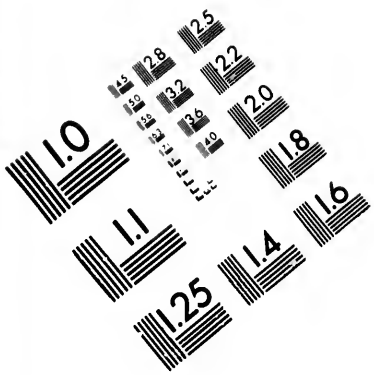

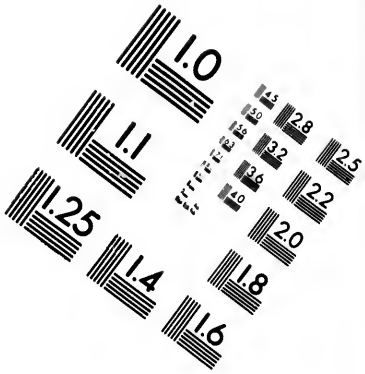

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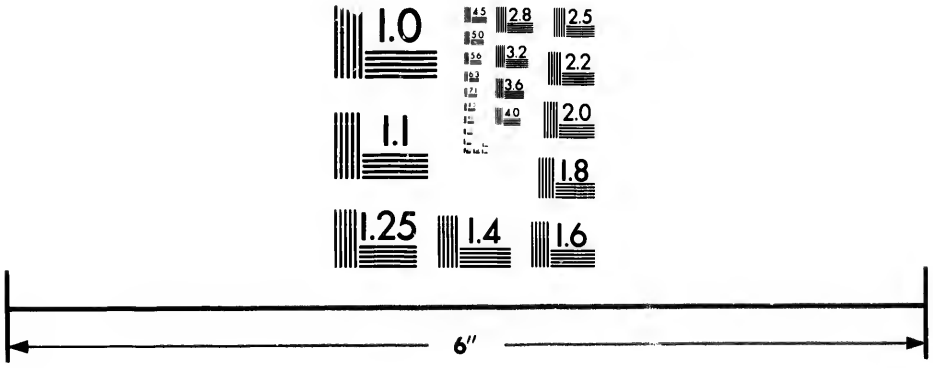

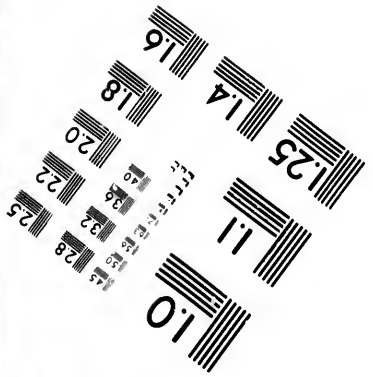

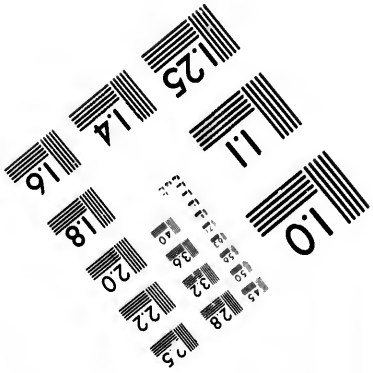

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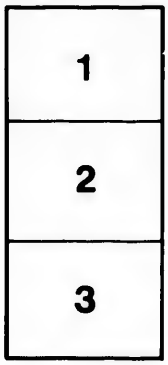

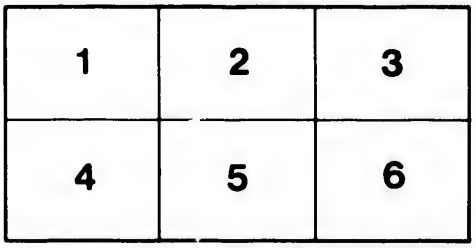

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IN THE

Supreme Court of Canada.

IN THE MATTER OF A WRIT OF A WRIT OF *HABEAS CORPUS.*

REGINA

vs.

ROBERT EVAN SPROULE.

CASE.

CHRISTOPHER ROBINSON, Q.C., AND THE ATTORNEY GENERAL OF BRITISH COLUMBIA. } *For the Crown*

GORMULLY & SINCLAIR,
Agents.

DALTON McCARTHY, AND T. DAVIE. } *For the Prisoner.*

McINTYRE, LEWIS & CODE,
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PRINTED BY A. S. WOODBURN, OTTAWA.

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INDEX.

Statement of Case.

On the 2nd day of December, A.D. 1885, and on several days thereafter, the said Robert Evan Sproule was tried before the Hon. Mr. Justice Gray at the City of Victoria, B.C., upon a charge of Wilful Murder alleged to have been committed by the said Sproule in the District of Kootenay, B.C., on the 1st day of June 1885. The Trial resulted in a verdict of Guilty with a recommendation to mercy, and on the 5th day of January A.D. 1886 the said Sproule was sentenced to death. On the 8th day of February A.D. 1886 a Writ of Error was granted by and subsequently a return thereto was made to the Supreme Court of British Columbia and on the 20th day of February 1886 and following days argument on the said writ of error was heard by the full Court consisting of five Judges, and on the 27th day of February 1886 the said Court unanimously overruled the said writ of error and confirmed the conviction of the said Sproule. On the 3rd day of May 1886, on the application of the prisoner's counsel, an order *nisi* for a writ of *Habeas corpus* or in the alternative for the discharge of the prisoner was granted by the Hon. Mr. Justice Henry, and on the 25th of May 1886 and subsequent days argument thereon was heard by Mr. Justice Henry, and after deliberation Judgment was pronounced by him directing the issue of a writ of *Habeas corpus* directed to the Sheriff for Vancouver Island calling upon him to produce the prisoner before Mr. Justice Henry together with the day and cause of his detention. On the nineteenth day of July A.D. 1886 the said Sheriff returned the said writ to this Court with his answer thereto endorsed thereon, and on the second day of August A.D. 1886 an application was made to Mr. Justice Henry for the discharge of the prisoner on the ground that the said Sheriff had not obeyed the said writ. After hearing argument thereon Mr. Justice Henry ordered the discharge of the prisoner.

This is an application to quash the Writ of *Habeas corpus* and all proceedings had herein since the issue thereof for the reasons set forth in the notice of motion and affidavits filed on this application and for such other reasons as may be urged on the hearing hereof.

In the Supreme Court of Canada.

IN THE MATTER OF ROBERT EVAN SPROULE, A PRISONER CONFINED IN THE COMMON GAOL AT THE CITY OF VICTORIA, IN THE PROVINCE OF BRITISH COLUMBIA.

I, THEODORE DAVIE, of the City of Victoria in the Province of British Columbia, Barrister-at-Law and a Solicitor of the Supreme Court of British Columbia, make oath and say as follows:

1. That during all the proceedings hereinafter mentioned I acted as Attorney and Counsel for the said Robert Evan Sproule and I am now his Attorney and Counsel.

2. The said Robert Evan Sproule was in or about the month of June 1885 *committed to take his trial upon a charge of wilful murder alleged to have been done in the district of Kootenay in the Province of British Columbia* and on the 13th day of October 1885 the said Robert Evan Sproule was brought in custody before His Lordship the Honorable Sir Matthew Baillie Begbie Chief Justice of the Supreme Court of British Columbia, at the Supreme Court House at the City of Victoria aforesaid whereupon an application was made on behalf of the Crown the result of which was that an order was made by the said Chief Justice, and drawn up and signed by him directing the trial to proceed at the City of Victoria instead of at Kootenay *without imposing any terms or conditions.*

3. *On the 23rd November A. D.* 1885 *a Court of Oyer and Terminer and of General gaol delivery was holden at the City of Victoria aforesaid, and the Commission for the holding of such Assize was issued by the Lieutenant-Governor of British Columbia under the Great Seal of the said Province* and was directed to the Honorable John Hamilton Gray, who was one of the Judges of the Supreme Court of British Columbia and to certain others who were also Justices of the last mentioned Supreme Court, and on and from the 23rd November aforesaid the said Court was adjourned from time to time until the 2nd December 1885 *upon which day the said Robert Evan Sproule was brought to the bar to answer an indictment in the words following that it is to say:*

BRITISH COLUMBIA.

TO WIT:

The Jurors for Our Lady the Queen upon their oath present that Robert E. Sproule on the first day of June in the year of Our Lord one thousand eight hundred and eighty-five feloniously wilfully and of his malice aforethought did kill and murder one Thomas Hammill against the peace of Our Lady the Queen, her Crown and dignity.

4. *The said Robert Evan Sproule pleaded not guilty to the said indictment, and the trial upon the same proceeded before the said Hon. John Hamilton Gray the presiding Judge from day to day until the 9th day of December* 1885 *on which last day the prisoner was given in charge to the jury, who after an absence of several hours for deliberation* returned into Court and announced through their foreman that they could not agree upon a verdict whereupon the presiding Judge directed them to retire for further deliberation which being done, they after a further short absence returned and thereupon their foreman *returned a verdict of "Guilty,"* coupling such verdict with a recommendation to mercy.

5. Upon the said verdict being announced, and before the same had been recorded, and whilst the jury were still in the jury box I respectfully demanded and applied to the Court as Counsel for and in the *presence and hearing of the prisoner that the Jury should be polled, but the Court refused my application.*

6. Afterwards on or about the 4th January 1886 the said presiding Judge assisted by the other Judges of the Supreme Court heard argument as to the prisoner's right to poll the Jury, and as to certain other matters, and on the 5th January 1886 the said Judge who had presided at the trial announced that after consultation with his brother judges he had come to the conclusion that the prisoner had no right to have jury polled *and thereupon proceeded to and did pass sentence of death upon the prisoner to be carried out on the 6th March then next ensuing.*

7. A writ of error was subsequently granted in the said case and a return thereto made to the Supreme Court of British Columbia; a copy of such return which contains the Commission for holding the Court and other proceedings at the trial is now produced and shewn to me at the time of my deposing to my affidavit marked with the letter "B."

8. The order for change of venue set out in the second and third pages of the said exhibited copy record was not in existence at the time of the trial and sentence, but was drawn up and issued subsequently.

9. Before proceeding to assign errors upon the record *I alleged a diminution of the record and applied for a Certiorari upon my own affidavit showing that the order for change of Venue set out in the record was not the true one or in existence at the time of trial and judgment and also stating that I had applied to poll the Jury as aforesaid,* which application and the refusal of it, I urged should appear upon the record. *The Court over-ruled me upon the points mentioned in this paragraph.*

10. The Court after hearing argument upon the writ of error over-ruled the same.

11. Execution of sentence of death upon the prisoner Robert Evan Sproule has been respited until Thursday the 6th May 1886, and he is now a prisoner in the Victoria Common Gaol whereof J. W. Hutchison is keeper, awaiting the execution of such sentence.

12. The said conviction proceeded wholly upon circumstantial evidence, and since the trial new evidence has come to light discrediting the theory of the prosecution and going far to establish an *alibi*:—One of the chief witnesses for the prosecution, one Charles Wolfe has made a declaration that the evidence given by him at the trial was false and the American Consul at Victoria has reported to the Lieutenant-Governor of British Columbia that after investigation he believed the prisoner to be innocent.

Sworn before me at the City of Ottawa, this 1st May, A.D. 1886,
A. F. McIntyre,
A Commissioner, &c.

(Signed) THEODORE DAVIE.

10

IN THE SUPREME COURT OF CANADA.

In the matter of Robert Evan Sproule a prisoner in the Common gaol at Victoria British Columbia.

I, Theodore Davie of the City of Victoria in the Province of British Columbia Solicitor, make oath and say as follows:

The prisoner is in the custody of James Eliphlet McMillan Esquire who holds the office of Sheriff for Vancouver Island. The said Robert Evan Sproule is under sentence of death to be carried out on the 6th day of May now instant, and there is now no time or opportunity to obtain an affidavit from the prisoner before that date.

Sworn before me at the City of Ottawa this 3rd of May A.D. 1886.
A. F. McIntyre
A Commr.

(Signed) THEODORE DAVIE.

20

IN THE SUPREME COURT OF CANADA.

Monday the 3rd day of May A.D. 1886.

Upon hearing Mr. Dalton McCarthy Q. C. as of Counsel for Robert Evan Sproule, and upon reading the affidavits of Theodore Davie filed respectively on the 3rd May 1886.

I do order that the Sheriff for Vancouver Island, James Eliphlet McMillan Esquire do show cause before me at my chambers at the Supreme Court House in the City of Ottawa on Saturday the Twenty-second day of May instant why a Writ of *Habeas Corpus ad subjiciendum* should not issue to the said Sheriff requiring him to bring before the Court the body of the said Robert Evan Sproule—together with the day and cause of his detention and why in the event of this order or rule being made absolute, or the writ being allowed the said Robert Evan Sproule *should not be discharged without the writ of Habeas Corpus actually issuing and without the prisoner being personally brought before the Court.*

30

(Signed) W. A. HENRY,
A Judge of the Supreme Court of Canada.

By agreement of Counsel the hearing on this order is adjourned to Tuesday next 25th instant at 4 o'clock P.M., 22 May 1886.

W. A. HENRY, J.

By agreement of Counsel the hearing on this order is further postponed to Wednesday the 26th of May instant at 4 o'clock P.M., 25th May 1886.

W. A. HENRY, J.

IN THE SUPREME COURT OF CANADA.

