstanding.

(*a*) The master should notify the servant immediately after his neglect that he intends to charge him for it. Otherwise, it may be held that he has condoned the offence by receiving him back and taking no notice of his neglect of duty or absence.

6. If any person shall harbor or employ the servant of another, after notice of his being such servant, any Justice may, upon complaint upon oath, issue his warrant for the apprehension of such harborer or employer; and upon conviction, the said Justice shall impose upon such harborer or employer a penalty of not less than twenty dollars or more than forty dollars, to be levied on the goods and chattels of such harborer or employer in manner prescribed by the fourth section of this chapter; and, upon failure to recover such penalty, the said Justice shall commit the said harborer or employer to gaol in manner and for the time provided by the said section; and the said Justice shall also make an order on such harborer or employer for the payment by him to the first employer of the wages earned by such servant during the time he was employed by the said harborer or employer, and which shall be recovered in the same manner and by the same process as is herein prescribed for the recovery of the penalty mentioned in this section, together with costs.

7. Any sealer who, by refusing to work or otherwise without sufficient reason, shall be a party to causing any master of a sealing vessel, while at sea, to give up the voyage before the time stated in the agreement for its duration and termination, shall, on conviction in a summary manner before any Justice, be imprisoned for a period not exceeding one month.

8. All outfits and supplies advanced to any fisherman, shoreman, shareman or other servant, shall be charged and paid for at the reasonable and current prices for outfits and supplies where the same shall be delivered.

9. In case any employer shall, during the service of such person, sell any intoxicating liquor to him, such employer shall not be entitled, in any such case, to deduct out of the wages or earnings of such person any charge or claim such employer may have or make for any liquor sold or delivered to such person at any time during his service; and no person shall recover any sum of money for any intoxicating liquor supplied to any such person during his service.

10. Every vessel employed in the seal or Labrador fisheries of this Colony shall, before proceeding on any such voyage, be

provided with a medicine chest containing a sufficient supply of medicine; and the master of every such vessel shall, on clearing for such voyage, be compelled to produce to the Collector or Sub-Collector a certificate under the hand of some respectable medical practitioner or druggist, of such vessel being provided with a sufficient medicine chest as aforesaid, or otherwise satisfy such Collector or Sub-Collector of the fact.

11. In all agreements with sealing crews aforesaid, there shall be two parts, respectively signed by the master and the crew; and one part shall remain with the master or owner, and the other part shall be left with any one of the crew who shall be selected by them or a majority of them for that purpose, or shall be posted and kept in some conspicuous part of the ship.

12. All penalties imposed under this chapter shall be paid to the party proceeding for the same, and all proceedings under this chapter shall be prosecuted and conducted in a summary manner, before any one or more Justice or Superior Court, and such Justice or Court may compel the attendance of witnesses and the production of all necessary documents.

Servants Carrying Away Boats. (*a*)

13. Any fisherman, sharemah, shoreman, or other servant, engaged in the fisheries of this Island or its dependencies, or the partner of any fisherman or planter so engaged, who shall, whether for the purpose of aiding his desertion or otherwise, wrongfully, or contrary to the terms upon which he may have the temporary use of the same, take, and carry away, any vessel, boat, sails, oars, nets, or other property whatsoever, used in the prosecution of the fishery, from any person engaged in carrying on the fishery, either as a merchant, planter or otherwise, when such taking and carrying away shall not amount to larceny, shall be guilty of a misdemeanor.

(*a*) This and the following sections are taken from the Act 38th Vic., c. 9. The Act was passed to punish fishermen and sharemen, running away from their masters when the voyage is bad, and taking boats, &c.; such taking away of boats, when done for the *purpose of escaping*, not being in law larceny, there being no intent to make the boats, &c., permanently their property. See *Larceny*.

14. Any person charged with such misdemeanor may be tried and convicted in a summary manner before a Stipendiary Magistrate, under the provisions of the Imperial Act, 11 & 12 Victoria, chapter forty-three, entitled "An Act to facilitate the performance of the duties of Justices of the Peace out of Sessions, within England and Wales, with respect to summary convictions and orders," and shall, on conviction, be subject to imprisonment for a period not exceeding six months, or the said Magistrate may impose the alternative punishment of a fine not exceeding one hundred dollars, which fine may be paid by the offender on conviction or at any time during his imprisonment.

15. Out of the fine so imposed, the convicting Magistrate may apportion such an amount (either the whole or part of such fine) as shall appear to him, from the evidence, a reasonable compensation to the party aggrieved for the value of the property taken, or for the amount of injury done; and such amount, when received, shall be paid over to the party aggrieved, and shall be a bar to all civil proceedings whatsoever, for the same cause; the remainder of the fine, if any, shall be paid to the Receiver General, for the use of the Colony.

16. For the purpose of giving jurisdiction under this Act, all offences shall be deemed to have been committed either within the District or dependency where such taking occurred, or in any District in this Island in which the offender shall be found.

17. All prosecutions under this Act shall be commenced within twelve months after the commission of the offence.

18. No conviction or order under this Act shall be quashed for want of form, and no warrant of commitment shall be held void by reason of any defect therein: Provided there is a valid conviction to maintain such warrant, and it is alleged in the warrant that the party has been convicted.

19. Form of Complaint (Cap. 20.)—

Northern District,
Island Cove,
to wit:

Newfoundland.

The complaint (*a*) of John Jones, of Island Cove, planter, taken

(*a*) On being brought before the Magistrate, Stiggins will be asked what he has to say in answer to the said complaint, and if he admits that the com-

upon oath, who saith,—"Job Stiggins, my servant, shipped by a written shipping paper, is now absent from my service without leave (*or refuses or neglects to perform his duty without sufficient cause.*) I therefore pray a warrant for his apprehension."

Sworn, &c. JOHN JONES.

WARRANT.

Northern District, Island Cove, to wit: } NEWFOUNDLAND.

To the Constables of the Northern District.

Whereas complaint, on oath, has this day been made before me, the undersigned Justice of the Peace for the said District, by John Jones, that (*here state complaint.*) These are therefore to command you forthwith to arrest Job Stiggins and bring him before me or some other Justice for the said District, to answer the said complaint, and to be further dealt with according to law.

Given under my hand, &c.

T. WILLS, J.P.

CHAPTER XXI.

EVIDENCE.

SECTIONS

1.—General observations.
2.—Objection to credibility, not competency of witness; exceptions.
3.—Husband or wife of informer.
4.—Defendant not competent or compellable in indictable offences.
5.—Summary proceedings; defendant competent but not compellable.
6.—Husband or wife not compelled to disclose communications between them.
7.—Privilege of clergymen.
8.—Exceptions--Idiots, lunatics, children, persons under sentence of death.
9.—Want of religious belief.

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plaint is true, he should then be asked whether he will return to his master's service; if he will do so, and the master agrees to take him back, this ends the matter. In the cases the Magistrate should do all in his power to reconcile the parties, and never imprison the servant unless compelled to do so by his obstinacy in refusing to serve his master without lawful excuse. Never act without seeing the shipping paper, and that it is properly signed, and always bear in mind the paramount necessity of not interrupting the fishery.

SECTIONS
10.—Authority to administer oath.
11.—Form of oath.
12.—Distinction between form and substance of oath.
13.—Affirmation instead of oath, in certain cases.
14.—Punishment for false affirmation.
15.—Party objecting to be sworn, may make declaration.
16.—Examination and cross-examination.
SECTIONS
17.—How far a party may discredit his own witness.
18.—Proof of contradictory statements of adverse witness.
19.—Cross-examination on previous statements.
20.—Previous conviction—how proved.
21.—Re-examination.
22.—Judicial notice of facts.
23.—General rules of evidence.
24.—Public documents.
25.—Evidence obtained by promise or threat.

1. There is no difference as to the rules of evidence between civil and criminal cases; the evidence that may be received in one case may be received in the other, and the evidence that is rejected in a civil case ought to be rejected in a criminal case. The amount of proof however, required, varies with the different proceedings before Justices; for instance, in a preliminary enquiry for an indictable offence, the evidence must raise a strong or probable presumption of the guilt of the party charged, to justify the Justice in sending him for trial. [*See note*, p. 83.] In summary penal proceedings the proof of guilt must be full and convincing, whilst in matters of civil jurisdiction a mere *preponderance* of proof will suffice to establish the case. The presumption of innocence, that is, that all accused persons are innocent until proved guilty, thus throwing the whole burthen of proof of guilt on the prosecutor, also marks one of the great distinctions between the evidence required in civil and criminal business.

2. At the present day it may be laid down as a general rule that objections can only be taken to the *credibility*, not to the competency, of witnesses. There are, however, some exceptions, which are thus summarized;—the informer or prosecutor or complainant is competent and compellable to give evidence for himself or defendant, in all criminal proceedings, indictable and summary.

3. The husband or wife of the informer or prosecutor or complainant is likewise competent and compellable to give evidence

for the Crown, as well as for the defendant, and also *against* each other, in cases of personal injuries committed on one another.

4. The defendant (*the party charged*) is not competent or compellable to give evidence for or against himself or herself in indictable offences, nor is his wife, except in cases of personal injury committed by one on the other, where the evidence of the injured party is admissible *against* the other.

5. *In summary proceedings* the defendant or his wife is a competent witness, but is not *compellable*, the words of the proviso in sec. 8, cap. 23, Consol. Stat., being,—

"Provided that nothing herein contained shall preclude a defendant or the husband or wife of a defendant from becoming a witness, *should he or she think fit*, in any summary proceedings of a criminal or other nature."

6. Sec, 9 of the same chapter provides that,—

"No husband shall be compellable to disclose any communication made to him by his wife during the marriage, and no wife shall be compellable to disclose any communication made to her by her husband during the marriage."

7. Sec. 11 of the same chapter provides that,—

"A clergyman or priest shall not be compellable to give evidence as to any confession made to him in his professional character."

8. On the above statutory exceptions to the principle of universal competency, certain common law exceptions must be grafted; for instance, persons who have not the use of reason are from their infirmity utterly incapable of giving evidence, and are therefore excluded as incompetent witnesses, as idiots, lunatics, children. [*Powell*, 18.]

The evidence of witnesses at any age is admissible, if it appear that they have sufficient discretion and understand the moral obligation of an oath. [*Bac. Abr. tit.* "evidence."]

Deaf and dumb persons, if they have sufficient understanding, may give evidence, either by signs or through an interpreter or in writing. [*Powell*, 17 & 18.]

A person under sentence of death is incapable of being a witness. [*Reg.* v. *Webb*, 11 *Cox*, c, c, 133.]

9. No person is a competent witness unless he believes in a Supreme Being, who will punish him either in the present or in the future life for perjury. [*Powell*, 19, 21.]

10. It may be laid down as a general rule that wherever Justices are authorized by law to hear and determine or examine witnesses, they have incidentally the power to examine on oath. [2 *Phil. Ev.*, 795.] In summary proceedings, (see page 150, 11 & 12 Vic., c. 42, s. 15.)