I, FRANCIS COOLEY WOLFENDEN, of the City of Victoria, in the Province of British Columbia, law clerk, make oath and say:

That I did on Tuesday, the eleventh day of May, instant, personally serve James Eliphlet McMillan, Esquire, Sheriff for Vancouver Island, named in the *order nisi* hereunto annexed with the said order, by delivering a true copy of the same to him at his office in the City of Victoria aforesaid.

That I did also on the eleventh day of May instant, serve the Honorable the Attorney-General for the Province of British Columbia with the said order hereunto annexed, by delivering a true copy thereof to Paulus Æmilius Irving, his deputy, at the Attorney-General's office, James Bay, Victoria, aforesaid.

Sworn before me at the City of Victoria, in the Province of British Columbia, this 12th day of May, A.D. 1886.
(Sgd) D. M. SHERTS.
A Commissioner for taking affidavits in the Supreme Court of British Columbia.

(Signed) F. C. WOLFENDEN.

IN THE SUPREME COURT OF CANADA.

In the matter of an application for a writ of Habeas Corpus to bring up the body of Robert Evan Sproule, a prisoner detained in the Common Gaol, at the City of Victoria, in the Province of British Columbia.

I, ROBERT EVAN SPROULE, the above named prisoner, make oath and say, that I am now held as a prisoner in the Common Gaol at the City of Victoria, British Columbia.

That I am the person applying for a writ of Habeas Corpus.

Sworn to before me at the City of Victoria, in the Province of British Columbia, this seventh day of May, A. D. 1886.
J. P. WALLS,
A Commissioner for taking Affidavits in the Supreme Court of British Columbia.

(Signed) ROBERT EVAN SPROULE.

IN THE SUPREME COURT OF CANADA.

I, PAULUS ÆMILIUS IRVING, of the City of Victoria, British Columbia, make oath and say as follows:

1. I am Deputy to the Attorney-General for British Columbia.

2. I was served yesterday afternoon with a copy of a rule *nisi* ordering the Sheriff of Vancouver Island to shew cause before Mr. Justice Henry, on the twenty-second day of May, instant, at the Supreme Court in Ottawa, Ontario, why a writ of *Habeas corpus ad subjiciendum* should not issue to the said Sheriff, requiring him the said Sheriff to bring before the Supreme Court of Canada the body of the said Robert Evan Sproule, together with the day and cause of the detention of the said Robert Evan Sproule, but I was not served with, nor have I seen the affidavits of Mr. Theodore Davie, referred to in the said rule *nisi*.

Sworn at the City of Victoria, British Columbia, this 12th day of May, A. D. 1886.
HENRY S. PELLEW CREASE,
Judge of the S. C. of B. Columbia.

P. Æ. IRVING.

IN THE SUPREME COURT OF CANADA.

In the matter of a *rule nisi* granted on Monday the 3rd day of May A.D. 1886 for a writ of *Habeas corpus* requiring the Sheriff for Vancouver Island to bring before the Supreme Court of Canada the body of one ROBERT EVAN SPROULE.

I, JAMES ELIPHLET MCMILLAN of the City of Victoria in the Province of British Columbia make oath and say as follows:

1. I am the Sheriff for Vancouver Island, and my jurisdiction extends over that portion of Vancouver Island *up to the 49th parallel of North latitude.*

2. *On the ninth day of December A.D.* 1885, *the prisoner Robert Evan Sproule was convicted of the crime of wilful murder at the Court of Oyer and Terminer and General Gaol Delivery then being holden, at the City of Victoria, within my Bailiwick, and on the fifth day of January A.D.* 1886, *the said Robert Evan Sproule, at the same Court, was, by the Judge thereof sentenced to death for the said crime.*

3. A calendar of the prisoners tried at the said Court was made out by the Registrar of the said Court and signed by the said Judge and a certified copy thereof was produced and shewn to me at the time of the swearing of this my affidavit and marked with the letter "A".

4. *Upon the conviction of the said Robert E. Sproule he was remanded into my custody by the said Court and has remained there ever since.*

5. On the eighth day of February A.D. 1886 a writ of error, at the instance of the said Robert Evan Sproule, was, on the fiat of the Attorney-General for this Province, sued out of the Supreme Court of British Columbia, and in obedience to a writ of *Habeas corpus*, from the said Court to me directed, I produced the said Robert Evan Sproule before the said Supreme Court on the 19th day of February A.D. 1886, when the said Robert Evan Sproule, personally

present did, by his Counsel, assign his errors upon the record and process returned by the said Justice in pursuance of the said writ of error and the said Robert Evan Sproule was then remanded into my custody.

6. The argument upon the said writ of error was had upon the following days that is to say, on Saturday the 20th day of February A.D. 1886, Monday the 22nd day of February A.D. 1886 and Tuesday the 23rd day of February A.D. 1886, upon which several days the said Robert Evan Sproule was produced by me before the said Supreme Court and remanded into my custody by the said Supreme Court.

7. On the 27th day of February A.D. 1886 I again produced the said Robert Evan Sproule before the said Supreme Court when the said Court gave Judgment affirming the conviction and remanded the said Robert Evan Sproule into my custody.

8. *A certified copy of the order by the Court of Oyer and Terminer and General Gaol Delivery for the execution of the said Robert Evan Sproule* and a certified copy of the said writ of error, of the return of the Justice thereto, of the assignment of errors, of the joinder in error and of the proceedings in the Supreme Court up to and inclusive of the said Judgment affirming the conviction were produced and shewn to me at the time of the swearing of this my affidavit and marked "B" and "C" respectively.

9. The said Robert Evan Sproule has from time to time been reprieved by a Judge of the Supreme Court of British Columbia and the documents produced and shewn to me at the time of the swearing of this my affidavit and marked "D" and "E" are copies of the several orders of reprieve.

10. True copies of the several remands of the said Robert Evan Sproule to my custody by the said Supreme Court were produced and shewn to me at the time of the swearing of this my affidavit and marked "F," "G," "H," "J," "K," and "L," respectively.

11. The said Supreme Court of British Columbia at the time of the argument on the return of the writ of error consisted of five Judges—*all of whom were unanimous in affirming the conviction.*

12. I was served with the rule *nisi* herein on Tuesday the 11th day of May instant and I say that the day and cause of the detention of the said Robert Evan Sproule appear from the several documents in this my affidavit referred to.

13. I have not been served with the affidavits in the said rule *nisi* mentioned.

Sworn at the City of Victoria British Columbia this 12th day of May A.D. before me
HENRY P. PELLEW CREASE
Judge of the S. C. of B. Columbia.

J. E. McMILLAN.

"A"

IN THE SUPREME COURT OF BRITISH COLUMBIA.

CALENDAR—GENERAL ASSIZE.

Before the HON. GEORGE A. WALKEM.

Held at Victoria on Monday, the 23rd day of November, 1885.

L. S.

NO.	NAME OF PRISONER.	INDICTMENT.	FINDING OF GRAND JURY.	PLEA.	VERDICT.	SENTENCE.
1	Samuel Greer.....	Endeavoring to obtain property by forged deeds, knowing same to be forged.	True Bill.....	Not guilty.	Not guilty.	

23rd November, 1885.

"JAMES C. PROVOST, R."

"GEO. A. WALKEM, J."

"A"

"A"

IN THE SUPREME COURT OF BRITISH COLUMBIA.

CALENDAR—GENERAL ASSIZE.

Before HON. SIR MATT. B. BEGBIE, C. J.

Held at Victoria on Monday, the 23rd day of November, 1885.

L. S.

NO.	NAME OF PRISONER.	INDICTMENT.	FINDING OF GRAND JURY.	PLEA.	VERDICT.	SENTENCE.
1	John Morris.....	Larceny on steamer	No Bill.			
2	Frank Holloway....	Breaking into shop, receiving	True Bill.....	Not guilty.	Guilty on 2nd count	Eighteen months' imprisonment with hard labor.
3	John Lynor.....	Larceny from person.....	True Bill.....	Not guilty.	Guilty	3 years in the Penitentiary.
4	Emerson Robson ...	Larceny from person.....	True Bill.....	Not guilty.	.....	Discharged on his own recognizance.
5	Frank Rosengreen..	Larceny from person.....	True Bill.....	Not guilty.	.....	Discharged on his own recognizance to appear at the next Assize.
6	Ah Chin	Larceny in dwelling house .	True Bill.....	Not guilty.	Guilty	18 months' imprisonment.
7	Robert Dixon.....	Larceny from person.....	True Bill.....	.....	....	Discharged on his own recognizance to appear at the next Assize.
8	Thomas Hamilton ..	Larceny from the person...	True Bill.	Not guilty.	Guilty	Two years and six months in Penitentiary.
9	Henry Leslie Emery	Forgery.....	True Bill.....	Guilty	....	6 months' imprisonment with hard labor. to date from 25th November. 1885.
10	Cum You	Embezzlement	True Bill.....	Not guilty.	Guilty	3 years in the Penitentiary.
11	Thomas McEwen...	Larceny from person.....	True Bill.....	Not guilty.	Not guilty.	
12	Tan Tuck Fen	Larceny of cheque, larceny of piece of paper; receiving the above.	True Bill.....	Not guilty.	Guilty on 3rd count.	4 months' imprisonment from November 25th, 1885.
13	Thomas Clayton....	Found by night in a dwelling house with intent to commit a felony therein.	True Bill.....	Not guilty.	Guilty	9 months' imprisonment with hard labor.

"A"

IN THE SUPREME COURT OF BRITISH COLUMBIA.

CALENDAR—GENERAL ASSIZE—*Continued from previous page.*

Held at Victoria on Monday, the 23rd day of November, 1885.

L. S.

NO.	NAME OF PRISONER.	INDICTMENT.	FINDING OF GRAND JURY.	PLEA.	VERDICT.	SENTENCE.
14	Kit Long	Larceny	True Bill	Not guilty.	Not guilty.	
15	Tuck Chung	Larceny	True Bill	Not guilty.	Not guilty.	
16	W. H. De Long	Entering premises & stealing	True Bill			Discharged.
17	H. Hondola	Entering premises & stealing	True Bill			Discharged.
18	William Moore	Larceny	True Bill	To stand till	next Assize.	
19	William Moore	Piracy and larceny of a ship	True Bill	To stand till	next Assize.	
20	William Moore	Accessory before the fact	No Bill.			
21	Chin Ah Hen		True Bill	Not guilty.	Guilty on 1st count.	12 months' imprisonment with hard labor.
22	Lum Yip	Threatening to shoot	True Bill	Not guilty.	Not guilty.	

"JAMES C. PROVOST."

"MATT. B. BEGBIE, C. J."

23rd November, 1885.

"A"

"A"

IN THE SUPREME COURT OF BRITISH COLUMBIA

CALENDAR—GENERAL ASSIZE.

Before HON. MR. JUSTICE GRAY.

Held at Victoria on Monday, the 23rd day of November, 1885. L. S.

NO.	NAME OF PRISONER.	INDICTMENT.	FINDING OF GRAND JURY.	PLEA	VERDICT.	SENTENCE.
1	Robert Marwick	Assault occasioning grievous bodily harm.	True Bill			Recognizance to be estreated.
2	Eli Le Claire	Assault occasioning grievous bodily harm.	True Bill			Discharged on recognizance to appear at next Assize.
3	James Wallace	Larceny from person	True Bill	To stand till next Assize.		
4	Na Quong					
5	Owe You	From last Assize		To stand till next Assize.		
6	James Smith	Robbery	True Bill	Not guilty.	To stand till next Assize.	
7	Edward Kelly	Murder	True Bill	To stand till Assize.		
8	Thomas Martin	Shop breaking	To stand till next Assize.			
9	George Suffern	Shop breaking				
10	Cum Yon	Endorsing feloniously	No Bill.			
11	Cum Yon	Endorsing feloniously	No Bill.			
12	Nah Kee	Threatening to accuse	True Bill	Not guilty.	Guilty	3 months with hard labor.
13	Albert E. Elliott	Larceny	True Bill			Recognizance to be estreated.
14	Albert E. Elliott	Larceny	True Bill			Recognizance to be estreated.
15	Albert Davey	Larceny	True Bill			Recognizance to be estreated.
16	Quiniste	Murder, accessory	From last Assize			Prisoner discharged.
17	Mah Ynig	Demanding money under threat to accuse.				Recognizance to be estreated.
18	William Nicholson	Larceny from person	True Bill			Recognizance to be estreated.
19	Ah Moon	Wounding with intent to murder, wounding with intent to do bodily harm.	True Bill	Not guilty.	Guilty of unlawful wounding.	4 months' imprisonment from December 3rd, 1885.
20	Ngan Shee Ynig	Wounding with intent	True Bill	Not guilty.	Unlawful wounding.	3 years' imprisonment in the Penitentiary.
21	Chan Ah Hing	Wounding with intent	True Bill	Not guilty.	Unlawful wounding.	3 years' imprisonment in the Penitentiary.

"A"

"A"

IN THE SUPREME COURT OF BRITISH COLUMBIA.

CALENDAR—GENERAL ASSIZE—*Continued from previous page.*

Held at Victoria on Monday, the 23rd day of November, 1886.

L. S.

NO.	NAME OF PRISONER.	INDICTMENT.	FINDING OF GRAND JURY.	PLEA.	VERDICT.	SENTENCE.
22	Robert Miller.....	Larceny from person.....	True Bill.....	Not guilty.	Guilty	2 years and 3 months in the Penitentiary.
23	Robert E. Sproule..	Murder	True Bill.....	Not guilty.	Guilty, recommended to mercy.	Death.
24	Francis M. Yorke ..	Assault with intent to commit rape.	True Bill.....	Not guilty.	Common assault....	Fined one hundred dollars ($100.00)
25	John W. Nettleton .	Assaulting constable	True Bill.....	Guilty	... .	12 months' hard labor.
26	John W. Nettleton .	Arson..... ...	True Bill.....	Not guilty.	Guilty, recommended to mercy.	2 yrs. in the Penitentiary, this sentence to be put in force first
27	John W. Nettleton .	Assault with intent to commit a felony, common assa't	True Bill.....	Not guilty.	Guilty	6 months' hard labor.
28	Ah Hong	Intent to defraud.....	True Bill.....	Not guilty.	Guilty	2 years in the Penitentiary.
29	Alfred Townsend...	Larceny in dwelling house .	True Bill.....	Guilty	....	18 months with hard labor.
30	William Holloway..	Larceny in dwelling house .	True Bill.....	Guilty	.....	18 months with hard labor.
31	Alfred Townsend...	Breaking into shop, receiving	True Bill.....	Guilty	Guilty on 2nd count	18 months with hard labor, to commence at expiration of first sentence.
32	John Theyer, *alias* Cosgrove.	Robbery, receiving	True Bill.....	.....	... .	Bonds estreated.
33	Samuel Greer	Forgery, uttering.....	.....	Nolle Pros equi.		

"JAMES C. PROVOST," *R.*

"J. H. GRAY, J."

23rd November, 1885.

I, James Charles Prevost, Registrar, do hereby certify that this is a true copy of the Calendar of Prisoners tried at a Court of Oyer and Terminer and General Gaol Delivery, held at Victoria, B. C., on the 23rd of November, 1885. (Signed) JAMES C. PREVOST, R.

Seal of the Court of Terminer and Oyer and General Gaol Delivery. James C. Prevost, R.

"B."

CANADA,
BRITISH COLUMBIA,
That portion of Vancouver Island up to the forty-ninth parallel of North Latitude.

TO WIT:

At a General Session of Oyer and Terminer and General Gaol Delivery *holden under the Act passed by the Legislature of the Province of British Columbia in the forty-eighth year of the reign of our present Sovereign Lady the Queen* at the City of Victoria in and for the Bailiwick of the Sheriff of Vancouver Island on Monday the twenty-third day of November in the year of Our Lord one thousand eight hundred and eighty-five *before the Honorable John Hamilton Gray a Judge of the Supreme Court of British Columbia* and one of the Justices of Our Lady the Queen duly assigned to deliver the gaols of the Bailiwick of the prisoners therein being: Robert Evan Sproule *convicted of felony* is ordered to be taken to the Gaol of the said Lady the Queen at Victoria aforesaid and from thence to the place of execution, and that on the sixth day of March in the year of Our Lord one thousand eight hundred and eighty-six he be then hanged by the neck until he be dead.

By the Court,

JAMES C. PREVOST,
Registrar.

Seal of the Court of Oyer and Terminer and General Gaol Delivery

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IN THE SUPREME COURT OF CANADA.

This is the certified copy of the order for execution marked B referred to in the affidavit of James Eliphlet McMillan, sworn this 12th day of May, A.D., 1886, before me.

HENRY S. PELLEW CREASE,
Judge of the Supreme Court of British Columbia.

Certified true copy.
JAMES C. PREVOST, *R.*

I JAMES CHARLES PREVOST hereby certify that the above copy order is a true and correct copy of the original order of which it purports to be a copy.

JAMES C. PREVOST, *R.*

"C"

IN THE SUPREME COURT OF BRITISH COLUMBIA.

(PLEAS BEFORE OUR LADY THE QUEEN).

At our City of Victoria, in our Province of British Columbia.

The eighth day of February, in the year of our Lord one thousand eight hundred and eighty-six; the nineteenth day of February, in the year of Our Lord one thousand eight

hundred and eighty-six: the twentieth day of February, in the year of Our Lord one thousand eight hundred and eighty six; the twenty-second day of February, in the year of Our Lord one thousand eight hundred and eighty-six; the twenty-third day of February, in the year of Our Lord one thousand eight hundred and eighty-six, and the twenty-seventh day of February in the year of Our Lord one thousand eight hundred and eighty-six, in the forty-ninth year of our reign.

Witness, the Honorable Sir Matthew Baillie Begbie, Knight Chief Justice of British Columbia, the twenty-seventh day of February, in the year of Our Lord one thousand eight hundred and eighty-six.

Among the records of this year, *Our Lady the Queen hath sent to Her Justices of Oyer and Terminer Her writ clothed in these words, that is to say:—*

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen Defender of the Faith.

To our keepers of the Peace and Justices assigned to hear and determine divers felonies, trespasses and other misdemeanors committed in the Province of British Columbia, and to every of them,

GREETING.

Because in the record and proceedings and also in the giving of judgment in a certain presentment made against Robert Evan Sproule, *at a general Session of the Court of Oyer and Terminer and General Gaol Delivery holden at the City of Victoria*, on Monday, the twenty-third day of November, in the forty ninth year of our reign and subsequent days, before the Honorable John Hamilton Gray, one of the Justices of the Supreme Court of British Columbia, *for murder;* whereof the said Robert Evan Sproule was accused before the said Honorable John Hamilton Gray, *and was thereupon convicted by a certain jury of the Victoria District, taken between us and the said Robert Evan Sproule*, as it is said, manifest error hath intervened, to the great damage of the said Robert Evan Sproule, as by his complaint we are informed. We being willing that the error (if error there be) should in due manner be corrected and full and speedy justice done to the said Robert Evan Sproule in this behalf, do command you, that if judgment be thereupon given, then you send us distinctly and openly under your seals or the seals of one of you, the record and proceedings aforesaid with all things concerning the same with this writ, so that we may have them before us on the tenth day of February, now instant, wheresoever we shall be in British Columbia, that the record and proceedings aforesaid being inspected we may cause to be further done thereupon for correcting that error what of right and according to the law and custom of the Dominion of Canada and the Province of British Columbia ought to be done.

WITNESS Ourself at James Bay Victoria the eight day of February in the forty-ninth year of our reign.

By the Honorable

ALEXANDER EDMUND BATSON DAVIE

Attorney General of Our Lady the Queen for Our Province of British Columbia.

Seal of the Supreme Court of British Columbia.

The record and proceedings whereof mention is within and above made appear in a certain schedule to this writ annexed.

Signed and sealed in the presence of "J. C. Bales." The answer of the Justice within named "J. H. Gray (L. S.)"

Province of British Columbia, That portion of Vancouver Island up to the forty-ninth parrallel of North Latitude.

TO WIT:

Be it remembered that on Tuesday, the thirteenth day of October, in the year of our Lord, one thousand eight hundred and eighty-five, *before the time of the Sitting of the Court of Oyer and Terminer and General Gaol Delivery hereinafter mentioned*, and *before the time of the presenting of the indictment hereinafter mentioned*, and *after the time of the issuing of the Commission and Letters Patent hereinafter mentioned*, cometh in the custody of the Keeper of the gaol of New Westminster, before the Honorable Sir Matthew Baillie Begbie, Knight, Chief Justice of British Columbia, and one of the Justices named and empowered by the said Commission and Letters Patent, Robert E. Sproule, who is charged with and has been committed to stand his trial *for having on the first day of June, in the year of our Lord one thousand eight hundred and eighty-five, at Kootenay Lake, in the District or Bailiwick, of the Sheriff of Kootenay*, feloniously, willfully and of his malice killed and murdered one Thomas Hammil (the said Sir Matthew Baillie Begbie, Knight, being a Judge who might hold or sit in the Court at which the said Robert E. Sproule was liable to be indicted for the cause aforesaid,. and also cometh Paulus Æmelius Irving, Counsel for the Crown, and thereupon on the said Tuesday, the thirteenth day of October aforesaid, the said Honorable Sir Matthew Baillie Begbie, Knight, in the presence of the said Robert E. Sproule, after hearing the said Paulus Æmelius Irving and Mr. Theodore Davie, Counsel for the said Robert E. Sproule, doth make and pronounce the order hereinafter set forth, that is to say:—

CANADA,
Province of British Columbia.

REGINA *VERSUS* ROBERT E. SPROULE.

At the City of Victoria

Tuesday the thirteenth day of October A.D. 1885.

Upon motion of Mr. P. E. Irving of counsel for the Crown in the presence and hearing of Robert E. Sproule a person charged with and committed to stand his trial for having on the 1st day of June A.D. 1885 at Kootenay Lake in the Bailiwick of the Sheriff of Kootenay in the Province of British Columbia feloniously wilfully and of his malice aforethought killed and murdered one Thomas Hammill.

And upon hearing Mr. Theodore Davie of Counsel for the said Robert E. Sproule and it appearing to my satisfaction that it is expedient to the ends of Justice that the trial of the said Robert E. Sproule for the alleged crime should be held at the City of Victoria.

And Mr. Irving now undertaking on behalf of the Crown to abide by such order as the Judge who may preside at the trial may think just to meet the equity of the eleventh section

of 32-33 Victoria Cap. 29 intituled "An Act respecting procedure in Criminal cases, and other "matters relating to Criminal Law" such being the conditions which I think proper to prescribe

I, Sir Matthew Baillie Begbie, Knight, Chief Justice of British Columbia and being a Judge who might hold or sit in the Court at which the said Robert E. Sproule is liable to be indicted for the cause afore said, do hereby order, that the trial of the said Robert E. Sproule shall be proceeded with at the City of Victoria in the said Province at the Court of Oyer and Terminer and General Gaol Delivery to be holden at the said City on Monday the 23rd day of November 1885 next.

And I order that the said Robert E. Sproule be removed hence to the gaol at the City of Victoria and that the keeper of the said gaol do receive the said Robert E. Sproule into his custody in the said gaol and him safely keep until he shall thence be delivered by due course of law.

(Signed) MATT. B. BEGBIE, C. J."

And be it also remembered that at the General Session of Oyer and Terminer and General Gaol Delivery holden under an Act passed by the Legislature of the Province of British Columbia in the forty-eighth year of the reign of our present Sovereign Lady the Queen Victoria by the Grace of God of the United Kingdom of Great Britain and Ireland Queen Defender of the Faith, at the City of Victoria in and for that portion of Vancouver Island which is South of the Forty-ninth parallel of North latitude on Monday the twenty-third day of November in the year of our Lord one thousand eight hundred and eighty-five and in the forty-ninth year of the reign of our said sovereign Lady the Queen before and presided over by the Honorable John Hamilton Gray one of the Judges of the Supreme Court of British Columbia the said the Honorable John Hamilton Gray being also a Justice of our said Lady the Queen duly assigned in under and by virtue of a Commission and Letters Patent under the Great Seal of the Province of British Columbia bearing date the third day of September in the year of our Lord one thousand eight hundred and eighty-five duly named authorized and empowered in manner and as by reference to the said Commission and Letters Patent will more fully appear and which Commission and Letters Patent are in the words and figures following, that is to say:

(Queen's Arms)

Great seal of the Province of British Columbia.

"CLEMENT F. CORNWALL."

VICTORIA by the grace of God of the United Kingdom of Great Britain and Ireland and of the Colonies and Dependencies thereof, in Europe, Asia, Africa, America and Australia, Queen, Defender of the faith, &c., &c., &c.

To the Honorable Sir Matthew Baillie Begbie, Knight, The Honorable Henry Peering Pellew Crease, The Honorable John Hamilton Gray, The Honorable John Foster McCreight, The Honorable George Anthony Walkem, Justices of Our Lady the Queen.

Greeting:

We reposing special trust in your learning integrity and ability do hereby assign and commission you the said Sir Matthew Baillie Begbie, Knight, Henry Peering Crease, John Hamil-

ton Gray, John Foster McCreight, and George Anthony Walkem, jointly and each of you severally, to enquire by the oaths of good and lawful men of this our Province of British Columbia, Dominion of Canada, by whom the truth of the matter may be better known and by other ways and means whereby you or either of you can or may the better know more fully the truth of all treasons, misprisons of treason, felonies, misdemeanors, misdeeds, offences and injuries whatsoever; and also the accessories of the same so far as they are criminally liable, by whomsoever and howsoever done, perpetrated or committed and by whom, to whom, when how and in what manner; and of all articles and circumstances to the premises and every or any of them howsoever, concerning; and to hear and otherwise determine the said treasons and other the premises in our Province of British Columbia, according to the laws of this our Province for the time being in force; and also from time to time to deliver the gaols and every the gaol within this our Province of British Columbia, of the prisoners therein being according to the said laws of this our Province for the time being in force; and also with power and authority to hold Courts of Judicature and to summon or cause to be summoned before you and each of you, in such manner and by such forms as you or either of you may think proper, all persons by means of whom it may be deemed that the truth of the matters aforesaid may be fully disclosed and made known; and also to order the production of all books and documents which could be produced or examined in any Court of law; and also to commit to the custody of the Keeper of any of our gaols in this our Province of British Columbia, any person or persons who shall in any way presume to refuse or neglect to obey any of your lawful commands in the premises.

IN TESTIMONY WHEREOF we have caused the Great Seal of our said Province to be hereto affixed, WITNESS the Honorable Clement F. Cornwall, our Lieutenant-Governor of our said Province of British Columbia at our Government House in our City of Victoria, this third day of September, A.D. 1885, and in the forty-ninth year of our reign.

By command,

JNO. ROBSON,
Provincial Secretary.