"Every witness to be examined upon oath or affirmation, and the Justice shall have full power and authority to administer to every such witness the usual oath or affirmation." In indictable offences (page 59) "Such Justice shall, before any witness is examined, administer to such witness the usual oath or affirmation, which such Justice shall have full power and authority to do;" (11 & 12 Vic., c. 42, s. 17), and by sec. 17, cap. 23, Consol. Stat.: "Every Court, Judge, Justice, Officer, Commissioner, Arbitrator, or other person, now or hereafter having by law or by consent of parties, authority to hear, receive, and examine evidence, is hereby empowered to administer an oath to all such witnesses as are legally called before them, respectively."

11. The oath is generally in the following form: (*a*)

"The evidence which you shall give on the present enquiry (*or touching this application or complaint, as the case may be*) shall be the truth, the whole truth, and nothing but the truth. So help you GOD."

12. The particular form or ceremony of administering an oath is quite distinct from the substance of the oath itself. [1 *Phil.* 8, 9th ed.] The form of oath under which GOD is invoked as a witness or as an avenger of perjury, is to be accommodated to the religious persuasion which the swearer entertains of GOD, and to be administered in such form as to be binding on his conscience. Within the limits of this little work, the various forms of oaths taken by the different religious persuasions, cannot be given. The swearing upon the Holy Evangelists is binding both on Roman Catholics and Protestants.

13. Sec. 27 of the 23rd chapter of the Consolidated Statutes contains the following provision:

"If any person called as a witness, or required or desiring to make

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(*a*) *Form of Interpreter's Oath.*—You shall truly and faithfully interpret the evidence about to be given and all other matters and things touching the present charge, and the (*French, as the case may be*) language into the English language, and the English language into the (*French, &c.,*) language according to the best of your skill and ability. So help you GOD.

an affidavit or deposition, shall refuse or be unwilling from alleged conscientious motives to be sworn, the Court or Judge, or other presiding officer, or person qualified to take affidavits or depositions, may, upon being satisfied of the sincerity of such objection, permit such person, instead of being sworn, to make his or her solemn affirmation or declaration, in the words following—*videlicit:*

"I, A. B., do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is, according to my religious belief, unlawful; and I do also solemnly, sincerely, and truly affirm and declare, &c." Which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form. [Sec. 27.]

14. If any person making such solemn affirmation or declaration shall wilfully, falsely, and maliciously affirm or declare any matter or thing which, if the same had been sworn in the usual form, would have amounted to wilful and corrupt perjury, every such person so offending shall incur the same penalties as by the laws and statutes of this Colony are or may be enacted or provided against persons convicted of wilful and corrupt perjury. [Sec. 28.] (*Perjury*, see p. 39, Manual.)

15. If any person called to give evidence in any Court of Justice, whether in a civil or criminal proceeding, shall object to take an oath or shall be objected to as incompetent to take an oath, such person shall, if the presiding Judge is satisfied that the taking of an oath would have no binding effect upon his conscience, make the following promise and declaration:

"I solemnly promise and declare that the evidence given by me to the Court shall be the truth, the whole truth, and nothing but the truth."

And any person who, having made such promise and declaration, shall wilfully and corruptly give false evidence, shall be liable to be indicted, tried and convicted for perjury, as if he had taken an oath. [Sec. 29.]

16. As to the Mode of Examination.—On an examination in chief, (*that is, where the party puts questions to his own witness*) a witness must not be asked *leading* questions (*leading questions are questions put in such a form as to suggest the desired answers.*) There are, however, some exceptions to this rule; (1), where the witness proves adverse to the examining party, leading questions may be asked by permission of the Court; (2), where a witness

has apparently forgotten a circumstance, and by inspecting a memorandum to refresh his memory, [*Powell*, 376, 379] ; (3), where the object is to contradict another witness as to a certain fact ; (4), where the object is to identify persons ; (5), where the question is merely introductory to another. On cross-examination, an adverse witness may be asked leading questions. A witness must only be asked questions of facts which are relevant and pertinent to the issue, he cannot be asked irrelevant questions or questions as to his own inferences from a personal opinion of facts.

17. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall in the opinion of the Judge prove adverse, contradict him by other evidence, or by leave of the Judge prove that he has made at other times a statement inconsistent with his present testimony ; but before such last mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement. [Consol. Stat., c. 23, s. 30.]

18. If a witness, upon cross-examination as to a former statement made by him relative to the subject-matter of the cause and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it ; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement. [*Idem*, sec. 31.]

19. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the cause, without such writing being shown to him ; but if it be intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him : Provided that it shall be competent for the Judge, at any time during

the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he shall think fit. [*Idem*, sec. 32.]

20. A witness in any cause may be questioned as to whether he has been convicted of any felony or misdemeanor; and upon being so questioned, if he either deny the fact or refuse to answer, the opposite party may prove such conviction; and a certificate, containing the substance and effect only (omitting the formal part) of the indictment and conviction of such offence, purporting to be signed by the Clerk of the Court where the offender was convicted, or by the Deputy of such Clerk or Officer, (for which certificate a fee of one dollar, and no more, shall be demanded or taken) shall, upon proof of the identity of the person, be sufficient evidence of the said conviction, without proof of the signature or official character of the person appearing to have made the same. [*Idem*, sec. 33.]

21. Re-Examination.—(After, say the defendant's cross-examination, the plaintiff again asks his witness questions, this is known as *re-examination.*) The office of re-examination is to be confined to shewing the true color and bearing of the matter elicited by cross-examination, and new facts or new statements, not tending to explain the witness's previous answers, are not to be admitted. [*Taylor* on Ed., 627.]

22. As a general rule, everything has to be proved in a Court of Justice, but there are certain facts of which all Courts in this Colony are bound to take judicial notice, without proof, viz.: the Acts of the Legislature, when purporting to be printed by the Queen's Printer for the Island, [Consol. Stat., p. 2,] the Imperial Statutes, Royal Proclamations, the Almanac, the divisions of the year; also the *Royal Gazette* of this Colony, and all Proclamations and Notices therein.

23. General Rules.—The following are some of the general rules established by the decisions and practice of the Superior Courts, and to which the proceedings before Justices should conform:—That a person is presumed to be innocent until the contrary be proved; that a party shall not be allowed to put leading questions, that is, questions in such a form as to suggest

the answer desired, to his own witness; that hearsay evidence is inadmissible, that the statement of one prisoner is not evidence either for or against another prisoner; that conversations which have taken place out of the hearing of the party to be affected cannot be given in evidence; that the evidence of an accomplice (*a*) is admissible, but ought not to be fully relied upon, unless it be corroborated by some collateral proof; that no person is bound to answer a question which may tend (*b*) to criminate himself; that if a witness choose to answer such question, his answer is conclusive; that, in general, the opinion of a witness as to any fact in issue is inadmissible, unless upon questions of skill and judgment; that the *onus probandi* lies upon the party asserting the affirmative; that the best evidence should be given of which the nature of the case is capable; that secondary evidence is therefore inadmissible, unless some ground be previously laid for its introduction, by showing the impossibility of procuring better evidence; that parol testimony is not receivable to vary or contradict the terms of a written instrument; that a person shall not be allowed to speak to the contents of a written instrument, unless it be first proved that such document is lost or destroyed, or, if in the possession of the adverse party, that notice has been given for its production; that a witness may be allowed to refresh his memory by reference to an entry or memorandum made by himself shortly after the occurrence of which he is speaking, although the entry or memorandum could not itself be received in evidence; that when positive evidence of the facts cannot be supplied, circumstantial evidence is admissible; and that circumstantial evidence should be such as to produce nearly the same degree of certainty as that which arises from direct testimony, and to exclude a rational probability of innocence. (*c*)

(*a*) This is not a rule of law, but of practice, and as such approved of by the superior courts. [*R.* v. *Stubbs*, 25 *L. J.* 16.]

(*b*) The privilege of refusing to answer such a question is that of the witness only. [*R.* v. *Kinglake*, 22 *L. T.* (N.) 335.]

(*c*) *Circumstantial Evidence.*—The description of evidence called circumstantial consists of proving, not the facts sought, but a fact or facts from which

24. As respects the proof of public documents, the Consolidated Statutes, sec. 13, cap. 23, provides,—

"Every document, which by any law now in force or hereafter to be in force, is or shall be admissible in evidence of any particular in any British Court of Justice, without proof of the seal or stamp or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same, shall be admitted in evidence, to the same extent and for the same purposes, in any Court of Justice in this Colony, or before any person having by law or by consent of parties authority to hear, receive and examine evidence, without proof of the seal or stamp or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same."

And section 15 provides that,—

"Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no statute exists which renders its contents proveable by means of a copy, a copy thereof or extract therefrom shall be admissible in evidence in any Court of Justice, or before any person now or hereafter having, by law or consent of parties, authority to hear, receive, and examine evidence: Provided it be proved to be an examined copy or extract, or provided it purport to be signed and certified, as a true copy or extract, by the officer to whose custody the original is entrusted; and which officer is hereby required to furnish such certified copy or extract to any person applying at a reasonable time for the same, upon payment

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it may be deduced in the way of presumption or inference. Upon this point it is said [1 *East, P. C., c. 5, s. 9, p. 223.*] "Perhaps strong circumstantial evidence, in cases of crimes committed for the most part in secret, is the most satisfactory of any from whence to draw the conclusion of guilt; for men may be seduced to perjury by many base motives, to which the secret nature of the offence may sometimes afford a temptation; but it can scarcely happen that many circumstances, especially if they be such over which the accuser could have no control, forming altogether the links of a transaction, should all unfortunately concur to fix the presumption of guilt on an individual, and yet such a conclusion be erroneous." The following rules are given in *Starkie* on evidence, 3rd Ed., p. 571 to 575:—

1.—The circumstances from which the conclusion is drawn should be fully established.

2.—All the facts should be consistent with the hypothesis (*i.e.*, supposition.)

3.—The circumstances should be of a conclusive nature and tendency.

4.—The circumstances should to a moral certainty actually exclude every hypothesis, but the one proposed to be proved. [*Oke*, p. 86.]

of a reasonable sum for the same, not exceeding ten cents for every folio of ninety words."

And under Imperial Acts the mode of proving public non-judicial documents is prescribed by 8 & 9 Vic., c. 113, s. 1, and 14 & 15 Vic., c. 99, s. 14, and under "The Documentary Evidence Act, 1868," (31 & 32 Vic., c. 37), various documents, such as proclamations, orders, or regulations of the Queen or Privy Council, or by authority of the Treasury, &c., may be proved by a copy of the *Gazette*, or a copy by the government printer, or in certain cases by an extract or copy certified by the proper officer of the department.

25. Evidence obtained by Promise or Threat.—Any evidence which has been obtained from a prisoner in consequence of any threat, promise, or inducement, [*R.* v. *Garner*, 18 L. J. 1] as, "You had better speak the truth;" "You had better speak; it is of no use denying it, as A. B. swears he saw you do it;" or the like, and made to the prisoner by any person concerned in the apprehension, examination, or prosecution of the prisoner, will render such evidence inadmissible; but any facts discovered in consequence of information so obtained may be given in evidence. But the words "You need not say anything to criminate yourself; what you do say will be taken down and used as evidence against you," used by a policeman, do not render the confession inadmissible [*R.* v. *Baldry*, 21 L. J. 130; see also *R.* v. *Luckhurst*, and *R.* v. *Sleeman*, 23 L. J. 18 and 19]; nor an inducement held out or advice given by a fellow prisoner [*R.* v. *Parker*, 25 J. P. 374]; nor the prosecutor (the master) advising his servant (the prisoner) to answer any questions truthfully, &c. [*R.* v. *Jarvis*, 1 L. R. (C. C.) 96]; nor the mistress of the prisoner in the presence of a police officer, saying, "You may as well tell the truth; it is sure to be found out." [*R.* v. *Edwards*, 33 J. P. 119, 145]; nor a mother saying to her son, "You had better, as a good boy, tell the truth [*R.* v. *Reeve*, 26 L. T. (N.) 403.]

CHAPTER XXII.

PRACTICE.

SECTIONS

1.—Introductory observations.
2.—Guilty knowledge and intent.
3.—Ouster of jurisdiction by claim of right.
4.—Estoppel—res adjudicata.
5.—Majority decide.
6.—Refusal to adjudicate.
7.—Judgment deferred.
8.—Altering judgment.
9.—Giving time for payment.
10.—Part payment.
11.—Waiver of irregularity.
12.—Commitment.
13.—Printed Forms.
14.—Seal.
15.—Keeping Records.
16.—General observations.

1. Most of the matters which would have come under this head have been referred to in the notes to the various Chapters. I considered that the Magistrate would find it more convenient to have his attention directed at once to the different points of practice, as they were referred to in the text; this Chapter, therefore, will only refer to a few necessary topics which could not be conveniently placed in notes.

2. It is most important for the Justice to bear in mind that it is one of the necessary ingredients in all criminal proceedings that the defendant should have committed the offence with a *criminal knowledge and intent*; the intent, however, sometimes cannot be positively proved, it can only be implied from overt acts; and every man is supposed to intend the necessary and reasonable consequences of his own acts. [*Arch. crim. plead.*, 208.] There are some cases in which the intent is inferred as a necessary conclusion from the act done, as where a man knowingly utters a forged instrument as a genuine one, the intent to defraud the party to whom he utters it is a necessary inference. For instance, (case cited in *Arch.* 325) if, under color of arrears of rent, though none be actually due, I distrain or seize my tenant's cattle, this is trespass, (a *civil* injury) not felony, (a *criminal* offence.) Where a shareman, dismissed by his master, went to his master's store, broke it open, and took five quintals

of fish, which he believed was his share of the fish, this would not be larceny, (a *criminal* offence) but a *civil* injury trespass. The claim of right, as in the case of this servant, may be wholly unfounded, but if it is proved that the defendant, *bona fide*, believed that he had such a right, it would do away with the criminality of his proceeding; it will thus be seen that a guilty knowledge or intention is a necessary ingredient in all criminal proceedings, with the exception of some few cases which are made triable summarily under certain statutes, such as servants and apprentices absenting themselves from their master's service, and which in reality partake more of a civil than a criminal character, the words *maliciously*, *wilfully*, &c., having been omitted from the statute creating the offence. This guilty knowledge and intent marks one of the great distinctions which separates criminal from civil proceedings. Every unneighbourly and wrong act is not necessarily criminal; for instance, in the case mentioned in pages 14 & 15, if Snow had cut down the fence in the night, he could not be summoned for malicious injury, his *bona fide* belief in his right to do it making his act a civil injury, for which damages might be recovered against him, not a criminal offence. This subject is also referred to under the head of larceny, in the Appendix of Forms, at the end of the Book.

3. Ouster of Jurisdiction by claim of right.—As this subject has been already treated of in pages 14 and 15, and at page 180, note, it only remains to say that where the matter is a doubtful one, it is enough to stay the jurisdiction. Justices cannot give themselves jurisdiction by an erroneous and capricious decision. [*Stone*, 435.] "The jurisdiction is not ousted by the *bona fide* claim of a right *which cannot exist at law*." A claim of right is not waived by the defendants calling evidence on the merits. [*Stone* 435.]

4. Estoppel or "*Res Judicata*" (*a*)—Latin—means where the matter has been adjudicated on. If an information or com-

(a) The plea of *res judicata* applies only where the identical question once decided is again raised between the same parties. [*Leith Harbor Case*, I L. R. (*Appeal Cases*) 17.]

plaint be dismissed, the Justice may, if required, make an order of dismissal, and give the defendant a certificate thereof, the production of which will be a bar to any subsequent information or complaint for the same matter against the same party. [11 & 12 Vict., c. 43, s. 14.] The certificate supersedes the necessity for other proof, but if such certificate be not produced, it will be for the defendant to prove by other evidence, not only that the former information was for the same matter with which he is charged a second time, but that it was dismissed upon the merits, and that the decision was intended to be final. If this be done, the plea of *autrefois acquit* will, it is conceived, be available in like manner as in indictments. [*R.* v. *Newbury*, 15 *J. P.*, 321.] It has, however, been held that a second application may be made against a putative father under the Bastardy Act, although the first was dismissed for want of satisfactory corroborative evidence, [*R.* v. *Machen*, 18 *L. J.* 213]; and there may be analogous cases in proceedings excepted from the operation of or not coming within the 11 & 12 Vict., c. 43, to which the same principle may apply. But whenever the information or complaint is within that Act, a certificate of dismissal will, it is conceived, be an effectual bar to a second application. If, however, the information or complaint is dismissed for want of form, or from a mistaken view of jurisdiction, and without any adjudication on the merits, a second information or complaint may be laid, and the plea of *autrefois acquit* will not avail. [See *R.* v. *Ridgway*, 1 *D. & R.* 38, and *R.* v. *Harrington*, 28 *J. P.* 485.] If the same question has been raised and disposed of, although in another form, by a different Court, the Justices cannot re-open it. When two Courts have concurrent jurisdiction, the decision of one Court will *prima facie* be *res judicata* in the other.

5. Majority decide.—The judgment will be according to the opinion of the majority of the Justices present at the hearing. The chairman may, of course, vote with the other Magistrates, but in case of equality he has no double or casting vote. If the Justices are equally divided, there can be no adjudication, and the case may be again heard on a fresh information, or adjourned by the majority to the next sitting [25 J. P. 77,] when

the case can be re-heard with the assistance of other Justices. [31 J. P., 733.] The Justices may alter their judgment during the continuance of the same sitting. Two or more Justices may lawfully do whatever any one Justice may do alone.

6. Refusal to Adjudicate.—If the Justices, from a mistaken opinion as to their jurisdiction, refuse to adjudicate, a rule may be obtained under 11 & 12 Vict., c. 44, s. 5, requiring them to show cause why they should not hear and adjudicate. If, however, they have already adjudicated on the merits, although their decision may be erroneous, their judgment cannot be reviewed, except on a case granted under 20 & 31 Vic., c. 43. [See *R.* v. *Paynter*, 26 *L. J.* 102, and *R.* v. *Dayman*, *Id.* 128.] Where the Justices dismissed the information against one of several owners of a colliery, on the ground that the owners were not joined as co-defendants, the Court granted the rule, [see *R.* v. *Brown*, 26 *L. J.* 183]; and the following test as to the interference of the Court of Queen's Bench in a partly heard case, was suggested by Lord Campbell:—"If the objection be such that whatever the merits of the case, whether the defendant be guilty or not, the Justices hold that they cannot decide on the merits owing to the objection—for instance, either want of parties or notice—such holding is a declining of jurisdiction and not an adjudication, and in such a case it is the duty of the Court to compel the Justices to proceed."

7. Judgment Deferred.—The Justices are not obliged to fix the fine or punishment at the instant of conviction, but may take time either for the purpose of informing themselves as to the legal penalty, or the amount proper to be imposed, or of taking advice as to the law applicable to the case.

8. Altering Judgment.—Alterations in the judgment, either in the extent of imprisonment or amount of fine, are occasionally made at Sessions, but it is essential that the alterations should be made at Sessions, during the sitting of the Magistrates. [61 J. P., 161.]

9. Giving Time for Payment.—Under several Acts of Parliament Justices are empowered to direct payment of a fine either immediately or within such time as they may think fit. When

time is given, it seems necessary, before issuing a warrant of distress or commitment, to summon the defendant to show cause why the warrant should not issue. In *Arnold* v. *Dimsdale*, 22 L. J. 161, it was held that if the payment were to be "immediate," there was no necessity for any summons before commitment; but if it were not immediate, the Court seems to have considered that a summons would have been requisite.

10. PART PAYMENT.—It is not unusual for persons on conviction to request the Justices to allow time for payment of the fine, at the same time offering to pay down part immediately. Such applications cannot be safely granted, as it is conceived that after part payment the right of commitment would be gone, the Justices having no power to apportion the period of imprisonment. The law does not intend a man to suffer two modes of punishment, *i. e.*, in purse and in person, for the same offence: and on this principle, when the goods of an offender are not sufficient to satisfy a distress, they ought not to be taken, but the ulterior punishment should be resorted to. [*R.* v. *Wyatt*, 2 *Lord Raym.* 119. *Stone*, 439.]

11. WAIVER OF IRREGULARITY.—If the defendant appear at the hearing, he must then object to the form of the summons, or to any irregularity in the proceedings on which it was founded; if he do not, but asks for judgment in his favour on the merits, he waives any irregularity in the process for bringing him before the Court. The defendant's appearance cures any irregularity in the service of the summons, or the want of one [see. *R.* v. *Stone*, 1 *East*, 649]; and even the non-compliance with a statutable form. [*Oke*, 140.] In R. v. *Shaw*, 34 *L. J.*, 169, the rule of law was thus stated by Blackburn, J.:—"I think when a man appears before Justices, and a charge is then made against him, if he has not been summoned, he has good ground for asking for an adjournment. If he waive that, and answers the charge, a conviction would be perfectly good against him, and the witnesses, if they swore falsely, would be liable to an indictment for perjury." So in R. v. *Smith*, 1 L. R. (C. C.) 110, it was held that if the defendant appeared at the hearing, evidence, on a trial for perjury, of the information without proof of the summons (which is merely to bring the defendant into Court) was sufficient, and a

conviction for perjury was affirmed; in R. v. *J. J. Gloucestershire*, 35 J. P. 372, that the absence of an information or summons, where no objection is made at the hearing, will not invalidate a conviction; and in *Turner* v. *Postmaster General*, 34 L. J. 10, that the jurisdiction of the Justices could not be objected to, the defendants and their attornies having examined and cross-examined the witnesses for the prosecution, and taken the chance of a decision on the merits. It sometimes happens that a person is apprehended for a supposed felony, and that when brought before the Justices, it turns out that the offence is not felony, but punishable summarily. In this case, if the prosecutor abandon the charge of felony, and propose to proceed on a new charge, as, for instance, wilful damage, the proper course is to have a new information and a warrant or summons founded thereon, and the evidence taken anew; and if the defendant desire it, to adjourn the case in order to give him time to answer the charge. If, however, no information on oath or otherwise is taken out, but the parties proceed with the new charge immediately after the first is abandoned, and the defendant goes on with the case by cross-examining the prosecutor's witnesses and entering upon his defence, taking the chance of a decision in his favour, it is too late for the defendant at the close of the case for the prosecution to object to the jurisdiction of the Justices on the ground that no information on oath has been taken out as required by the statute, or that the defendant was not found committing the offence, or that he is not legally in custody, the conduct of the defendant amounting to a waiver of any irregularity. [*Stone*, 432; see also p. 140, *note*.]