By the oaths of Charles William Ringler Thomson, Percival Ridout Brown, Frank Stillman Barnard, John Ralph Mitchell, Peter John Leach, Ront Harvey, Charles Kent, Thomas Napier Hibben, John Teagpe, Thomas Hickman Tye, Alexander Alfred Green, Alexander Blair Gray, William Fisher, William Dalby, Henry Edward Croasdaile, Thom s Augustus Collier good and lawful men of the District or Bailiwick of the Sheriff for Vancouver Island, summoned only from the Victoria District as established by the "Jurors Act 1883," and qualified according to law then and there impanelled sworn and charged to enquire for the said Lady the Queen and for the body of the said Bailiwick of the Sheriff for Vancouver Island, it is presented in manner and form as followeth, that is to say:

BRITISH COLUMBIA.

TO WIT:

The Jurors for our Lady the Queen upon their oath present that Robert E. Sproule on the first day of June in the year of Our Lord one thousand eight hundred and eighty-five feloniously wilfully and of his malice aforethought did kill and murder one Thomas Hammill against the peace of our Lady the Queen Her Crown and Dignity.

Whereupon the said Sheriff is commanded that he omit not for liberty within his Bailiwick, but cause him the said Robert E. Sproule to come and answer to the felony whereof he stands indicted.

And the same Session of Oyer and Terminer and General Gaol Delivery of our said Lady the Queen is held and continued during the said twenty-third day of November aforesaid and is adjourned till Tuesday the twenty-fourth day of November aforesaid, and is then duly held and adjourned from day to day till Wednesday the second day of December in the year of Our Lord one thousand eight hundred and eighty-five.

And thereupon at the Session of Oyer and Terminer and General Gaol Delivery of our said Lady the Queen holden at the said city of Victoria aforesaid on to the said twenty-third day of November in the year of Our Lord one thousand eight hundred and eighty-five and the succeeding days from day to day as aforesaid before the Honorable John Hamilton Gray last above named, here cometh the said Robert E. Sproule under the custody of James Eliphlet McMillan Esquire, Sheriff for Vancouver Island aforesaid in whose custody in the gaol at the City of Victoria aforesaid for the cause aforesaid he had been committed, being brought to the bar here in his proper person by the sheriff to whom he is here also committed, and having heard the said indictment read and being asked whether he is guilty or not guilty of the premises of the said indictment above charged upon him and neither demurring to or moving to quash the said indictment or otherwise objecting thereto, he saith that he is not guilty of the premises in the said indictment above charged upon him and therefore he puts himself upon the country, and the Honorable Alexander Edmund Batson Davie the Attorney General of the said Province, who prosecutes for our said Lady the Queen in his behalf doth the like.

Therefore let a jury thereupon immediately come before the Honorable John Hamilton Gray last above named of good and lawful men of that portion of Vancouver Island which is South of the forty-ninth parallel of North Latitude summoned only from the Victoria District as established by the "Jurors Act 1883," and qualified according to law by whom the truth of the matters may be better known and who are not of kin to the said Robert E. Sproule to recognize upon whether the said Robert E. Sproule be guilty of the felony and murder in the indictment above specified or not guilty because as well the said Alexander Edmund Batson Davie who prosecutes for our said Lady the Queen as aforesaid as the said Robert E. Sproule have put themselves upon that jury.

And thereupon the said Robert E. Sproule challenges for cause one of the said jurors namely Ralph Borthwick and peremptorily challenges sixteen other of the said jury, namely, John Matthews, Frederick Carne the younger, Michael Baker, Jonathan Bullen, John Thomas Higgins, Joseph Wilson Armstrong, Willis Bond, George William Anderson, Herbert Dodgson, Stephen Fulton McIntosh, James Shopland, George Deans, John Black, James Hood, Arthur J. Rowbotham and Thomas King, all of which said challenges are allowed to him.

And Roger Elphinstone one of the jurors of the said Jury upon the prayer of the Honorable Alexander Edmund Batson Davie, who prosecutes for our said Lady the Queen as aforesaid, is ordered by the Court to stand aside.

And thereupon the jurors of the said jury for this purpose empanelled and returned, to wit, William Henry Mason, Andrew Laing, William Hick, George Good, Joseph Goyette, William Mann, John Ellis Blackmore, Joseph Rowe, Thomas Lloyd Davies, Thomas Benallick, Peter Corr and James Boyd, being called come, who to speak the truth of and concerning the

premises are without any objection on the part of the said Robert E. Sproule chosen tried and sworn.

And because after the said trial had been duly proceeded with for and during several hours on the said Wednesday, the second day of December, it manifestly appears to the Court that the trial of him the said Robert E. Sproule cannot be concluded on the said Wednesday, the second day of December, the same trial of the said Robert E. Sproule, and also the said session of Oyer and Terminer and General Goal Delivery are by the Court here duly adjourned at a late hour until the next Thursday, the third day of December aforesaid, at the Supreme Court House in Victoria aforesaid, and the said Robert E. Sproule is committed to the custody of the said Sheriff in the said gaol aforesaid, and the said jurors committed to and kept together in the custody of the said Sheriff (the said Jury being first cautioned by the said Justice in Court here not to communicate with any person or to permit any person to communicate with any of them or to separate) until the said Thursday, the third day of December, at which said last mentioned session of Oyer and Terminer and General Gaol Delivery holden by adjournment at the Supreme Court House in Victoria aforesaid, in and for the said Bailiwick, on the said Thursday, the third day of December, before the said Justice last above mentioned, come as well the said Alexander Edmund Batson Davie, who prosecutes for our Lady the Queen as aforesaid, as the said Robert E. Sproule, and the jurors also come and the trial of the said Robert E. Sproule is also proceeded with.

And because after the said trial had been duly proceeded with for and during several hours on the said Thursday, the third day of December, it manifestly appears to the Court that the trial of him the said Robert E. Sproule cannot be concluded on the said Thursday, the third day of December, the same trial of the said Robert E. Sproule and also the said session of Oyer and Terminer and General Gaol Delivery are by the Court here duly adjourned at a late hour until the next Friday, the fourth day of December aforesaid, at the Supreme Court House in Victoria aforesaid, and the said Robert E. Sproule is committed to the custody of the said Sheriff in the said goal aforesaid, and the said jurors committed to and kept together in the custody of the said Sheriff (the said Jury being first cautioned by the said Justice in Court here not to communicate with any person or permit any person to communicate with any of them or to separate) until the said Friday, the fourth day of December, at which said last mentioned session of Oyer and Terminer and General Gaol Delivery holden by adjournment at the Supreme Court in Victoria aforesaid, in and for the said Bailiwick, on the said Friday, the fourth day of December, before the said Justice last mentioned, come as well the said Alexander Edmund Batson Davie, who prosecutes for our Lady the Queen as aforesaid, as the said Robert E. Sproule and the jurors also come and the trial of the said Robert E. Sproule is also proceeded with.

And because after the said trial had been duly proceeded with for and during several hours on the said Friday, the fourth day of December, it manifestly appears to the Court that the trial of him the said Robert E. Sproule cannot be concluded on the said Friday, the fourth day of December, the same trial of the said Robert E. Sproule and also the said session of Oyer and Terminer and General Gaol Delivery are by the Court here duly adjourned at a late hour until the next Saturday the fifth day of December aforesaid at the Supreme Court House in Victoria aforesaid and the said Robert E. Sproule is committed to the custody of the said Sheriff in the said Gaol aforesaid, and the said jurors committed to and kept together in the custody of the said Sheriff (the said jury being first cautioned by the said

Justice in Court here not to communicate with any person or permit any person to communicate with any of them or to separate) until the said Saturday the fifth day of December at which last mentioned session of Oyer and Terminer and General Gaol Delivery holden by adjournment at the Supreme Court House in Victoria aforesaid in and for the said Bailiwick on the said Saturday the fifth day of December before the said Justice come as well the said Alexander Edmund Batson Davie, who prosecutes for our Lady the Queen as aforesaid as the said Robert E. Sproule and the jurors also come and the said trial of the said Robert E. Sproule is also proceeded with. And because after the said trial had been duly proceeded with for and during several hours on the said Saturday the fifth day of December it manifestly appears to the Court that the trial of him the said Robert E. Sproule cannot be concluded on the said Saturday the fifth day of December the same trial of the said Robert E. Sproule and also the said session of Oyer and Terminer and General Gaol Delivery are by the Court here duly adjourned at a late hour until the next Monday the seventh day of December aforesaid at the Supreme Court house in Victoria aforesaid and the said Robert E. Sproule is committed to the custody of the said sheriff in the said gaol aforesaid, and the said jurors committed to and kept together in the custody of the said sheriff (the said jury being first cautioned by the said Justice in Court here not to communicate with any person or permit any person to communicate with any of them or to separate) until the said Monday the seventh day of December, at which said last mentioned session of Oyer and Terminer and General Gaol Delivery holden by adjournment at the Supreme Court House in Victoria aforesaid in and for the said Bailwick on the said Monday the seventh day of December before the said Justice last mentioned came the said Alexander Edmund Batson Davie who prosecutes for our Lady the Queen as aforesaid as the said Robert E. Sproule and the Jurors also come and the trial of the said Robert E. Sproule is also proceeded with. And because after the said trial had been duly proceeded with for and during several hours on the said Monday the seventh day of December it manifestly appears to the Court that the trial of him the said Robert E. Sproule cannot be concluded on the said Monday the seventh day of December the same trial of the said Robert E. Sproule and also the said session of Oyer and Terminer and General Gaol Delivery are by the Court here duly adjourned at a late hour until the next Tuesday the eighth day of December aforesaid at the Supreme Court House in Victoria aforesaid and the said Robert E. Sproule is committed to the custody of the said sheriff in the said gaol aforesaid, and the said jurors committed to and kept together in the custody of the said sheriff (the said jury being first cautioned by the said Justice in Court here not to communicate with any person or permit any person to communicate with any of them or to separate) until the said Tuesday the eighth day of December, at which said last mentioned session of Oyer and Terminer and General Gaol Delivery holden by adjournment at the Supreme Court House in Victoria aforesaid, in and for the said Bailiwick on the said Tuesday the eighth day of December before the said Justice last mentioned come as well the said Alexander Edmund Batson Davie who prosecutes for our Lady the Queen as aforesaid as the said Robert E. Sproule and the jurors also come and the trial of the said Robert E. Sproule is also proceeded with, and because after the said trial had been duly proceeded with for and during several hours on the said Tuesday the eighth day of December it manifestly appears to the Court that the trial of him the said Robert E. Sproule cannot be concluded on the said Tuesday the eighth day of December the same trial of the said Robert E. Sproule and also the said session of Oyer and Terminer and General Gaol Delivery are by the Court here duly adjourned at a late hour

until the next Wednesday the ninth day of December aforesaid and the said Robert E. Sproule is committed to the custody of the said sheriff in the said gaol aforesaid, and the said jurors committed to and kept together in the custody of the said sheriff (the said jury being first cautioned by the said Justice in Court here not to communicate with any person or permit any person to communicate with any of them or to separate) until the said Wednesday the ninth day of December, at which said last mentioned Session of Oyer and Terminer and General Gaol Delivery holden by adjournment at the Supreme Court House in Victoria aforesaid and for the said Bailiwick on the said Wednesday the ninth day of December before the said Justice last above mentioned come as well the said Alexander Edmund Batson Davie who prosecutes for our Lady the Queen as aforesaid as the said Robert E. Sproule and the jurors also come and the trial of the said Robert E. Sproule is also proceeded with and after the case on the part of the Crown and the said Robert E. Sproule respectively has been duly concluded the said Justice duly proceeds to charge and does charge the jury and afterwards and immediately after the conclusion of the said charge of the said Justice the Jury do retire from the bar here in the custody of the said sheriff to consult upon their verdict to be given upon the premises in the said indictment specified (the said jury being first cautioned by the said Justice in Court here not to communicate with any person or permit any person to communicate with any of them or to separate) having first consulted upon their verdict the said jurors so chosen tried and sworn as aforesaid return to the bar here and upon their oath say that the said Robert E. Sproule is guilty of the felony and murder aforesaid on him above charged in the form aforesaid as by the indictment aforesaid is above supposed against him.

And the said Robert E. Sproule is thereupon remanded to the custody of the said sheriff in the gaol aforesaid till such time as the court shall award judgment and also the said session of Oyer and Terminer and General Gaol Delivery is by the Court here duly adjourned at a late hour until the next Tuesday the fifteenth day of December aforesaid at the Supreme Court House in Victoria and is then duly held and continued during the said Tuesday the fifteenth day of December aforesaid and is so duly held and continued and adjourned from day to day until Monday the twenty-first day of December aforesaid.

And afterwards on the said twenty-first day of December aforesaid at the last mentioned session of Oyer and Terminer and General Gaol Delivery duly holden by adjournment at the Supreme Court House in Victoria aforesaid in and for the said Bailiwick on the said Monday the twenty-first day of December aforesaid before the said Justice last above mentioned cometh the said Robert E. Sproule in the custody of the said sheriff and because the Justice last before named now in Court is not yet advised about awarding judgment of and upon the premises whereof the said Robert E. Sproule hath been found guilty as aforesaid the said Robert E. Sproule is remanded to the custody of the said sheriff in the gaol aforesaid until such time as the Court shall award judgment and also the said session of Oyer and Terminer and General Gaol Delivery is by the Court here duly adjourned until Monday the fourth day of January in the year of Our Lord one thousand eight hundred and eighty-six at the Supreme Court House in Victoria aforesaid and is then duly held and continued during the said Monday the fourth day of January aforesaid.