12. COMMITMENT,—The offence for which the defendant is committed should be stated in a warrant of commitment with the same clearness and precision as in a conviction. It should show that the defendant has been convicted of an offence over which the Justice has jurisdiction (*a*). It was at one time a matter of

(*a*) *Whipping*.—Consol. Stat., cap. 42, contains the following provisions:

1. When any male person shall be convicted in any Court of Record, or before any Justice, of any felony or misdemeanor, and it shall be proved, on

doubt whether a Justice could substitute a good warrant for a defective one, and thereby justify the gaoler in detaining the defendant in prison; but since the case of *Ex parte Cross*, 21 J. P. 407, this doubt has been removed. In this case the first commitment of the defendant under the Vagrant Act was bad on the face of it, but the Court held, after argument, that the prisoner might be lawfully detained under a second warrant for the same offence, bearing date the same day as the first warrant,

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or after conviction, to the satisfaction of the Court or Justice, that such person has been previously convicted before any Court of Record or Justice in this Island of felony or misdemeanor, such first-mentioned Court or Justice may, if it or he shall think fit, direct and adjudge that, in addition to any other punishment that may be by law inflicted for such second offence, such person shall be once, twice, or thrice, publicly or privately whipped, and in such adjudication prescribe the number of stripes to be given on each occasion, and such adjudication shall be carried into effect by the gaoler of the prison in which such person may be confined: Provided that not more than twenty-five stripes shall be given at any one time.

2. Every person confined in gaol in this Island who shall wilfully injure or destroy any part of the furniture of such gaol, or damage any of the walls, floors, or other parts thereof, or shall assault any officer or prisoner of or in such gaol, shall be guilty of a misdemeanor, and may be tried therefor in a summary manner before any Stipendiary Justice of the Peace, and upon conviction shall be subject to further imprisonment, not exceeding six months, and in the discretion of the said Justice shall, if a male offender, also be liable to be punished by whipping, to the extent and in the manner provided in the preceding section of this chapter.

In the conviction, where whipping is adjudged, the two convictions must be set out, both in conviction and commitment; the *first* shortly, if the first conviction was before another Justice, state "and whereas it is now duly proved before me, the said Justice, that the said A. B. was on, &c., duly convicted before (*here state first conviction*) and I adjudge the said A. B. for his second offence, of which he has been this day (*here set out second conviction*); and add, 'I further adjudge that the said A. B. be (*once or twice*) privately whipped, and to receive ten stripes on each occasion, the first whipping to take place within ten days from this date, and the second to be administered to him the day before his term of imprisonment is ended.'"

Whipping should not be adjudged except in the case of incorrigible offenders, and generally speaking, only, for crimes accompanied with great personal violence. By sec. 16, 39th Vic., c. 12, Supreme Court may adjudge whipping on male persons convicted of offences accompanied with severe personal violence.

and lodged with the gaoler several days after, having an endorsement requiring the gaoler to substitute the same for the first warrant. The Court considered the decision in *R.* v. *Richards*, 5 A. & E. 926, as an express authority in support of their judgment, and that it was good sense and good law.

18. PRINTED FORMS.—Every Justice of the Peace should take care to provide himself with printed forms which can be obtained on application to the Colonial Secretary or to the Clerk of the Peace in St. John's.

14. SEAL.—The seal which is required to all warrants, commitments, convictions, summons and other documents, purporting to be under the hand and seal of the Justice, may be any impression or a mark in ink made by the Justice or the Printer and adopted by the Justice; the impression on a wafer made with a key or even with the thumb will do. And until this absurd law is done away with, Justices should be careful to have a seal or something like it whenever necessary on their papers.

15. RECORDS.—A Record Book containing full particulars and notes of the evidence in all cases brought before him should be kept by every Justice. He should also keep a copy of every summons or warrant, and every conviction should be entered and recorded in his book. I would also recommend him to have all complaints and informations written in a book for convenience of reference and also to preserve them. The Judge of the Supreme Court on Circuit may request the Magistrate to shew his Records; the Justice will, therefore, for his own credit sake take care to have his Records kept in an orderly and correct manner.

16. GENERAL OBSERVATIONS.—In the detection and punishment of crime, a Magistrate should be active and energetic, leaving no stone unturned to discover the guilty party. None of the information which he receives, nor the evidence he takes before the party is charged on the formal enquiry, need be known to any one but himself and the constable he employs, and in nearly all serious offences, it is most important that this information should not be communicated to the suspected or guilty person. The Magistrate, also, should endeavour to discover the

motive for the crime ; no offence is committed without a motive, and when once the motive is discovered it affords very often a clue to all other circumstances connected with the case. Whilst, however, he should thus be active and energetic in obtaining information, he should be calm and deliberate in arriving at a conclusion, weighing well all the evidence on both sides of the question, not deciding on first impressions, which very often are the right impressions, but sometimes also are completely erroneous ; He should think over every matter well before he decides, and when he does decide, should take care to have sufficient evidence to sustain his judgment. No prejudice or personal dislike should be allowed to affect his judgment.

CHAPTER XXIII.

CIVIL BUSINESS.

SECTIONS

1.—General jurisdiction in civil cases.
2.—Jurisdiction in sealers' wages.
3.—Fishermen and other servants privileged creditors in insolvency.
4.—If Estate insufficient to be paid rateably.
5.—Servants engaged without merchant's knowledge, not privileged.
6.—Servant engaged in place of another, privileged.
7.—Receiver entitled to same defence as hirer.
8.—In actions by servants against receiver, sufficient if insolvency be made to appear.
9.—Collusion between servant and hirer.
10.—Recovery against receiver, not supplier.
11.—Evidence in civil cases.
12.—Civil case before Magistrate always commenced by summons.
13.—Particulars in summons.
14.—Should be tried when returnable.
15.—Proceedings in case of default.
16.—Form of Oath.
17.—Form of Summons.
18.—Hearing, when both parties appear.
19.—Non-suit.
20.—Costs.
21.—Form of subpœna for witness.
22.—Execution on judgment.
23.—Attachment on judgment.

1. The Sections of the Consolidated Statutes giving Magistrates authority to hear and determine civil cases, are given *ante*, pages 9 and 10; besides the powers thus given, the Act 39th Vic., cap. 7, passed in 1876, gives the Court of Quarter Sessions power to try disputes to any amount concerning sealer's wages or share of seals. This Act was passed to remove doubts whether sealers came under the category of servants in the fishery. As Stipendiary Magistrates out of Session may exercise the same jurisdiction as the Court of Quarter Sessions, it follows, therefore, that this additional jurisdiction in sealer's cases may now be exercised by a Stipendiary Magistrate. Magistrates have also authority to try cases against the receiver of the voyage under the Insolvency Act.

2. The several Courts of Session, and the several District Courts in this Colony, shall have power and authority, in a summary way, to take cognizance of, and also to hear, determine, and adjudicate upon all disputes to any amount which may arise in Newfoundland, concerning the wages or share of seals of any person engaged in the seal fishery; and the judgment, determination, or award of the said Courts of Session in all such cases shall be final: Provided always, that this Act shall not apply to any claim or dispute in reference to damages for the alleged wrongful dismissal of any such person engaged in the seal fishery, where the damages claimed shall exceed forty dollars.

3. In chapter 90, Consol. Stat., sections 24 to 31, the following is contained respecting receivers of the voyage and the preferential claims of fishery servants, and how such claims are to be prosecuted:

"When it shall be made to appear that the hirer or employer of any seaman, fisherman, or other servant, is insolvent or unable to pay his creditors one hundred cents to the dollar, such seaman, fisherman, or other servant, actually employed in catching, curing or making of fish or oil, and such person as shall have supplied bait to the hirer or employer aforesaid, and who shall be creditors for wages, shares or bait for the current season, shall, upon all such fish and oil taken, cured or made by the hirer or employer aforesaid, or out of the produce or value thereof, if the same be in the possession of the hirer or employer, or of any other person aware of or privy to the hiring or employing of any such seaman, fisherman, or other servant, or having notice of the claim of such seaman, fisherman, or other servant, whether the same be accruing or due

at or before the time of such other person receiving such fish or oil or the produce or value thereof, or before paying the hirer or employer for the same, be considered privileged creditors, and shall first be paid one hundred cents in the dollar, so far as such fish or oil, or the produce or value thereof, shall go." [Sec. 24.]

4. Where such fish and oil shall be insufficient for the full payment of the wages or shares of all such seamen, fishermen or other servants, or of the persons who shall supply bait as aforesaid, they shall be paid their claims rateably in proportion to their respective wages, shares or bait money. [Sec. 25.]

5. In the case of the supplying merchant, no seaman, fisherman, or other servants than those engaged with the knowledge and consent (*a*) of such supplying merchant, being a receiver, shall be privileged creditors in manner aforesaid, in regard to any supplying merchant, being such receiver, nor in regard to the fish or oil, or the produce or value thereof, in the hands of such receiver. [Sec. 26.]

6. Any person who may be *bona fide* engaged or shipped in the place of any such seaman, fisherman, or other servant, who may, during the voyage have been discharged, or have left, or deserted, or have died, or have been incapacitated by illness or other cause from continuing his service, shall be a privileged creditor in manner aforesaid, and shall be entitled to claim on the supplying merchant, being such receiver, for the period he may have served in such stead. [Sec. 27.]

7. Any defence which the hirer or employer could have made if the action had been taken against him by such seaman, fisherman, or other servant, or supplier of bait, for such wages, share or bait money, shall be equally available for the receiver to make on the trial of any action brought against him by such seaman, fisherman or other servant or supplier of bait, for such wages, share or bait money, or the value of such fish and oil, or any part thereof as aforesaid: Provided that the receiver of the voyage, or any part of the produce or value of same, shall not be liable for the payment of the wages or share of such seaman, fisherman or other servant or supplier of bait, or any part thereof, unless it be proven on the trial that such receiver is liable under the provisions of this chapter: Provided that any shareman selling or lawfully disposing of his share of fish or oil, or any part thereof, may sue and recover payment

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(*a*) It has been decided that if the supplying merchant knew that the planter or sub-planter had so many servants at certain wages, this was sufficient knowledge and consent; under this section it is not necessary that he should know the names of the servants.

for same from the purchaser thereof, according to the terms of his contract, before any Stipendiary Justice or Court; and any shareman, fisherman, or other servant, may, in like manner, sue for and recover his wages or share from his hirer or employer, notwithstanding the provisions of this chapter. [Sec. 28.]

8. To enable such seaman, fisherman or servant, or person supplying bait as aforesaid, to recover the amount of his wages, share or bait money from the receiver of such fish and oil, or the produce or value thereof, it shall not be necessary that the hirer or employer should have been formally declared insolvent; but it will be sufficient, if it be made to appear on the trial (*a*) of any action which such seaman, fisherman or other servant or supplier of bait may bring for money had and received, or for wages, against the said receiver, before any Stipendiary Justice, Court of Sessions or other Court in this Island, that the share, wages or bait money was due at the time of bringing such action, and that the said hirer or employer was then insolvent or unable to pay his creditors one hundred cents in the dollar. [Sec. 29.]

9. If such seaman, fisherman, or other servant, or supplier of bait, has knowingly or wilfully colluded with or assisted the hirer or employer in disposing of his voyage otherwise than to his supplying merchant, such supplying merchant not being paid to the extent of his supplies over and above the unpaid wages or bait money at the time of the action being brought, such seaman, fisherman or other servant, or supplier of bait, shall not be entitled to recover in any action brought against any receiver, being a supplying merchant. [Sec. 30.]

10. Nothing herein contained shall prevent such seaman, fisherman, or other servant, from recovering such share or wages from any person other than the supplying merchant who may have received such voyage or any part thereof, and who would be otherwise liable under this chapter. [Sec. 31.]

11. The evidence in civil cases follows precisely the same rules as given in the chapter on Evidence, the great difference being that in civil cases, the mere preponderance of evidence in

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(*a*) It will be sufficient if the employer or some other witness be sworn and prove that he is unable to pay the servant's wages; the usual practice is to call the employer as a witness, but any other witness can prove the same facts to the satisfaction of the Magistrate trying the case. The proof that the employer is insolvent or unable to pay his servant's wages, is a necessary preliminary, to enable the servant in the action against the receiver, to recover his wages or share of fish.

favor of one party will entitle that party to a judgment in his favor, both plaintiff and defendant can be called and be compelled to give evidence for or against each other.

12. A civil case before a Magistrate or Quarter Sessions is always commenced by a summons. This should be served personally on the defendant by the constable, who should have the original, or both copy and original may be signed by the Magistrate. On the original, which is returned by the constable to the Magistrate, he, the constable, should endorse on the back,—"I served the defendant personally with a copy of this summons on ——, (*at such an hour.*")

13. The summons should contain particulars of the plaintiff's demand, either on a piece of paper attached to the summons or written on the margin of the summons.

14. At the exact time when the summons is made returnable, the Magistrate sitting in the Court House or Magistrate's office, where he usually transacts magisterial business, should direct the constable to call the case, —— versus ——; and, if neither party should appear at the appointed time, he may, if he do not choose to wait for the parties, mark on the back of the summons, "case dismissed."

15. Should the plaintiff appear, but not the defendant, the Magistrate should direct the constable to call out in a loud voice the name of the defendant or defendants three times,—"appear at the suit of ——, (plaintiff), or judgment will be given against you by default." The Magistrate should then proceed to swear the plaintiff according to the form of the oath given in next section, and enquire carefully into his claim if he believe that he has a claim against the defendant, and he is bound to accept his evidence when not contradicted; he will, however, use his own discretion under the evidence as to the amount for which he will give the plaintiff judgment. After examining the plaintiff, and, if necessary, any witness he produces, the Magistrate should also swear the constable, and if the proof of service is satisfactory, he endorses on the back of the summons, "Judgment by default for plaintiff for $—." (Date.) (*a*).

(*a*) *Default.*—Should the defendant appear soon after judgment by default has been delivered, and prove on oath to the Magistrate that he has a

16. The oath should be in the following form, and may be administered by the Magistrate or Clerk of the Peace:—

"The evidence you shall give in the cause now depending, shall be the truth, the whole truth, and nothing but the truth. So help you GOD."

The observations on oaths in the Chapter on Evidence also refer to swearing in civil cases.

17. FORM OF SUMMONS.—

Northern District,
Island Cove,
No. .

NEWFOUNDLAND.

To Job Stiggins, Greeting.

You are hereby required to appear and plead before the undersigned Stipendiary Magistrate for the said District, at *Island Cove*, aforesaid, on *Monday, the seventeenth day of December*, 187 , at eleven o'clock in the forenoon, to an action at the suit of *John Jones*, who claims from you the sum of Ten dollars and ten cents, for the matters contained in the annexed particulars: and in default of your so doing, the plaintiff may proceed to judgment and execution.

This day of 187 .

T. WILLS, Stip. Mag.

Bill of Particulars.

JOB STIGGINS, To JOHN JONES, Dr.

1876.

Oct. 31.—One pair Boots	£2	10	0	
One Ball Hemp.....	0	0	6	
	£2	10	6	$10 10

18. When both parties appear, the Magistrate, at the time when the defendant is summoned for, will at once proceed to hear the case. The plaintiff may commence proceedings by making a statement of his claim, or he may at once call his witnesses; the plaintiff examines each of his own witnesses first, this is called examination in chief, and then the defendant may cross-examine them. The Magistrate should bear in mind the rules of evidence and keep each party strictly to the case before him, and should endeavour as much as possible to prevent either

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good ground of defence to the action, the Justice may request the plaintiff and defendant to attend before him, hear both parties, and decide the case on the merits.

party interrupting the other. When the plaintiff's case is finished, the defendant then proceeds with his case; he may commence with making a statement of his grounds of defence, *(a)* or he may at once proceed to call his witnesses; these are examined by the defendant in chief and cross-examined by plaintiff. If the defendant calls witnesses, the plaintiff has a general reply. After hearing both sides, the Magistrate may immediately give judgment, or he may take time to consider it, making always as little delay as possible in delivering his judgment.

19. Should the plaintiff at any time before judgment is delivered, choose to be non-suited, he can claim a non-suit as a matter of right. The effect of non-suit is, *first*, the plaintiff may summon the defendant again for precisely the same cause of action, which he could not do if judgment had been given for the defendant; *second*, he has to pay the defendant's costs.

20. The costs to be paid for witnesses, summons, &c., are given at pages 138 & 139; the plaintiff should always be made to pay the costs before the process is issued for him, unless he is a pauper, and can swear that he is not worth five pounds over and above his wearing apparel, &c.

21. Form of Subpœna for a Witness.—*(b)*

Northern District,
Island Cove,
to wit:

Newfoundland.

To the Constables of the Northern District.

These are to require you forthwith to summon John Smith of Island Cove, aforesaid, Fisherman, to appear before the undersigned Stipendiary

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(*a*) *Set-off.*—This means the counter claim which the defendant may have against the plaintiff. To enable the defendant to set off his claim against plaintiff, 1st, it must be between the same parties, not a sum due by plaintiff and *another* to defendant; 2nd, the set-off must be liquidated, that is a sum certain, which can be sued for as a common money debt, not in the nature of damages, such as for killing a pig, or damage to property, which are known in law as unliquidated damages—damages which would have to be ascertained by a Court. [See *Roscoe*, Nisi Prius, set-off, 417, &c.]

(*b*) A witness is not bound to attend in a civil case unless his fee for attendance, 75 cents a day and 10 cents a mile travelling to the place of trial and back to his residence, is first paid or tendered to him.

Tender.—In making a tender it must be made to the party himself or some one authorized by him to receive it; the money must be produced unless

Justice of the Peace for the District aforesaid, at Island Cove, in the said District, on the day of at o'clock, in the forenoon, to give evidence in a case in which John Jones is plaintiff, and Job Stiggins defendant, on the part of the plaintiff; and be you then there to certify what you have done in the premises. Herein fail you not.

Given under my hand at Island Cove, aforesaid, the day of A. D. One thousand eight hundred and seventy-

T. WILLS, J.P.

22. EXECUTION (*a*) ON JUDGMENT.—

Northern District, Island Cove, to wit: } NEWFOUNDLAND.

Whereas John Jones lately before me, the undersigned Stipendiary Magistrate for the said District, at Island Cove, hath recovered judgment against Job Stiggins of Island Cove, aforesaid, Fisherman, for the sum of Ten dollars and ten cents.

You are therefore hereby required to cause to be made and levied of the Moneys, Goods, Debts and Effects of the said Job Stiggins, the said sum of Ten dollars and ten cents; and also the sum of One dollar and fifty cents, by the said John Jones in this behalf expended for the cost and expenses of the suit; and have you the said sums of money before

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the creditor dispenses with the production of it at the time, or does anything which is equivalent to a dispensation, such as saying "You need not offer me the forty shillings, I won't take it." By law no tender in silver is good over $10. [Consol. Stat., p. 462.] Gold may be to any amount. Tender must be unconditional. [*Roscoe*, Nisi Prius, 422, &c.]

(*a*) The plaintiff or defendant who recovers a judgment is entitled to an execution or attachment (Form 23) against the losing party, whenever he demands it. The Magistrate, however, should do all in his power, whilst complying with this rule, to prevent the proceeding being unnecessarily harsh or revengeful against the losing party; and should the party claiming the execution allow time for payment, the Magistrate or Clerk of the Peace may receive the money by instalments. In levying the execution, the goods should be pointed out to the constable by the party requiring the levy, and no more should be taken than will be sufficien to satisfy the judgment and costs. The goods should be kept three days before being sold, and in the meantime a notice of the sale should be posted on the Court House door, signed by the constable, stating the time when such sale will take place and other particulars; the person requiring the execution will have to find a conveyance for the goods, if necessary.

me immediately after the execution of this writ to be rendered to the said John Jones, and have you then there this warrant.

Island Cove, day of , Anno Domini 187 .

T. WILLS, J. P.

23. FORM OF ATTACHMENT (*a*) ON A JUDGMENT.—

Northern District, Island Cove, to wit: } NEWFOUNDLAND.

Whereas a Judgment has lately been given at Island Cove aforesaid, before me, a Stipendiary Justice of the Peace for the said District, against Job Stiggins at the suit of John Jones, for the sum of Ten dollars and ten cents; you are hereby required not to part with any Monies, Goods, Debts, or Effects, of the said Job Stiggins, which you now have in your custody, or under your control; but you are to hold the same to the amount of Eleven dollars and sixty cents, being the amount of the said Judgment and Costs, to abide my further order, touching the same.

Island Cove, the day of 187 .

T. WILLS, J. P.

To Mr. Zechariah Snooks,
Planter, Island Cove.

This Attachment not to be raised but by written notice.

(*a*) By sec. 7, Consol. Stat., cap. 13: "Any of the Courts of Session or a Stipendiary Magistrate, before whom judgment shall be recovered, may attach monies, goods, debts and effects in the hands of any third party, and summon and compel, by warrant, if necessary, the attendance of any party for examination, and make and enforce the observance of such order thereon as to the said Courts or Magistrate shall appear just: Provided that no such attachment shall affect executory contracts (*incomplete contracts*) or debts not actually due."

APPENDIX OF FORMS OF OFFENCES, &c.

Abbreviations in Forms.

Note the observations at p. 120.—*On, &c.*, is an abbreviation for, on the —— day of ——, Anno Domini one thousand eight hundred and seventy— ; *at, &c.*, is an abbreviation for statement of locality, as, *at Island Cove, in the Northern District*; I. means indict. offence ; *n. ex.*, not exceeding —— years ; imp., imprisonment ; *sum.*, means summary jurisdiction ; *B.*, means bail ; *Dis.*, means discretionary ; *Comp.*, means compulsory ; *F.*, felony ; M., misdemeanor ; *I. A.*, Imperial Act. All offences not marked *Summ.*, are indictable offences. Offences marked *Summ.*, are cognizable under summary jurisdiction.

Arson.