And afterwards upon the said Monday the fourth day of January aforesaid at the said last mentioned session of Oyer and Terminer and General Gaol Delivery duly holden by adjournment at the Supreme Court House in Victoria aforesaid in and for the said Bailiwick on the said Monday the fourth day of January aforesaid before the said Justice

last above mentioned cometh as well the said Alexander Edmund Batson Davie, who prosecutes for our Lady the Queen as aforesaid as the said Robert E. Sproule in the custody of the said sheriff and because the Justice last before named now in Court here is not yet advised about awarding judgment of and upon the premises whereof the said Robert E. Sproule hath been found guilty of as aforesaid the said Robert E. Sproule is remanded to the custody of the said sheriff in the gaol aforesaid till such time as the Court shall award judgment and also the said session of Oyer and Terminer and General Gaol Delivery is by the Court here duly adjourned until Tuesday the fifth day of January aforesaid at the Supreme Court House in Victoria aforesaid.

And afterwards on the said Tuesday, the fifth day of January aforesaid, at the said last mentioned session of Oyer and Terminer and General Gaol Delivery duly holden by adjournment at the Supreme Court House in Victoria aforesaid, in and for the said Bailiwick, on the said Tuesday, the fifth day of January aforesaid, before the said Justice last above mentioned, cometh as well the said Alexander Edmund Batson Davie, who prosecutes for our Lady the Queen as aforesaid, as the said Robert E. Sproule in the custody of the said Sheriff, and it is demanded of the said Robert E. Sproule, if he hath or knoweth anything, to say wherefore the said Justice here ought not, upon the premises and verdict aforesaid, to proceed to judgment and execution against him who nothing further saith unless as he before had said.

Whereupon all and singular the premises being seen and by the said Justice here fully understood, it is considered and adjudged that the said Robert E. Sproule be taken to the gaol of the said Lady the Queen at Victoria aforesaid, and from thence to the place of execution, and that on the sixth day of March, in the year of our Lord one thousand eight hundred and eighty-six, he be there hanged by the neck until he be dead.

And now on this 19th day of February, 1886, before Her Majesty's Supreme Court of British Columbia, cometh the said Robert Evan Sproule into the Court here under the custody of the Sheriff for Vancouver Island, by virtue of a writ of *habeas corpus* issued in that behalf, and immediately saith that in the record and process aforesaid, and also in giving the judgment aforesaid, there is manifest error in this.

1. That the indictment does not appear by the said record to have been found and presented by good and lawful men of the body of the county or bailiwick of the Sheriff for Vancouver Island, which county or bailiwick is by the Sheriff's Act Amendment Act, 1878, declared to extend over all that portion of Vancouver Island which is south of the 49th parallel of north latitude, sworn to, enquire for Our Lady the Queen for the body of the said county or bailiwick. Wherefore in that there is manifest error.

2. There is also error in this, that the said Robert Evan Sproule had not a jury from the body of the county upon which he could put himself upon his trial as by law he was entitled to have and section 1, s.s. 1, and sections 3, 34, and 35 of the Jurors Act, which assume to enact that jurors shall be summoned only from a limited portion of the bailiwick or county is *ultra vires* and void. Wherefore in that there is manifest error.

3. There is also error in this. That the indictment does not show the alleged offence to have been committed within the jurisdiction of the court or within the realm at all. Wherefore in that there is manifest error.

4. There is also error in this, that the record alleges the offence to have occurred at Kootenay Lake within the District or Bailiwick of the Sheriff of Kootenay, and shews no

valid order to try the prisoner elsewhere than in that District, which in the absence of a valid order under section 11 of the Procedure Act of Canada was the only venue where the said Robert Evan Sproule could be legally tried. Wherefore in that there is manifest error.

5. There is also error in this that the commission under which the proceedings were taken is void: Firstly because it is the commission of the Lieutenant Governor of the Province who has no power to issue the same; And secondly because the said commission empowers the commissioners nominated by it to proceed contrary to the common and statute law of the land in this that it empowers them to enquire by the oaths of good and lawful men of British Columbia generally instead of by the oaths of good and lawful men of the District County or Jurisdiction wherein the enquiry is being taken. Wherefore in that there is manifest error.

6. There is also error in this that the commission does not name the counties or districts in which the enquiries are to be made and one previous court held under it exhausts the commission. Wherefore in that there is manifest error.

7. There is also error in this that so much of the Jurors Act 1883 as prescribes the practice in relation to Juries in criminal cases is unconstitutional and void. Wherefore in that there is manifest error: And this the said Robert Evan Sproule is ready to verify. Wherefore he prays that the judgment aforesaid, for the errors aforesaid and other errors in the record and proceedings aforesaid appearing may be reversed annulled and altogether had for nothing, and that he may be restored to the free law of the land and all that he hath lost by the occasion of the said judgment.

"THEODORE DAVIE."

And thereupon the Honorable Alexander Edmund Batson Davie, Attorney-General, present, here in Court in his proper person, who for our said Lady the Queen prosecuteth, and having heard the matters aforesaid above assigned for error in manner and form aforesaid for our Lady the Queen, saith that neither in the record and proceedings aforesaid is there any error; therefore the said Attorney-General of our said Lady the Queen, prayeth that the Court of our said Lady the Queen now here may proceed to examine as well the record and proceedings aforesaid, and the Judgment thereon given as aforesaid as the matter above assigned and alleged for error, and that the Judgment may in all things be affirmed.

Wherefore the said Robert E. Sproule is remanded to the custody of the said Sheriff in the said gaol aforesaid, and the said Sheriff is ordered to bring the said Robert E. Sproule before this Court on Saturday, the twentieth day of February, in the year of our Lord one thousand eight hundred and eighty-six.

And on Saturday the twentieth day of February in the year of our Lord one thousand eight hundred and eight six as well the Honorable Alexander Edmund Batson Davie Attorney General for our said Lady the Queen as aforesaid as the said Robert E. Sproule in custody of the said sheriff cometh before our said court and because it manifestly appears to the said Court that the examination of as well the record and proceedings thereon and the judgment thereon given as the matters above assigned and alleged for error cannot be concluded on the said Saturday the twentieth day of February in the year of our Lord one thousand eight hundred and eighty-six the said Robert E. Sproule is remanded to the custody of the said sheriff in the said gaol aforesaid, and the said sheriff is ordered to bring the said Robert E. Sproule before this said Court on Monday the twenty-second day of February in the year of our Lord one thousand eight hundred and eighty six and on Monday the twenty-second day of

February in the year of our Lord one thousand eight hundred and eighty six before our said court as well the Honorable Alexander Edmund Batson Davie Attorney General of our said Lady the Queen as aforesaid as the said Robert E. Sproule in the custody of the said sheriff cometh. And because it manifestly appears to the said Court that the examination of as well the record and proceedings thereon and the Judgment thereon given as the matters above assigned and alleged for error cannot be concluded on the said Monday the twenty-second day of February in the year of our Lord one thousand eight hundred and eighty-six the said Robert E. Sproule is remanded to the custody of the said sheriff in the said gaol aforesaid and the said sheriff is ordered to bring the said Robert E. Sproule before this said Court on Tuesday the Twenty third day of February in the year of Our Lord one thousand eight hundred and eighty six.

And on Tuesday the twenty-third day of February in the year of Our Lord one thousand eight hundred and eighty-six before our said court as well as the said Honorable Alexander Edmund Batson Davie Attorney-General of our said Lady the Queen as aforesaid as the said Robert E Sproule in the custody of the said sheriff cometh and the examination of as well the record and proceedings thereon and the judgment thereon given as the matters above assigned and alleged for error is proceeded with and because the Court here is not yet advised about awarding judgment of and upon the premises the said Robert E. Sproule is remanded to the custody of the said sheriff in the gaol aforesaid till such time as the Court shall award judgment.

And afterwards on Saturday the twenty-seventh day of February in the year of Our Lord one thousand eight hundred and eighty-six before this said Court as well as the Honorable Alexander Edmund Batson Davie Attorney-General of our said Lady the Queen as aforesaid as the said Robert E. Sproule in the custody of the said sheriff cometh.

Whereupon as well the record and proceedings aforesaid and the judgment given in manner and form aforesaid as the matters aforesaid by the Robert E. Sproule above for error assigned, being seen and by the Court of our said Lady the Queen now here fully understood and mature deliberation being thereupon had, it appears to the Court of our said Lady the Queen how here, that there is no error either in the record or proceedings aforesaid or in the giving of the Judgment aforesaid.

Therefore it is considered and adjudged by the said Court here that the judgment aforesaid be in all things affirmed and stand in full force and effect.

By the Court.
JAMES C. PREVOST,
R.

{ *Seal of the Supreme Court of British Columbia.* }

I, James Charles Prevost, Registrar of the Supreme Court of British Columbia, do hereby certify that the aforegoing twenty sheets of paper writing, each of which is signed by me contain a full, true and correct transcript of the Records of the Supreme Court of British Columbia, in the case of Robert Evan Sproule, Plaintiff in error against the Queen, Defendant in error. And I further certify that the judgment of the said Court in the said record appearing was the unanimous judgment of the said Court, which consisted of all the Judges thereof, namely, Sir Matthew Baillie Begbie, Knight, Chief Justice, the Honorable Henry Pering Pellew Crease, the Honorable John Hamilton Gray, the Honorable John Foster McCreight, and the Honorable George Anthony Walkem.

In Testimony whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of British Columbia, the twelfth day of May, A.D. 1886.

Seal of the Supreme Court of British Columbia.

JAMES C. PREVOST,
Registrar.

"D."

In the matter of Robert Evan Sproule, convicted of murder and sentenced to death, such sentence not to be carried into effect until the 6th April, 1886.

I, the Honorable John Hamilton Gray, one of the Judges of Her Majesty's Supreme Court of British Columbia, before whom the trial and conviction of the said Robert Evan Sproule took place, do order and direct that execution upon the sentence of death passed upon the prisoner shall not be carried into effect until Thursday, the 6th day of May, A.D. 1886.

Dated at Victoria, the 13th March, A.D. 1886.

(Sd.) J. H. GRAY,
J. S. C.

To the Sheriff of Vancouver Island.

Certified true copy,
JAMES C. PREVOST.
R.

This is the order of reprieve marked "D," referred to in the affidavit of James Eliphlet McMillan. Sworn this 12th day of May before me,

HENRY P. PELLEW CREASE,
Judge of the Supreme Court of British Columbia.

"E."

In the matter of Robert Evan Sproule, convicted of murder and sentenced to death, such sentence not to be carried into effect until the 6th May, 1886.

I, Sir Matthew Baillie Begbie, Knight, Chief Justice of the Supreme Court of British Columbia, in which said Court the trial and conviction of the said Robert Evan Sproule took place, do order and direct that execution upon the sentence of death passed upon the prisoner shall not be carried into effect until Monday, the 7th day of June, A. D. 1886.

Dated at Victoria, the 3rd May, A. D. 1886.

To the Sheriff of Vancouver Island.

Certified True Copy,
JAMES C. PREVOST.
R.

(Sd.) MATT. B. BEGBIE.
(*Seal of the Court*).

This is the order of reprieve marked E. referred to in the affidavit of James Eliphlet McMillan. Sworn this 12th day of May, A. D. 1886, before me,

HENRY P. PELLEW CREASE,
Judge of the Supreme Court of British Columbia.

"F."

IN THE SUPREME COURT OF CANADA.

MONDAY, the fifteenth day of February, A. D. 1886.

ROBERT EVAN SPROULE, the Plaintiff in error, being brought into Court in custody by the Sheriff for Vancouver Island, by virtue of a writ of *Habeas Corpus*. It is ordered that the said Robert E. Sproule be remanded into the custody of the said Sheriff, and that the said Sheriff do bring the said Robert E. Sproule before this Court on Friday, the 19th day of February, A. D. 1886, at the hour of 11 o'clock in the forenoon.

Certified True Copy,
JAMES C. PREVOST,
R.

By the Court,
JAMES C. PREVOST,
R.

This is the remand marked F, referred to in the affidavit of James Eliphlet McMillan. Sworn this 12th day of May, A. D. 1886, before me,

HENRY P. PELLEW CREASE,
Judge of the Supreme Court of British Columbia.

"G"

IN THE SUPREME COURT OF BRITISH COLUMBIA.

FRIDAY, the 19th day of February 1886.

ROBERT EVAN SPROULE the Plaintiff in error being brought here into Court in custody by the Sheriff for Vancouver Island by virtue of a writ of *Habeas corpus* it is ordered that the said writ and the return made thereto be filed. And the said Plaintiff in error prodneing a writ of error and praying Oyer of the Record and Judgment against him upon an indictment of murder and the same being read to him the said Plaintiff in error now here in Court assigns error.

It is further ordered that the assignment of errors be filed and the said Plaintiff in error is now here in Court committed to the custody of the Sheriff for Vancouver Island charged with the matters in the said return mentioned which matters are as follows, to wit, that the said Robert Evan Sproule was committed to and detained in the custody of the Sheriff for Vancouver Island by virtue of a certain warrant or order of Court in the words following: That is to say:—We command you that you have before our Supreme Court of British Columbia immediately after the receipt of this our writ the body of Robert E. Sproule detained in our prison under your custody to undergo and receive all and singular such things as our said Supreme Court shall then and there consider of concerning him in that behalf to be by the said Sheriff kept in safe custody until he shall be from thence discharged by due course of law. And it is further ordered that the said Sheriff or his Deputy do bring the said Plaintiff in error before this Court on Saturday the 20th day of February instant at 10:30 a.m.

On motion of Mr. A. E. B. Davie, Attorney General.

By the Court,
JAMES C. PREVOST, *R.*
[L.S.]