1. (*Dwelling House, person being therein.*)—For that he, the said A. B., on, &c., at, &c., unlawfully, maliciously, and feloniously, did set fire to a certain dwelling house of C. D., there situate, one E. D. then being therein, contrary to the statute.

Punishment—im. n. ex. 2 years. **B.** dis. **F.** (I. A.) 24 and 25 Vic., c. 97, sec. 2.

2. *House, Stables, &c.*—For that he, the said A. B., on, &c., at, &c., unlawfully, maliciously, and feloniously, did set fire to a certain house (or stable or out-house there situate, in the possession of the said A. B. or C. D.,) with intent thereby then to injure the said C. D. (or to defraud the —— Insurance Company,) contrary to the statute, &c.

Punishment—Imp. n. ex. 2 years. **B.** dis. **F.** (I. A.) 24 & 25 Vic., c. 97, s. 3.

Assault.

3. *Stabbing, &c., with intent to maim, resist apprehension, disable, &c.*—For that he, the said A. B., on, &c., at, &c., unlawfully, maliciously, and feloniously, with a certain gun, then and there loaded with gunpowder and divers leaden shot, did shoot at one C. D,, (or did, by drawing the trigger of a certain loaded gun, attempt to discharge the said gun at ——, with intent, in

so doing, then and there to maim (*a*) or disfigure (*b*) or disable (*c*) him,) or to do him some grievous bodily harm, or to resist and prevent the lawful apprehension of the said A. B. or of one E. F., contrary, &c.

Punishment—imp. n. ex. 2 years. **B.** discretionary. **F.** (I. A.) 24 & 25 Vic., c. 100, s. 18 & 19.

4. *Causing bodily harm.*—For that he, the said A. B., on, &c., at, &c., unlawfully, maliciously, and feloniously, did wound (or cause certain grievous bodily harm) to one C. D., with intent, &c., (*as in Form* 3, *varied according to the circumstances of the case,*) contrary, &c.

Punishment—imp. as No. 3. **B.** discretionary. **F.** (I. A.) 24 & 25 Vic., c. 100, s. 18.

5. *Misdemeanor in Stabbing, &c., or inflicting grievous bodily injury.*—For that he, the said A. B., on, &c., at, &c., unlawfully and maliciously did wound one C. D., (or unlawfully and maliciously did inflict upon one C. D. certain grievous bodily harm, with a certain weapon or instrument called ——,) contrary to the statute.

M. B. dis. Imp. n. ex., 2 yrs. (I. A.) 24 & 25 Vic., c. 100, s. 18.

6. *On Magistrates or Officers, &c., in case of Wreck.* For that he, the said A. B., on &c., at &c., unlawfully did assault, and did strike or wound C. D., Esquire, a Magistrate, (or Commissioner of Wrecked Property) then lawfully authorized in and on account of his the said C. D's duty in and concerning the preservation of a certain vessel (*there in distress,*) (*or wrecked,*) (*or stranded,* or *cast ashore,*) (*or lying under water,*) or certain goods and effects, wrecked, &c., contrary to the statute.

Punishment—imp. n. ex. 2 yrs. **M. B.** discretionary, (I. A.) 24 & 25 Vic., c. 100, s. 37.

(*a*) *Maim* is to injure any part of a man's body which may render him, in fighting, less able to defend himself, and annoy his enemy.

(*b*) *Disfigure*, is to do some external injury, which may detract from his personal appearance.

(*c*) *Disable*, is to do something which creates a permanent disability, and not merely a temporary injury.

7. *On Peace or Revenue Officer.*—For that he, the said A. B., on &c., at &c., unlawfully did assault, (*or resist, wilfully obstruct,*) C. D., he being then a peace officer, to wit a constable of and then in the due execution of his duty, contrary to the statute.

Punishment—imp. n. ex. 2 yrs. **M. B.** discretionary, (I. A.) 13 & 14 Vic., c. 101, s. 9.

8. *Common Assault and Battery, (Indict.) with or without Bodily harm.*—For that he, the said A. B., on, &c., at, &c., unlawfully did assault, wound and ill-treat C. D., (*and if so*, and thereby then occasioned unto said C. D., great actual bodily harm) (*a*), against the peace, &c. *Manual*, p. 181.

9. *Common Assault.* (*Summ.*)—That on the day of at in the District, C. D., of, &c., at, &c., did unlawfully assault and beat, (*if no battery, say* assault), this informant, contrary to the statute, &c. See page 177, *Manual.*

10. *Assault on Constable.* (*Summ.*)—Did unlawfully assault and beat this informant, he being then one of the constables of, &c., and being then and there in due execution of his duty, against the peace, &c. See page 182, *Manual.*

11. *Aggravated Assault upon Females and Boys under Fourteen.* (*Summ.*)—For that he, the said A. B., on, &c., at, &c., unlawfully did assault and beat (*or* assault) , a certain male child, not exceeding the age of fourteen years, to wit, of the age of years, (*or* a certain female), named C. D., (the complainant), contrary, &c.. See page 178, *Manual.*

12. *Indecent Assault on a Female* (*b*).—For that he, the said

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(*a*) *Actual bodily harm* would include any hurt or injury calculated to interfere with the health or comfort of the prosecutor; it need not be an injury of a permanent character, nor need it amount to what would be considered *grievous* bodily injury. [*Arch.* Crim. Plead., 660 Ed. 1871.]

Grievous bodily injury.—It is not necessary that a *grievous bodily harm* should be either permanent or dangerous; if it be such as seriously to interfere with health or comfort, that is sufficient; and therefore, where the defendant cut the private parts of an infant, and the wound was not dangerous, and was small, but bled a good deal, and the jury found that it was a grievous bodily harm, held that the conviction was right. [*Arch.* Crim. Plead. 666.]

(*b*) *Indecent assault* must be an assault accompanied with indecency on the part of the defendant. Where there is proof that the woman assented,

A. B., on, &c., at, &c., unlawfully did indecently assault and ill-treat a certain female, named C. D., against the peace, &c.

M. Imp. not ex. 2 yrs. 24 & 25 Vic., c. 100, s. 52. **B.** disc.

Attempts to Murder

By Stabbing or causing bodily harm, or Shooting.—For that he, the said A. B., on, &c., at &c., feloniously did wound one C. D., (or feloniously did cause certain grievous bodily harm to C. D., or feloniously did shoot at C. D. with a certain gun, loaded with powder and ball,) with intent, in so doing, then and there feloniously, wilfully, and of his malice aforethought, to kill and murder the said C. D., contrary to the statute, &c.

F. Imp. not ex. 2 yrs. **B.** dis. (I. A.) 24 & 25 Vic., c. 100, s. 57. Indict. (*a*)

Bigamy.

For that he, the said A. B., on the day of , at , in the said District, feloniously did marry and take to wife one *Ann Smith*, his former wife, to whom he was previously married,

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defendant must be acquitted. If, on an indictment for an indecent assault, it appears that the woman consented to the assault, but that her consent was procured *by fraud*, such consent constitutes no defence. [*Arch.* Criminal Plead. 711.

(*a*) Accomplice.—Duty of a Justice.—A Justice has no power to make a promise of pardon, and it is his duty to commit an accomplice for trial, notwithstanding it is intended that he should give evidence for the prosecution. The application for the accomplice to be a witness is usually made to the Supreme Court or Quarter Sessions, before the indictment is sent to the grand jury. Where the evidence would be too weak to justify a commitment independently of the testimony of the accomplice, the proper course seems to be to take the deposition of the accomplice in the usual way, cautioning him, at the same time, that he is not bound to say anything which may criminate himself. In this case, the accomplice would be bound over as a witness, and the circumstances explained to the Judge, before the indictment against the prisoner is presented to the grand jury. The rule which requires the evidence of an accomplice to be corroborated is one of practice only, approved of by the superior courts. [*R.* v. *Stubbs*, 26 *L. T.* 109.]

to wit, on day of, A. D. 18 , being then alive, contrary, &c.

F. Imp. not ex. 2 yrs. **B.** dis. (I. A.) 24 & 25 Vic., c. 100, s. 57. Indict.

Prove first marriage, and that first wife was alive at the time of the second marriage. The marriage may be proved by the production of the register, or by an examined copy or extract, provided it purport to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted. Prove second marriage. First wife is not a competent witness to prove any part of the case, either for or against her husband; the second wife is, the previous marriage being proved, for the second marriage is void. [*Arch.* 275.]

Burglary.

Entering a Dwelling House at Night, with intent to commit Felony.—For that he, the said A. B., on the day of , at , in the said District, about the hour of (eleven) in the night, feloniously and burglariously did break and enter the Dwelling House of C. D., there situate, with intent to commit felony therein, contrary to the statute, &c.

Dwelling House.—Must prove that the defendant broke and entered the dwelling house in which C. D. resided, or some building between which and the dwelling house there was a communication.

Breaking.—There must be a breaking, actual or constructive; but lifting a latch, breaking out a pane of glass, pushing open a window, fastened with wedges, has been held a breaking. Entering through an open window—is not breaking—breaking out, however, through an inner door—is sufficient breaking.

Entry.—Any, the least degree of entry, however, with any part of the body, or with an instrument held in the hand, is sufficient.

Intent.—The best evidence of intent is, that the defendant actually committed the felony alleged to have been intended by him.

Night.—By law, now, night commences at 9 p. m., and ends at 6 a. m., of the next morning. To constitute burglary, crime must be committed within those hours.

Certiorari—Form of Writ of.—(*a*)

Newfoundland.
Supreme Court.

Victoria, by the Grace of God, of Great Britain and Ireland, Queen, &c.

To , one of our Justices of the Peace for the District of our said Island, Greeting:—

(*a*) See pp. 22 & 23.

We, being willing for certain causes that all and singular the records of conviction whereof C. D. was convicted before you of *(here state offence)* as it is said, be sent by you before us; We do, therefore, command you that you send the records of the said conviction, with all things touching the same, under your seal, immediately after receipt of this writ, before us, in our said Court, together with this our writ, that we may further cause to be done therein that what of right and according to law we shall see fit to be done.

Witness Sir HUGH W. HOYLES, Knight, Chief Justice of our said Supreme Court, at St. John's, this day of , 187 .

By the Court,

P. EMERSON, C. C. & Reg.

JUSTICE'S RETURN TO WRIT OF CERTIORARI.—(To be endorsed on Writ.)

—— District, } NEWFOUNDLAND.
—— to wit: }

I , Esquire, the within named Justice of the Peace, do, under my hand and seal, return into Her Majesty's Supreme Court of Newfoundland, the conviction mentioned within, with all matters touching the same. Witness my hand and seal, &c.

—— J. P.

Concealing Birth of a Child.

For that she, the said A. B., on the day of , at , in the said District, was delivered of a child, and being so delivered of the said child, did then unlawfully endeavour to conceal the birth of the said child, by secretly burying the dead body of the said child, (*if it was by other means than secret burying, state the mode of disposing of the body,*) contrary, &c.

M. Pun.—imp. not ex. 2 yrs. (I. A.) 24 & 25 Vic., c. 100, s. 60. Indict. **B.** discretionary.

Birth.—This must be proved, and the mode of concealment, and also that the mother did it, if she is the one charged; the body of the child must be covered and concealed. Denial of the birth, no preparations having been made for confinement, and no assistance called for, generally form part of the evidence in such cases. Three points must be proved in such cases: 1st That the woman was delivered of the child; 2nd, That she secretly buried, or otherwise secretly disposed of the body; 3rd, That the burying was an actual *concealment* of the body.

False Pretences.

Obtaining Money, Goods, &c., by False Pretences.—For that he, the said A. B., on, &c., at, &c., did unlawfully obtain from the said C. D., certain goods, (*or* money, *as the case may be,*) by means of a certain false pretence, then and there made by him, the said A. B., to wit, that he was sent to the said C. D., by one E. F., to buy the same for him, (*setting out the false pretence*), with intent thereby then to defraud, well knowing the said pretence to be false, against the form of the statute, &c.

Mis. Pun. not exc. 2 yrs. imp. (I. A.,) 24 & 25 Vic., c. 96, s. 88, 89 & 90. **B.** dis. Indict.

Must prove false pretence as charged. Property obtained or money; if the charge is for obtaining two pairs of shoes, proof that the defendant obtained one pair will do. *Money.*—Coin may be described simply as money, and the allegation will be sustained by proof of any amount of coin, although the particular species of coin, of which such amount was composed, shall not be proved. [*Arch.* 314.]

With intent to defraud.—It is only necessary to state in the charge and to prove an intent to defraud, generally, without alleging or proving an intent to defraud, any particular person. [24 & 25 Vic., c. 96, s. 88.]

The defendant may be convicted, although the offence turns out to be larceny. [24 & 25 Vic., c. 96, s. 88.]

The subject of false pretences contains many nice distinctions, which are too elaborate and complicated to be discussed in this small space. There must be proof that the pretences made use of were *false*; in other words, the facts negativing the pretences must be proved.

Firing Woods.

For that he, the said A. B., on, &c., at, &c., wilfully and carelessly did set on fire certain woods, forests, trees, and underbush, (the property of C. D., or *public property,*) situate at , contrary, &c.

Pun., fine not ex. $80, or imp. not exc. 6 mos. *Summ.*

Evidence that the woods were set on fire by the *carelessness* or negligence of defendant is sufficient to convict under this section. So much damage has been done to the forests of the Colony, by negligence of persons making fires in the woods, that this Act was passed to punish mere

carelessness, which, but for this Statute, would not otherwise be a criminal offence.

Consol. Stat., Cap. 40, Sec. 3 :—

"If any person shall wilfully or carelessly set on fire, or cause to be set on fire, any of the woods, forests, trees, or underbush, in this Colony or its dependencies, such woods, forests, trees, or underbnsh being public or private property, such person shall, on being convicted thereof in a summary manner before any Justice, be subject to a fine not exceeding eighty dollars, or be imprisoned in gaol for a period not exceeding six months; or such person may be indicted for such offence, and tried and sentenced to the like punishment, by and before any Court of Record in this Colony. Nothing herein contained shall deprive any person who may be injured by such firing and burning of his property of his right of action at law for such damages as he may sustain by reason thereof."

Fish Stealing.

Codfish, green or cured.—For that he, the said A. B., on, &c., at, &c., three quintals of codfish, cured (or green), of a value not exceeding twenty dollars, to wit, of the value of fifteen dollars, of the goods and chattels of C. D., feloniously did steal, take, and carry away, contrary, &c.

Punishment—imp. not exc. 6 weeks. *Summ.*

Consol. Stat., Chap. 40, Sec. 4 :—

"Any person who shall feloniously steal, take or carry away any cod fish, green or cured, of a value not exceeding twenty dollars, may be tried in a summary manner before a Stipendiary Magistrate, and shall on conviction be subject to imprisonment for a period not exceeding six weeks; and any person subject to imprisonment under this section, may appeal from the judgment or order of such Stipendiary Magistrate to the Supreme Court then next to be held at or near the place where such offence shall have been committed, on giving sufficient security to prosecute such appeal, and further to abide by and perform such order or decree as the said Court may make thereon; and on the hearing of such appeal, such Court may admit further and other evidence than that adduced before the said Magistrate, and may confirm, vary or set aside the judgment of such Magistrate, and make such orders as to the execution of any judgment as to it may seem meet. The appeal provided by this section may be heard before one Judge sitting as the Supreme Court either in St. John's or on Circuit."

Forgery.

For that he, the said A. B., on, &c., at, &c., feloniously did forge, (or did offer, utter, and put off to John Munn and others, trading under the firm of John Munn and Company, well knowing the same to be forged), a certain order, purporting to be an order from John Jones to John Munn and Company, for the payment to Job Stiggins of ten pounds, for wages, with intent thereby then to defraud, against, &c.

F. Pun. not ex. 2 yrs. imp. 24 & 25 Vic., c. 98, s. 23, (I. A.) **B.** disc., Indict.

Prove that the order was forged, by producing the person whose name is forged to order. Presenting an order over the counter is uttering and putting off. "Using of a forged instrument, in some way, in order to get money or credit upon it, *or by means of it*, is sufficient to constitute the offence described in the statute." [*Arch.* 569.]

With intent to defraud.—It is not necessary to prove the intention of the defendant to defraud any particular person; it is sufficient to prove generally an intent to defraud. "*Well knowing the same to be forged.*" "This is not capable of direct proof; it is, therefore, nearly always proved by evidence of facts, from which the jury may presume it." [*Archbold*, 570.]

The statement of the prisoner to the Clerk at the time of presenting the forged instrument, will generally furnish the strongest evidence against him on this head.

Larceny—(*Stealing.*)

For that he, the said A. B., on, &c., at, &c., three pairs of shoes and one waistcoat, of the goods and chattels of C. D., feloniously did steal, take and carry away, against the peace, &c.

I. F. Imp. not ex. 2 yrs. Common Law. **B.** discretionary.

LARCENY DEFINED.—Larceny at common law is the wrongful taking and carrying away of the personal goods of any one from his possession, with a felonious intent to convert them to the use of the offender, without the consent of the owner. But goods which are not personal chattels at common law have been made the subject of larceny by statute. *Simple* larceny is the larceny of the goods only; *compound*, is a larceny from the person or habitation of the owner. [*Boothby, Syn.* 163.] The component parts of the offence of simple larceny are the taking—the carrying away or asportation (as it is technically termed)—and the felonious intent. With respect to the *taking*, it may be either actual or constructive—actual, where the party takes the goods out of the possession of the owner *invito domino*, by force, or stealth or the like; constructive, where the possession is obtained by some trick or artifice, or the like,

with intent at the time to convert them to the party's own use, but which has not the effect of transferring any right of property from the owner to such party; for if such right be transferred, the offence will not be larceny, but may be that of obtaining goods under false pretences. [2 *Arch.*] With respect to the *carrying away*, any removal of the goods from the place where they were, however slight, and notwithstanding they may be left on the premises, will be a sufficient asportation; as, for instance, removing a parcel which lay in the forepart to the middle or tail of a waggon; taking plate out of a chest and laying it on the floor; snatching an earring from a lady's ear, which is instantly dropped among the curls of her hair; or drawing a pocket-book out of the inside pocket of a coat above the top of the pocket, although it should then fall again into the pocket. [*B. Syn.* 196.] But a mere *change of position* of the goods will not be sufficient; as, for instance, setting a wrapper which was laid lengthway of a waggon on one end for the greater convenience of taking out the contents. To constitute the larceny, the felon must, for an instant at least, have the entire and absolute possession of the goods. [*R.* v. *Cherry*, 2 *East*, P. C. 556.] It will be larceny for a person to run away with money given to him by another person to procure a railway ticket, she being present all the time. [*R.* v. *Thompson*, 32 L. J. 53.] There must also be a complete severance from the possession of the owner, and therefore it has been held that the asportation will not be complete if the prisoner were unable to carry off the property on account of its being attached to the counter by a string which was not cut or broken, or on account of its being tied to a bunch of keys which remained in the prosecutor's pocket. With respect to the *felonious intent* the goods must have been taken without any claim of right, for if they were taken either by mistake or under a *bona fide* claim of right, however unfounded, it will not be felony. But it will be for the Court to determine on the evidence, whether they were taken under such an assertion or supposition of right, or with a thievish and felonious intent. The *animus furandi* must have existed at the time when the goods were taken, except in the case of a servant stealing his master's goods, when this principle will not apply [see *R.* v. *Roberts*, 3 *Cox*, C. C. 74], the subsequent appropriation of them without an original felonious intent not constituting the criminal offence of larceny. It may be laid down as a general rule, that the taking and carrying away are felonious, where the goods are taken against the will of the owner, either in his absence or in a clandestine (*a*) manner, or where possession is obtained by force or

(*a*) The openness or secrecy with which an act is done is an important element in the consideration of this offence, and constitutes in many cases the distinction between a felony and a trespass. [See 1 *Hale*, 509.]

surprise, or by a trick or fraudulent expedient, the owner not voluntarily parting with his entire interest in the goods, and where the taker intends, in any such case, frandulently to deprive the owner of his entire interest in the property against his will, permanently and not temporarily. [*Stone*, 275, 276.]

Malicious Injury to Property.

For that you, Job Stiggins, on, &c., at, &c., maliciously did injure (*or damage or destroy*) a certain gate, the property of John Jones, contrary, &c.

Sum. pun. not ex. 2 mos. jail, or fine not ex. $20; also compensation not ex. $20. See p. 186, Manual.

Manslaughter.

For that he, the said A. B., on the first day of June, in the year of our Lord , feloniously did kill and slay one J. N., against the peace of our Lady the Queen, Her Crown and dignity.

F. Pun. not ex. 2 yrs imp. (I. A.) 24 & 25 Vic., c. 100, s. 5. **B.** never taken by Magistrate. Indict.

Manslaughter is the unlawful and feloniously killing of another, without any malice, either express or implied. It is of two kinds; (1,) Involuntary manslaughter; where a man doing *an unlawful act*, not amounting to felony, by accident kills another, or where a man by *culpable neglect of a duty* imposed upon him is the cause of the death of another. And it may be stated generally that that which constitutes murder being done by design, and of malice prepense in the eye of the law, constitutes manslaughter, when arising from culpable negligence; (2,) Voluntary manslaughter; where, upon a sudden quarrel, two persons fight, and one of them kills the other, or where a man greatly provokes another, by some personal violence, amounting at least to a blow, and the other immediately kills him. Where it is doubtful whether the crime is murder or manslaughter, the Magistrate should charge *murder* on the enquiry, as the Crown officers may afterwards indict for manslaughter only; or the grand jury, on an indictment for murder, may find only manslaughter.

Homicide not felonious.—No punishment or forfeiture shall be incurred by any person who shall kill another by misfortune, or in his own defence, or in any other manner, without felony. 24 & 25 Vic., c. 100, s. 7.

Murder.

For that he, the said A. B., on the first day of June, in the year of our Lord feloniously, wilfully, and of his malice

aforethought, did kill and murder one J. N., against the peace of our Lady the Queen, Her Crown and dignity.

F. Punishment—death. (I. A.) 24 & 25 Vic., c. 100, s. 1. Bail never taken by Magistrate.

One J. N.—It must be proved that J. N. was the person killed; if the name of the person killed be unknown it should be stated.