Certified True Copy,
JAMES C. PREVOST, *R.*

This is the remand marked "G" referred to in the affidavit of James Eliphlet McMillan sworn this 12th day of May A.D. 1886 before me,

HENRY P. PELLEW CREASE,
Judge of the Supreme Court of British Columbia.

"H"

IN THE SUPREME COURT OF BRITISH COLUMBIA.
ROBERT EVAN SPROULE
Plaintiff in Error,

vs.

THE QUEEN
Defendant in Error.

The Plaintiff in error Robert Evan Sproule being brought here into Court in custody of the Sheriff for Vancouver Island by virtue of a rule of this Court the argument not being concluded is remanded to the same custody charged with the matters in the said Rule mentioned: And it is further ordered that the said Sheriff do bring the said Robert Evan Sproule before this Court on Monday next the 22nd day of February 1886 at 10:30 a.m.

By the Court,

[L.S.] "JAMES C. PREVOST," *R.*

Certified True Copy,
JAMES C. PREVOST, *R.*

This is a remand marked H referred to in the affidavit of James Eliphlet McMillan sworn the 12th day of May A.D. 1886 before me

[L.S.] HENRY P. PELLEW CREASE,
Judge of the Supreme Court of British Columbia.

"J"

IN THE SUPREME COURT OF BRITISH COLUMBIA.
ROBERT EVAN SPROULE.
Plaintiff in error,

vs.

THE QUEEN,
Defendant in error,

The Plaintiff in error Robert Evan Sproule being brought into Court in custody of the Sheriff for Vancouver Island by virtue of a Rule of this Court the argument not being concluded is remanded to the same custody charged with the matters in the said rule mentioned. And it is further ordered that the said Sheriff do bring the said Robert Evan Sproule before this Court on Tuesday the 23rd day of February 1886, at 10.30 A. M.

By the Court,

HARVEY COMBE,
Depy. Registrar.

(L.S.)

This is the remand marked J referred to in the affidavit of James Eliphlet McMillan, sworn this 12th day of May, 1886, before me.

HENRY P. PELLEW CREASE,
Judge of the Supreme Court of British Columbia.

Certified true copy.
JAMES C. PREVOST, *R.*

"K."

IN THE SUPREME COURT OF BRITISH COLUMBIA.
ROBERT EVAN SPROULE,
Plaintiff in error.

vs.

THE QUEEN,
Defendant in error.

The Plaintiff in error Robert Evan Sproule being brought into court in custody of the Sheriff for Vancouver Island by virtue of a rule of this Court is remanded to the same custody charged with the matters in the said Rule mentioned. And it is further ordered that the said Sheriff do [illegible]ng the said Robert Evan Sproule before this Court on Saturday the 27th day of February 1886 at 12 P. M.

By the Court,
HARVEY COMBE,
(L.S.) *Dep. Registrar.*

This is the remand marked K referred to in the affidavit of James Eliphlet McMillan, sworn this 12th day of May 1886 before me.

HENRY P. PELLEW CREASE,
Judge of the Supreme Court of British Columbia.

Certified true copy.
JAMES C. PREVOST, *R.*

"L."

IN THE SUPREME COURT OF BRITISH COLUMBIA.
ROBERT EVAN SPROULE,
Plaintiff in Error.

vs.

THE QUEEN,
Defendant in Error.

The Plaintiff in Error, Robert Evan Sproule, being brought here into Court in the custody of the Sheriff for Vancouver Island, by virtue of a rule of this Court, is remanded into the custody of the said Sheriff.

By the Court,
JAMES C. PREVOST,
R.

Dated 27th February, 1886.
Certified true copy,

JAMES C. PREVOST,
R.

(L.S.)

This is the remand marked L, referred to in the affidavit of James Eliphlet McMillan. Sworn on the 12th day of May, 1886, before me,

HENRY P. PELLEW CREASE,
Judge of the Supreme Court of B. Columbia.

IN THE SUPREME COURT OF CANADA.

In the matter of an application for a writ of *Habeas Corpus* to bring up the body of ROBERT EVAN SPROULE a prisoner detained in the Common Gaol at Victoria British Columbia.

I STEPHEN YARDLEY WOOTTON of the City of Victoria in the Province of British Columbia Solicitor of the Supreme Court of British Columbia make oath and say:

1. That the annexed documents marked "A" and "B" respectively are true copies of the order and calendar under which the above named Robert Evan Sproule is now held a prisoner in the Common Gaol at the City of Victoria aforesaid as produced to me by James E. McMillan Esquire Sheriff for Vancouver Island in whose custody the said Robert Evan Sproule now is.

2. That the certificate annexed to the said documents was made by the said James E. McMillan in my presence and the signature thereto is of the proper handwriting of the said James E. McMillan.

3. That the said order and calendar are the authorities and only authorities for the detention of the said Robert Evan Sproule as aforesaid as I am informed by the said James E. McMillan and James W. Hutchison the goaler of the said Common Gaol at Victoria aforesaid.

4. That the signature "Robert Evan Sproule" at the foot of the annexed application by the said Robert Evan Sproule for a writ of *Habeas Corpus* is of the proper handwriting of the said Robert Evan Sproule and that the same was signed in my presence on the seventh May instant and in the presence of James W. Hutchison the other subscribing witness thereto.

Sworn to before me at the City of Victoria, in the Province of British Columbia, this seventh day of May, A. D. 1886.
(Sgd) GEO. JAY, JR.
A Commissioner for taking Affidavits in the Supreme Court of British Columbia.

(Signed) S. Y. WOOTTON.

To one of the Judges of the Supreme Court of Canada.

MY LORD,

I humbly request that Your Lordship will peruse the copy authorities under which I am now held a prisoner in the common gaol at the City of Victoria, in the Province of British Columbia, and that Your Lordship will be pleased to grant me a writ of *Habeas Corpus*, returnable before Your Lordship, with the day and cause of my being taken and detained.

Dated at Victoria, British Columbia, this seventh day of May, A.D. 1886.

SIGNED in the presence of
(Sgd.) J. W. HUTCHISON.
Gaoler Victoria gaol, B.C.

(Signed), ROBERT EVAN SPROULE.

(Sgd.) S. Y. WOOTTON, of Victoria,
Solicitor.

(Sgd.) G. J., JR.

I, JAMES ELIPHALET MCMILLAN, of the City of Victoria, British Columbia, Sheriff for Vancouver Island, hereby certify that the annexed documents marked A and B respectively, are true copies of the authorities under which Robert Evan Sproule is held in my custody, and is now detained in the Common Gaol at Victoria aforesaid as a prisoner, and that there is no other authority for his detention by me.

Dated at Victoria, British Columbia, this seventh day of May, A. D. 1886.

(Sgd.) J. E. McMILLAN,
Sheriff.

S. Y. W.

"A."

IN THE SUPREME COURT OF BRITISH COLUMBIA. 10

ROBERT EVAN SPROULE,
Plaintiff in Error,

vs.

THE QUEEN,
Defendant in Error.

The Plaintiff in error Robert Evan Sproule being brought here into Court in the custody of the Sheriff for Vancouver Island by virtue of a rule of this Court is remanded into the custody of the said Sheriff.

By the Court,

"JAMES C. PREVOST," *R.* 20
[L. S.]

DATED February 27th, 1886.

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"B

IN THE SUPREME COURT OF BRITISH COLUMBIA

Calendar—General Assize.

Before Hon. Mr. Justice Gray.

Held at Victoria on Monday, the 23rd day of November, 1885.

No.	Name of Prisoner.	Indictment.	Finding of Grand Jury.	Plea	Verdict.	Sentence.
1	Robert Marwick	Assault occasioning grievious bodily harm.	True Bill	.....	.....	Recognizance to be estreated.
2	Eli Le Claire	Assault occasioning grievious bodily harm.	True Bill	.....	.....	Discharged on recognizance to appear at next Assize.
3	James Wallace	Larceny from person	True Bill	To stand till next Assize.		
4	Na Quong					
5	Owe You	From last Assize	.....	To stand till next Assize.		
6	James Smith	Robbery	True Bill	Not guilty.	To stand till next Assize.	
7	Edward Kelly	Murder	True Bill	To stand till Assize.		
8	Thomas Martin	Shop breaking	To stand till next Assize.			
9	George Suffern	Shop breaking				
10	Cum You	Endorsing feloniously	No Bill.			
11	Cum You	Endorsing feloniously	No Bill.			
12	Nah Kee	Threatening to accuse	True Bill	Not guilty.	Guilty	3 months with hard labor.
13	Albert E. Elliott	Larceny	True Bill	.....	.....	Recognizance to be estreated.
14	Albert E. Elliott	Larceny	True Bill	.....	.....	Recognizance to be estreated.
15	Albert Davey	Larceny	True Bill	.....	.....	Recognizance to be estreated.
16	Quiniste	Murder, accessory	From last Assize	.....	.....	Prisoner discharged.
17	Mah Yuig	Demanding money under threat to accuse.	.....	.....	.....	Recognizance to be estreated.
18	William Nicholson	Larceny from person	True Bill	.....	.....	Recognizance to be estreated.
19	Ah Moon	Wounding with intent to murder, wounding with intent to do bodily harm.	True Bill	Not guilty.	Guilty of unlawful wounding.	4 months' imprisonment from December 3rd, 1885.
20	Ngan Shee Yuig	Wounding with intent	True Bill	Not guilty.	Unlawful wounding.	3 years' imprisonment in the Penitentiary.
21	Chan Ah Hing	Wounding with intent	True Bill	Not guilty.	Unlawful wounding.	3 years' imprisonment in the Penitentiary.

B

IN THE SUPREME COURT OF BRITISH COLUMBIA.

CALENDAR—GENERAL ASSIZE—*Continued from previous page.*

Held at Victoria on Monday, the 23rd day of November, 1886.

NO.	NAME OF PRISONER.	INDICTMENT.	FINDING OF GRAND JURY.	PLEA.	VERDICT.	SENTENCE.
22	Robert Miller.....	Larceny from person.....	True Bill.....	Not guilty.	Guilty	2 years and 6 months in the Penitentiary.
23	Robert E. Sproule..	Murder	True Bill.....	Not guilty.	Guilty, recommended to mercy.	Death.
24	Francis M. Yorke .	Assault with intent to commit rape.	True Bill.....	Not guilty.	Common assault....	Fined one hundred dollars ($100.00)
25	John W. Nettleton .	Assaulting constable	True Bill.....	Guilty ..	... .	12 months' hard labor.
26	John W. Nettleton	Arson..... ...	True Bill.....	Not guilty	Guilty, recommended to mercy.	2 yrs. in the Penitentiary, this sentence to be put in force first
27	John W. Nettleton .	Assault with intent to commit a felony, common assa't	True Bill.....	Not guilty.	Guilty	6 months' hard labor.
28	Ah Hong	Intent to defraud.....	True Bill.....	Not guilty.	Guilty	2 years in the Penitentiary.
29	Alfred Townsend...	Larceny in dwelling house .	True Bill.....	Guilty	... .	18 months with hard labor.
30	William Holloway.	Larceny in dwelling house .	True Bill.....	Guilty	.....	18 months with hard labor.
31	Alfred Townsend...	Breaking into shop, receiving	True Bill.....	Guilty	Guilty on 2nd count	18 months with hard labor, to commence at expiration of first sentence.
32	John Theyer, *alias* Cosgrove.	Robbery, receiving	True Bill.....	.....	.....	Bonds estreated.
33	Samuel Greer.	Forgery, uttering.....	Nolle Prosequi.			

(Signed) JAMES C. PROVOST, *R.*

23rd November, 1885.

(Signed) J. H. GRAY, J.

L. S.

BRITISH COLUMBIA. } A.
TO WIT: }

WHEREAS it appears to the satisfaction of me Matthew Baillie Begbie Chief Justice of the Supreme Court of British Columbia a Judge who might hold or sit in the Court at which Robert E. Sproule a prisoner now confined in New Westminster Gaol under a warrant of commitment given under the hand and seal of Arthur W. Howell one of Her Majesty's Justices of the Peace in and for the Province of British Columbia is liable to be indicted for that he the said Robert E. Sproule did on the first day of June A.D. 1885 feloniously wilfully and of his malice aforethought kill and murder one Thomas Hammill that it is expedient that the trial of the said Robert E. Sproule should be held in the City of Victoria (being a place other than that in which the said offence is supposed to have been committed);

I do order that the trial of the said Robert E. Sproule shall be proceeded with at the Court of Oyer and Terminer and General Gaol Delivery to be holden at the City of Victoria and I do order the Keeper of the New Westminster Gaol to deliver the said Robert E. Sproule to the Keeper of the Gaol at Victoria City, and I do order and command you the Keeper of the said Gaol at Victoria City to receive the said Robert E. Sproule into your custody in the said gaol and there safely keep him until he shall be thence delivered by due course of the law.

Dated at Victoria this 13th October, 1885.

(Sgd) MATT. B. BEGBIE, *C. J.*

IN THE SUPREME COURT OF CANADA.

In the matter of a *rule nisi* granted on Monday, the 3rd day of May, A. D. 1886, for a writ of *Habeas Corpus*, requiring the Sheriff for Vancouver Island to bring before a Judge of the Supreme Court of Canada the body of one ROBERT EVAN SPROULE.

I, THEODORE DAVIE, of the City of Victoria, Barrister-at-Law, make oath and say as follows:

That the order in the above matter as drawn up and in existence at the time of the trial of the said Robert Evan Sproule, referred to in the affidavit of James E. McMillan filed herein on the 22nd May, inst., was in the words and figures of the document hereunto annexed and marked A, and not otherwise.