Murder is thus described and defined by Lord Coke, (3 Just. 47). "Where a person of sound memory and discretion unlawfully killeth any reasonable creature in being, and under the King's peace, with malice aforethought, either express or implied."

1st. Murder must be committed by a person of sound memory and discretion; it cannot, therefore, be committed by an idiot, a lunatic or an infant, unless he shows a consciousness of doing wrong. (*Archb.*, 623.)

2nd. It must be an unlawfully killing not excusable or justifiable. It may be by poisoning, striking, starving, drowning, and a thousand other forms of death, by which human nature may be overcome. [4 *Blac. Comm.* 196.]

To make the killing murder, the death must follow within a year and a day after the stroke or other cause of it. [*Archb.* 625.]

3rd. The person killed must be a reasonable creature in being and under the King's peace—a child must be born into the world in a living state, and there must be an independent circulation in the child before it can be accounted alive; but the fact of the child being still connected with the Mother by the umbilical cord, will not prevent the killing from being murder.

King's Peace—this means merely that it is not murder to kill an alien enemy in time of war.

4th. The killing must be committed with malice aforethought. Malice is either express or implied. *Express malice* is when one, with a sedate and deliberate mind, and formed design, doth kill another, which formed design is evidenced by external circumstances discovering that inward intention; as lying in wait, antecedent menaces, former grudges, and concerted schemes to do him some bodily harm. (1 *Hale*, 45.) No provocation, however great, will extenuate or justify a homicide where there is evidence of *express malice*. [*R.* v. *Mason*, *Fost.* 132.]

In many cases where no malice is expressed or openly indicated, the law will *imply* it. Thus, where a man wilfully poisons another—in such a deliberate act the law presumes malice, though no particular enmity can be proved. [1 *Hale*, 455.]

So if a man kill another suddenly, without any, or without a considerable provocation; if he kills an Officer of Justice in the legal execution of his duty; or if intending to do another *felony*, he undesignedly kill a man; in all these cases the law *implies malice*, and the offence is murder.

Of his malice aforethought did kill and murder.—The law presumes every homicide to be murder, until the contrary appears. Therefore, the prosecutor

is not bound to prove malice or any facts or circumstances besides the homicide from which the jury may presume it; it is for the defendant to prove the homicide justifiable or excusable, or that it amounted but to manslaughter. In cases of express malice the homicide is usually committed in secret, and it is rarely practicable to substantiate it by direct and positive testimony; in most cases the defendant is convicted on circumstantial evidence merely.—Lord Hale laid it down as a rule never to convict a man of murder or manslaughter on circumstantial evidence alone, unless the *body have been found.* [2 Hale, 290.] [*R.* v. *Hopkins*, 8 C. & P. 591.] In cases of implied malice, the homicide is usually committed in the presence of others who may prove it, if not it must be proved by circumstantial evidence. [*Archb.* 622.]

In all cases of murder, the Magistrate's first care should be to *secure* the guilty or suspected party; he should use the utmost care, caution and secrecy, in collecting the evidence. The body and the place of the murder should be carefully examined, and every minute particular noted; a Doctor should examine the body, and, if necessary, hold a *post mortem* to prove the actual cause of death. The bloody clothes of the murdered man, or of the murderer, should be carefully kept by the Constable, and also the instrument which caused death. All these things are necessary to produce at the trial. The Magistrate should remember that whilst every thing may appear clear to him who is on the spot, it is necessary to make the whole matter clear, perhaps months afterwards in St. John's, before a jury, who know nothing except what is proved before them. A murder can only be tried before the Supreme Court in St. John's.

Perjury.

For that he, the said A. B., on the day of , at , in the said District, falsely, wickedly, wilfully and corruptly, did commit wilful and corrupt perjury, *(in the testimony he gave upon oath in his examination, before , Esquire, a Justice of the Peace for the said District, upon the hearing of a certain information or complaint, preferred by one C. D., or the said A. B., against E. F.,)* against the peace, &c.

M. I. Common Law. **B.** discretionary. Pun.—fine and imp. with hard labour, or imp. not ex. 7 yrs., and incompetency as a witness.

The oath must be taken—(1) In a judicial proceeding; (2) Before a competent jurisdiction or authority; (3) It must be material to the question depending; (4) It must be false or not known by defendant to be true; and (5) it must be taken deliberately and intentionally. [*Oke* 174.] See also p. 39, *Manual.*

Receivers of Stolen Goods.

For that he, the said A. B., on the day of , at , in the said District, feloniously did receive of one C. D., (*the thief*,) *or, if unknown*, say of a certain evil disposed person, one watch of the value of forty dollars *(or money, as the case may be)*, the goods and chattels *(or money and property)* of E. F., which had then lately before been feloniously stolen, he the said A. B. well knowing the same to have been so stolen, contrary to the statute, &c.

Receivers.

In Felonies.—Whosoever shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, extorting, obtaining, embezzling, or otherwise disposing whereof shall amount to a felony, either at common law or by virtue of this Act, knowing the same to have been feloniously stolen, taken, extorted, obtained, embezzled, or disposed of, shall be guilty of *Felony*.

Pun.—imp. n. ex. 2 yrs. Male under 16, whipping.

Accessories.—An offender may be indicted and convicted either as an (*a*) accessory after the fact or for a substantive felony, and in the latter

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(*a*) An indictment will not lie against a person as a receiver, if the stealing is not a crime either at common law or under the Larceny Act, although the offence may be felony. [*R.* v. *Smith*, 1 L. R. (C. C.) 266.] If a husband knowing that his wife has stolen goods, receives them from her, he may be convicted as a receiver. [*R.* v. *M'Athey*, 32 L. J. 35. See also *R.* v. *Woodward*, 31 L. J. 91.] As to feloniously receiving the goods of a husband taken away by his wife, see *R.* v. *Deer*, 7 L. T. 366; and as to the goods getting back into the possession of the owner, so as no longer to be stolen goods, before their delivery to the receiver, see *R.* v. *Schmidt*, 1 L. R. (C. C.) 15. The bare finding of stolen goods on the premises of the person indicted for receiving, without any evidence that they were left there by the thief in accordance with a previous arrangement between him and the receiver, will not be a sufficient confirmation of the evidence of the thief that they were so left as to justify a conviction upon his otherwise unsupported evidence. [*R.* v. *Robinson*, 26 J. P. 186.] Two or more persons may be indicted for jointly receiving stolen property, although each successively received the whole at different times. [*R.* v. *Reardon*, 35 L. J. 171.] A person buying goods of a partner,

case, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice; but no person howsoever tried for receiving as aforesaid, shall be liable to be prosecuted a second time for the same offence. [*Id.* s. 91.]

INDICTMENT.—In any indictment containing a charge of feloniously stealing any property, counts for feloniously receiving the same, knowing the same to have been stolen, and in any indictment for feloniously receiving any property, a count for feloniously stealing the same may be added; and the jury may find a verdict of guilty, either of stealing or receiving the property; and if the indictment shall have been found against two or more persons, the jury may find all or any of the said persons guilty either of stealing the property or of receiving the same, or find one or more of the said persons guilty of stealing the property, and the other or others of them guilty of receiving the same, knowing the same to have been stolen, [*Id.* s. 92]; and any number of receivers at different times of such property, or of any part thereof, may be charged with substantive felonies in the same indictment, and may be tried together, notwithstanding that the principal felon shall not be included in the same indictment, or shall not be in custody or amenable to justice [*Id.* s. 93]; and if upon the trial of two or more persons indicted for jointly receiving, it shall be proved that one or more of such persons separately received any part of such property, the jury may convict such of the said persons as shall be proved to have received any part of such property. [*Id.* s. 94.]

IN MISDEMEANORS.—Whosoever shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, obtaining, converting, or disposing whereof is made a misdemeanor by this Act, knowing the same to have been unlawfully stolen, taken, obtained, converted, or disposed of, shall be guilty of a *misdemeanor*—Pun.—imp. n. ex. 2 yrs.—Male under 16, whipping—[*Id.* s. 95]; and may be indicted and convicted thereof, whether the person guilty of the principal misdemeanor shall or shall not have been previously convicted thereof, or shall or shall not be amenable to justice. [*Id.* s. 95.]

WHERE TRIABLE.—The trial for any offence under the 91st to the 95th section may be in any District or place in which he shall have or

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who stole them from the firm, he knowing them to have been stolen, should be indicted as an accessory after the fact, and not as a receiver. [*R.* v. *Smith*, 22 L. T. (N.) 554.]

shall have had any of the property in his possession, or in any District or place in which the party guilty of the principal felony or misdemeanor may by law be tried, in the same manner as such receiver may be tried in the District or place where he actually received such property [*Id.* s. 96; see also s. 114.]

In Summary Offences.—Where the stealing or taking of any property whatsoever is by this Act punishable on summary conviction, either for every offence, or for the first and second offence only, or for the first offence only, any person who shall receive any such property, knowing the same to be unlawfully come by, shall, on conviction before a Justice, be liable, for every first, second, or subsequent offence of receiving, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence of stealing or taking such property is by this Act made liable. [24 & 25 Vict., c. 96, s. 97.]

Accessories.—In case of felony every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is by this Act punishable; and every accessory after the fact to any felony punishable under this Act (except only a receiver of stolen property), shall, on conviction, be imprisoned for not exceeding two years, with or without hard labour, and with or without sol. con.; and every person who shall aid, abet, counsel, or procure the commission of any misdemeanor punishable under this Act, shall be liable to be indicted and punished as a principal offender [*Id.* s. 98]; and whosoever shall aid, abet, counsel, or procure the commission of any offence by this Act punishable on summary conviction only, shall be liable, on conviction before a Justice, for every first, second, or subsequent offence, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence as a principal offender is by this Act made liable. [*Id.* s. 99.]

Telegraph.—(*Damaging Telegraphs.*)

For that he, the said A. B., on, &c., at, &c., unlawfully and maliciously did cut, *(or break, or throw down, or destroy, or injure, or remove)* certain wire, *or* a certain cable, *or* post, being part of a certain electric telegraph there being, belonging to the *Anglo-American Telegraph Company*, contrary, &c.

F. Imp. n. ex. 1 yr. **B.** compulsory. Consol. Stat., p. 229.

Vagrants.

32 Vic., Cap. 12, Sec. 15 :—

"All common beggars and vagrants, having no visible means of subsistence, may be arrested by the police, and brought before a Justice of the Peace, and, on conviction before the said Justice, may be imprisoned for a period not exceeding ten days."

Wrecks.—*Stealing from.*

For that he, the said A. B., on, &c., at, &c., feloniously did plunder and steal part of a certain ship or vessel, called the *(then in distress, or wrecked, or stranded, or cast ashore, as the case may be,)* there, twenty pieces of oak plank, being parts of the said ship (or certain goods and merchandize, *or* articles belonging to a certain ship or vessel, called, &c., to wit, pounds weight of copper,) the property of C. D., (or of a certain person whose name is unknown), contrary to the statute.

F. I. Imp. n. ex. 2 yrs. **B.** dis. (I. A.) 24 & 25 Vic., c. 96, s. 64.

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