Sworn to at the City of Ottawa, this 26th May, A. D. 1886, before me. (Sgd.) WALTER J. THICKE, *A Comnr., etc.* } (Signed) THEODORE DAVIE.

IN THE SUPREME COURT OF CANADA.

In the matter of ROBERT EVAN SPROULE, a prisoner in the common gaol at Victoria, British Columbia, in custody of James E. McMillan, the Sheriff for Vancouver Island.

Upon reading the rule or order granted in this matter on the third day of May, one thousand eight hundred and eighty-six, calling upon James E. McMillan, Esq., Sheriff for Vancouver Island, to shew cause why a writ of *Habeas Corpus* should not issue, requiring him to bring before the Court the body of Robert Evan Sproule, together with the day and cause of his detention, and why, in the event of the writ being allowed, the prisoner should not be discharged without the writ actually issuing or the prisoner being brought before the Court, upon hearing Mr. Burbidge, Q.C., and Mr. Gormully, as of Counsel for the Crown, and Mr. McCarthy, Q.C., and Mr. Theodore Davie, as of Counsel for the prisoner, and upon reading the several affidavits upon which the said order of the third day of May was issued, and the further affidavits of the prisoner, filed on the fifteenth day of May, one thousand eight hundred and eighty-six, of Stephen Yardley Wooton (with demand of the prisoner for a *Habeas Corpus* and other documents attached or exhibited) filed on the twenty-second day of May one thousand eight hundred and eighty six, of James E. McMillan (with documents attached being his return to said rule or order) and PAULUS E. IRVING, filed on the twenty-second day of May, one thousand eight hundred and eighty-six, and of Theodore Davie, filed on the twenty-sixth day of May, one thousand eight hundred and eighty-six. I, the Honorable William Alexander Henry, a Judge of the Supreme Court of Canada, do order that a writ of *Habeas Corpus ad subjiciendum* do issue, directed to the said Sheriff of Vancouver Island, in the Province of British Columbia, commanding him forthwith to have before me at my chambers, in the Supreme Court of Canada, at Ottawa, the body of the said Robert Evan Sproule, the above-named prisoner, together with the day and cause of his detention.

Dated this 25th day of June, A.D. 1886.

(Signed) W. A. HENRY,
A Judge of the Supreme Court of Canada.

Entd. fol. 285. J. L.

THE QUEEN *VS.* SPROULE.

HENRY J.

This is an Order to show cause why a Writ of *Habeas corpus ad subjiciendum* should not issue to the Sheriff of Vancouver Island British Columbia, to bring up the body of the above named Robert Evan Sproule together with the day and cause of his detention in the custody of the said Sheriff and why in the event of the allowance of the said writ the said Robert Evan Sproule should not be discharged from the said custody without the actual issue of the said Writ or the attendance of the said Robert Evan Sproule before me.

The Order was duly served upon the Sheriff of Vancouver Island and upon the Attorney General of British Columbia; and, on the argument before me, on the twenty-fifth and twenty-sixth days of May last past, cause was showed on behalf of the Crown against the discharge of the prisoner.

The argument on both sides was able and exhaustive, and my labor and inquiry much less than would otherwise have been necessary.

Having been occupied, however since, in the hearing of arguments in term or session of the Court and in delivering judgment in other cases, in Court, I have not been able to prepare my judgment at an earlier date.

The case is a novel one, particularly in the Dominion; and required, and has had, my best consideration.

The Judges of the Supreme Court of Canada derive their authority in regard to Writs of *Habeas corpus ad subjiciendum* from the 51st section of the Supreme and Exchequer Courts Act of the Dominion, passed in 1875 which is as follows:

"Any Judge of the Supreme Court shall have concurrent jurisdiction with the Courts or "Judges of the several Provinces, to issue the writ of *Habeas Corpus ad subjiciendum* for the "purpose of an enquiry into the cause of commitment in any criminal case under any Act of "the Parliament of Canada * * *." The Supreme Court of ~~Britain~~ British Columbia has complete cognizance of all pleas whatsoever "and has jurisdiction in all cases civil as well as criminal arising within "the said Colony of British Columbia." That Court has, and its Judges have, full jurisdiction in respect of the writ of *Habeas Corpus ad subjiciendum* and the Judges of this Court have therefore, under the 51st section I have cited, the same jurisdiction.

Having then such jurisdiction the next enquiry is as to its applicability to the circumstances of this case.

It is not appellate but original; deriving its power and authority from the section before mentioned.

In such a case we cannot, in any way, review the decision of a Court of competent jurisdiction; but must confine our consideration to the question of jurisdiction over the subject matter in question, exercised by a Court, and resulting in the conviction and sentence of a person charged with a criminal offience. If the court before whom the prisoner in this case was tried and convicted had the necessary jurisdiction I cannot interfere. This position was taken on the argument and well sustained by binding authorities.

The authorities go however as effectually to sustain the proposition that when ascertaining the cause of the commitment of a prisoner it is shown that the Court had no jurisdiction to try and convict him, he is entitled by law to his discharge. The law has provided the mode and manner for trying parties accused of crimes; and the Courts before whom they are to be tried; and no one can be legally sentenced unless tried and convicted by competent authority and according to law. If any necessary link in the chain to constitute jurisdiction be wanting, no one can be legally punished. If the Judge who presides at a criminal trial be without proper authority in regard to such a trial the conviction is a nullity and so in all other cases where from any cause there was not jurisdiction, and when such want of jurisdiction is made to appear it must necessarily result in the discharge of the convicted party.

Numerous authorities might be cited to sustain that proposition.

I cannot in this connection do better than quote from the judgment of Chief Justice Cockburn in Martin vs. M. Connochie (L. R. 3, Q. B. D. at page 775). "It seems to me I "must say, a strange argument in a Court of Justice to say that when, as the law stands, "*formal proceedings*, are in strict law required, yet no substantial injustice has been done by "dealing summarily with a defendant, the proceedings should be upheld. In a Court of law "such an argument a ~~commenienti~~ Curiâ is surely inadmissable. In a Criminal proceeding the "question is not alone whether substantial justice has been done but whether justice has been "done *according to law*. All proceedings in poenam are, it need scarcely be observed, "strictisimi juris; nor should it be forgotten that the formalities of law, though here and

" there they may lead to the escape of an offender, are intended on the whole, to insure the " safe administration of justice, and the protection of innocence, and must be observed.

" A party accused has the right to insist on them as a matter of right of which he cannot " be deprived against his will ; and the Judge must see that they are followed. He cannot " set himself above the law which he has to administer, or make or mould it to suit the exigen. " cies of a particular occasion. Though a murderer should be taken red-handed in the act, if " there is a flaw in the indictment the criminal must have the benefit of it. If the law is " imperfect it is for the Legislature to amend it. The Judge must administer it as he finds " it. And the procedure by which an offender is to be tried though but ancillary to the appli- " cation of the substantive law and to the ends of justice, is as much part of the law as the " substantive law itself * * *. The law constitutes a given act an offence. As such it " attaches to it a given punishment. But it prescribes a plenary course of proceedure by " which, if at all, the offence is to be brought home to a party charged with having committed " it. If a Court having jurisdiction over the offence, takes upon itself to substitute a different " and more summary method of proceeding, surely this is to make the Court, as it were, super- " cede the law."

The prisoner was indicted at Victoria and tried there under an indictment which is as follows :

BRITISH COLUMBIA.

TO WIT :

" The Jurors for our Lady the Queen upon their oath present that Robert E. Sproule on " the first day of June in the year of our Lord one thousand eight hundred and eighty five, " feloniously, wilfully and of his malice aforethought did kill and murder one Thomas " Hammill against the peace of Our Lady the Queen Her Crown and dignity."

The homicide of Hammill took place at or near to Kootenay, in British Columbia, distant from Victoria about seven hundred miles. The Province was by several Acts of its Legislature, the last of which was in 1885, divided into judicial Districts or Circuits ; and Courts of assize and *nisi prius*, and of Oyer and Terminer and general Gaol Delivery were provided to be held at each of the undermentioned places at the times mentioned in the Act, that is to say at the City of Victoria, at the City of Nanaimo, at the City of New Westminster, and at other places including the Bailwick of Kootenay.

Before the trial it is shown by affidavit that an Order for a change of venue to Victoria was made and signed by the learned Chief Justice of British Columbia. That Order was subsequently considered, and no doubt properly, defective ; as it made no provision as required by the Statute for such conditions as to the payment of any additional expenses thereby caused to the accused as the Court or Judge may think proper to prescribe. The prisoner, previous to the making of that Order, was in custody for a crime alleged to have been committed by him within the Bailiwick of the Sheriff of Kootenay but was taken by some process, the nature of which does not appear, before the learned Chief Justice ; and, by his Order, before referred to, committed for trial to the custody of the Sheriff of Vancouver, where he was during the trial and now is. It has been satisfactorily shown by affidavit that the only Order for a change of venue in existence at the time of the trial of the prisoner was the one before mentioned. If that Order is defective, then the trial of the prisoner was without authority.

By law the trial should have been had in the Bailiwick where the homicide took place, unless the venue for the trial was changed, as by law prescribed and required. The right of the Court or a Judge to order a change of venue in a criminal case is upon the condition following: "But such order shall be made upon such conditions as to the payment of any "additional expense thereby caused to the accused as the Court or Judge may think proper to "prescribe."

When it may be the case that a prisoner charged with an offence is without means to provide for his defence at a place distant from the ordinary place of trial to change the venue without at the same time making provision for the additional expense would practically prevent him from making any defense, and the order for doing so would be manifestly unjust.

The Legislature has therefore properly and humanely provided that the Court or a Judge, meaning no doubt the Court or Judge making the order, shall consider all the circumstances in relation to the change of venue and make the order conditional upon the payment of any additional expense thereby caused. The statute requires the Court or a Judge to decide in his discretion "as to the payment of any additional expense." The trial in this case took place six or seven hundred miles from Kootenay, and the prisoner before being tried had the right to the opinion and decision of the Judge as to the amount to be previously paid to him. I say previously paid, because, for good and palpable reasons the Statute has clearly made the decision of the Judge and the payment of the additional expense as settled by him conditions precedent to the operation of the order. Those conditions not having been prescribed a peremptory order was made which I think was wholly unwarranted and void.

I have considered this matter from the position shown in the affidavits read on behalf of the prisoner made by Theodore Davie, Esquire, counsel of the prisoner, who in one of them says: "That the order in the above matter as drawn up and in existence at the time of the "trial of the said Robert Evan Sproule, referred to in the affidavit of James E. McMillan filed "herein on the 22nd of May instant, was in the words and figures of the document hereunto "annexed and marked A, and not otherwise." Annexed to that affidavit is the copy of the order purporting to have been made on the 13th of October, 1885, by the learned Chief Justice of British Columbia; and it contains no reference whatever to the matter of the additional expenses of the prisoner. In another affidavit which is referred to in the order herein the same deponent stated that on the 13th day of October, 1885, the said Robert Evan Sproule was brought in custody before His Lordship the Hon. Sir Matthew Baillie Begby, Chief Justice of the Supreme Court of British Columbia, at the Supreme Court House at the City of Victoria aforesaid, whereupon an application was made on behalf of the Crown, the result of which was that an order was made by the said Chief Justice and drawn up and signed by him, directing the trial to proceed at the City of Victoria, instead of at Kootenay, without imposing any terms or conditions. Accompanying the last mentioned affidavit a verified copy of the record of the trial was produced, and in that affidavit the said Theodore Davie further says: "The order for change of venue set out in the second and third pages of the said exhibited copy record was not in existence at the time of the trial and sentence, but was drawn up and signed and issued subsequently. Before proceeding to assign errors upon the record I alleged a diminution of the record and applied for a certiorari upon my own affidavit, showing that the order for change of venue set out in the record was not the true one or in existence at the time of the trial and judgment * * * The Court after hearing argument over-ruled the same."

Here then the error alleged was brought by affidavit to the notice of the Court but the allegations of error were overruled. Should they have been if the facts are truely stated in the affidavits referred to? The Court was asked to correct the record for the reasons alleged but declined to do so without shewing in its judgment why I have, however, been furnished with the reasons of the learned Judges in a report of the argument, and strange to say the allegation that the Order for the change of venue as appearing in the record was made up after the trial and sentence of the prisoner is not referred to The fact is neither admitted or denied. The Order purports to have been made and signed by the learned Chief Justice. If so made he was in a position to affirm or deny the allegation. It purports to have been made on the 13th of October, 1885, the same date with the Order shown by the affidavit of Mr. Davie to have been made and signed on that day. If two Orders were made on that day the fact could easily and should, have been shown. When delivering judgment in the matter the learned Chief Justice said: "We are all of opinion that the Order of the 13th October, 1885, for the removal "of the trial to Victoria was a good and proper Order under S. H. of the Can. Procedure Act, "1869, C. 29, and that the condition as to costs was an expedient and sufficient condition.' The learned Chief Justice then dealt with a contention of Mr. Davie, that the Statute only applied to a case of change of venue after an indictment found but made no reference to the allegation under oath of Mr. Davie, that although it appeared as if made on the 13th October, 1885, it was not in fact made in existence till after the trial and sentence. I can hardly think any respectable Counsel or any other sane person would have the temerity to make such a statement to the Court if unfounded when he knew one of the learned Judges must know that it was so, but the allegation having been made and not in any way contradicted the truth of it must be assumed. The reference of the Chief Justice is to the Order appearing in the record but he does not say that it was made before the trial, and therefore does not contradict the statement otherwise of Mr. Davie in regard to it. Whether the record must be received as conclusive is, however, another matter and one I will hereafter deal with. If then the Order as shown in the record was not made before the trial some one is answerable for ~~contradicting~~ antedating it or the record assigned a wrong date to it. There can be no reasonable doubt that two Orders were in fact made the one last referred to, as I think, intended to supply what was considered a fatal defect in the previous one. It would be absurd to say that an Order made after the trial in a wrong place, of a prisoner, made after a trial could relate back and give jurisdiction where none existed when the trial took place. It would be like the case of ~~the~~ execution for murder without a conviction.

I have already given it as my opinion that the Order alleged to have been first made was defective and as I find that the other was not made till after the trial and sentence I think the trial of the prisoner was improperly and illegally removed to Victoria; but should I be wrong in my conclusion that the Order set forth in the record was not made till after the trial I will consider the question of its validity if made as it purports to have been on the 13th October 1885. After setting out that it appeared to the satisfaction of the learned Chief Justice, who made it, that it was expedient to the ends of justice that the trial of the said Robert Evan Sproule for the alleged crime should be held at the City of Victoria his Lordship ordered as follows: "And Mr. Irving now undertaking on behalf of the Crown to abide by such Order "as the Judge who may preside at the trial may think just to meet the equity of the eleventh "section of the 32 & 33 Vic. Chap. 29 intituled 'An Act respecting procedure in criminal "cases and other matters relating to Criminal Law: Such being the conditions which I think

" proper to prescribe. I Sir Mathew Bailie Begbie Knight, Chief Justice of British Columbia " and being a Judge who might hold or sit in the Court at which the said Robert Evan Sproule " is liable to be indicted for the cause aforesaid, do hereby Order that the trial of the said " Robert E. Sproule shall be proceeded with at the City of Victoria in the said Province at the " Court of Oyer and Terminer and General Gaol Delivery to be holden at the said City on " Monday the 23rd day of November 1885." Is that then a valid Order within the terms of the Statute that requires the Court or the Judge that makes the Order to prescribe and by which to settle the conditions as to the payment of the additional expense? The Statute gave no power of delegation to the Court or a Judge. The allowance of additional expenses might be to enable a prisoner to secure the attendance of witnesses for his defense and a poor man would require provision to be made for their attendance by the Judge who makes an Order of the kind. To postpone the consideration until the trial would in some cases be a virtual denial of that which the Statute has provided for. The wrong would be done and if the prisoner should have been convicted what benefit, as to the trial would be an Order from the presiding Judge for additional expenses. The clear intention of the provision was to put the prisoner in no worse pecuniary position as to his trial in the case of a change of venue. The Court or Judge applied to for an Order for that purpose should on proper and necessary inquiry decide as to the amount, if the inquiry satisfied him additional expenses would be incurred, and insert it in the Order; and having done so the payment should be considered a condition precedent to the operation of the Order.

In no other way could the interests of a prisoner be sufficiently protected for if once removed he would have no security that the additional expenses would be furnished to him in sufficient time before his trial, and he should not be left to depend on the undertaking of any irresponsible person. In this case the learned judge seems to have made no inquiry whatever before making the Order. He decided nothing as to the matter but made the Order upon Mr. Irving's undertaking on the part of the Crown to abide by an Order to be subsequently made by the Judge who might preside at the trial.

A Judge's Order of such a character is I consider void and must be so considered in all cases where the terms upon which the Statute allows it to be made are not fulfilled and where the Judge does not himself first do what the Statute enjoins as necessary to give him jurisdiction over the subject matter. A party accused of the committal of a crime is required by the law to be tried in the Bailiwick where it is alleged to have been committed. The Grand Jury there are to find an indictment against him before he can be put on his trial and twelve good and lawful men of that Bailiwick form a necessary part of the tribunal. If the Order for the change of venue is defective, as I in this case hold it is, the Grand Jury of no other place could find a bill of Indictment against him and no other petit Jury could legally be empanelled to try him.

Chief Justice Cockburn in his remarks in the case before mentioned, and which I repeat says: " And the procedure by which an offender is to be tried though but ancillary to " the application of the substantive law and to the end of justice, is as much part of the " law as the substantive law itself." It was when deciding upon a " Rule calling on Lord " Penzance the official principal of the Arches Court of Canterbury and J. Martin to shew " cause why a Writ of Prohibition should not issue to prohibit the said Court from publishing " proceedings with or enforcing a decree of suspension *ab officio et beneficio* made against

" the Rev. Alexander H. MacKonnochie, clerk, in a suit Martin vs. MacKonnochie such " decree being one which was made without jurisdiction. It was contended and admitted " that the Arches Court had jurisdiction over cases of the kind in question but only at the " request of the Diocesan Court and that no such request was shown the Writ of prohibition " was granted because of the want of jurisdiction in the Court of Arches." In this case I think for the reasons I have given there was no jurisdiction to try the prisoner at Victoria.

I will now consider whether or not it is permissible, in a case like the present, to contradict the record.

It is well understood that in a great variety of cases the record of a Court of competent jurisdiction is not only conclusive evidence of the facts stated therein but in many cases the only proof; still where the jurisdiction is impeached it appears to me, that the mere statements in a record by which jurisdiction is shown should not prevail where evidence by affidavit shews conclusively that the statements are erroneous. The question of jurisdiction in a proceeding like this being raised, I think, for the true and proper determination of that question, evidence should be admitted to show that there was really no jurisdiction. To state perhaps an extreme case; should a man be hanged or punished when it could be shown by extrinsic evidence that the tribunal had no authority to try or convict him. See I Smith's "Leading Cases," p. 740: " But a question has occasionally arisen whether in cases where the Justices have proceeded " without jurisdiction and have nevertheless stated upon the face of the conviction matter " showing a jurisdiction it be competent to the defendant to prove the want of jurisdiction by " affidavit."

" It certainly appears desirable that the Court should have the power to entertain the " question of jurisdiction, some cases might easily be suggested where not only great private but " great public inconvenience might arise from leaving an invalid order or conviction unreversed " and great injustice might be caused by allowing justices out of or in sessions by making their " order or conviction good upon the face of it to give themselves a jurisdiction over matters " not entrusted to them by law."

At page 271 of the same book we find it said " Supposing that the Court below cannot be " compelled by *mandamus* to show the defect of jurisdiction upon the record, the next ques- " tion is, will the Court above allow evidence of such defect of jurisdiction to be laid before it " by way of affidavit on the record being brought before it by a Writ of Certiorari?

" In R. vs St. James Westminster 2 A. & E. 241 it was remarked by Mr. Justice Taunton " (a judge whose obiter dicta are always worthy of the greatest attention) that this had been " constantly done. In R. vs The Inhabitants of Great Marlow 2 Bast 244 an appointment of " Overseers, good on the face of it was allowed to be questioned by affidavit on the ground of " a defect of jurisdiction and was finally quashed.

" The Court in that case had taken time to consider as to the practice with regard to " receiving the affidavit and Mr. Justice Laurence mentioned several cases in which that course " had been pursued. In the case of R. vs Justices of Cheshire I P. & D. 93, 8 A. & E. 400 " the question was a good deal discussed; and it seems to have been admitted that affidavits " might be looked at for the purpose of showing a defect of jurisdiction. It cannot be dis- " puted " said Mr. Justice Coleridge in the latter case " that there are many cases in which " affidavits may be looked at in order to ascertain whether there was jurisdiction or not; for " suppose an Order made which was good on the face of it, but which was not made by a " magistrate it is clear that this fact may be shown to the Court."

" And it seems to be settled by the later cases that a defect of jurisdiction may be shown " by affidavit, though the proceeding is so drawn up as to appear valid on the face of it." See the judgments in R. vs Bolton ~~12~~ B. 66. The Whitbury jr., union case 4 E. & B. 314. In re Penny 7 E & B 660 and other cases cited at page 742. 1 Q.B

At page 743 Mr. Smith says : " It should seem that the Queen's Bench Division will on " *Certiorari* entertain affidavits where the conviction is good on the face of it not only to " show that preliminary matters required to give the Justice jurisdiction to enter upon an " enquiry into the merits of the case were wanting see R. vs. Bolton ~~12~~ B. 66. R. vs. Badger 1 Q.B " 6 E & B 13. R. vs. Wood 5 E & B 49. R. vs. Justices of Fotness 2 L. M & P 230. the " judgments in R. vs. St. Olave's District Board 8 E & B 529 and in re Smith 3 H & N 227 " or that circumstances appeared in the course of the inquiry which ousted his jurisdiction. " R. vs. Nunneley E. B. & E. 852. R. vs. Cridland 7 E. & B. 352. R. vs. Backhouse 30 " L. J. M. C. 118. R. vs. Stimpson 4 B & S 301 but also that there was no evidence to prove " some fact, the existence of which was essential to establish the offence charged."

It seems also to be well settled by judgments in the United States that where it is shown that jurisdiction over the subject matter did not exist the statements of facts in a record of the highest Court might be inquired into by affidavit on the ground that if there was not jurisdiction there was no legal record. I will refer to a few out of a great many authorities that might be cited. In Davis vs. Packard, 6 Wend. 327-332, in the Court of Errors the Chancellor speaking of domestic judgments says : " If the jurisdiction of the Court is general or unlimited both as " to parties and subject matter it will be presumed to have had jurisdiction of the cause unless " it appears affirmatively from the record, or, by the showing of the party denying the " jurisdiction of the Court that some special circumstances existed to oust the Court of its " jurisdiction in that particular case." In Bloom *vs* Burdick 1 Hill 130 Bronson Justice says : " The distinction between Superior and Inferior Courts is not of much importance in this " particular case, for whenever it appears that there was a want of jurisdiction, the judgment " will be void in whatever Court it was rendered "—and in People *vs.* Cassels 5 Hill 164–168 the same Judge says : " that no Court or Officer can acquire jurisdiction by the mere assertion " of it or by falsely alleging the existence of facts upon which jurisdiction depends." In Harrington *vs.* the People 6 Barb. 607 Paige J. expresses the opinion that the jurisdiction of a Court, whether of general or limited jurisdiction may be inquired into, although the record of the judgment states facts giving it jurisdiction. He repeats the same view in Noyes *vs.* Butler 6 Barb 613–617 and in Hard *vs.* Shipman 6 Barb 621–623–624 where he says of Inferior as well as Superior Courts that " the record is never conclusive as to the recital of a jurisdictional " fact and that the Defendant is always at liberty to show a want of jurisdiction although the " record avers the contrary—and that if the Court had no jurisdiction it had no power to make " a record."

The English cases which I have cited are those before Justices ; but on principle I can see no difference between a judgment of an Inferior, and one of a Superior Court, when the question of jurisdiction is raised nor can I see why if the record of the former can be shown to be erroneous or false as touching the matter of jurisdiction the other cannot be ; for without jurisdiction, the acts of one must be void as well as those of the other, and therefore the rule in the one case should be the same as in the other ; and in the cases I have consulted in the Courts in the United States the rule is applied to their highest Courts.

I could suggest many cases in which serious wrong and injury might result if the jurisdiction of a Court could not be attacked by evidence outside of the record and in contradiction of it, showing the total want of jurisdiction. Suppose that there was no question that a Commission of Oyer and Terminer and General Gaol Delivery was necessary and a Judge undertook to try an accused person for high crime and the record showed that he had a legal commission authorizing him in the premises but the fact was that no such commission was ever issued or held by him, and that the accused was convicted and sentenced possibly (as in this case) to forfeit his life, would it not be a gross prostitution of the principles of common justice to shut out evidence tendered to show that the Judge acted without a commission—and therefore without any jurisdiction On the same principle evidence to show that for any other reason he had not jurisdiction should not be rejected. It is proper to explain in this connection that a copy of the record was submitted and referred to in the affidavit on behalf of the prisoner when the Order *nisi* was applied for and another copy was returned by the Sheriff of Vancouver and put in by the Crown when shewing cause against the Order. It was therefore by both parties made a part of the case submitted for my decision, and although the proceedings were not removed by *Certiorari* the consideration of it as to the question of jurisdiction was legitimately submitted.

Other objections to the jurisdictions were raised and debated to which I need not give the same amount of consideration that I would feel it necessary to do in case my decision depended on the correct solution of them.

I will however deal with one of them and refer to the others. The learned Judge before whom the prisoner was tried acted by authority of a Commission of Oyer and Terminer and General Gaol Delivery issued by the Lieutenant-Governor of British Columbia and the Commission is set out in the returns. The latter named high functionary was then acting under a Commission from the Governor General under the Imperial Confederation Act of 1867. That Commission "authorises empowers requires and commands the Lieutenant-"Governor in due manner to do and execute all things that shall belong to his said command "and the trust reposed in him, according to the several powers and directions granted or "appointed him by virtue of the present Commission and of the British North America Act "1867, and according to such instructions as were therewith given to him or which might "from time to time be given him in respect of the said Province of British Columbia under "the sign Manual of the Governor General of Canada or by Order of the Privy Council of "Canada and according to such laws as were or should be in force within the Province of "British Columbia." The Governor General's Commission authorises him "to constitute and "appoint Judges and in case requisite Commissioners of Oyer and Terminer, Justices of the "Peace and other necessary Officers and Ministers in Our said Colony." It is apparent that since the union of British Columbia with Canada in 1876 its Legislative power was largely restricted and the powers and duties of the Lieutenant-Governor proportionately restricted. In fact the Lieutenant-Governor, after the Union was no longer the Imperial officer a Lieutenant Governor had previously been. Under his Commission from the Queen previous to the Union the Lieutenant-Governor directly represented Her and only through that representation had he any power to issue Commissions but we are not necessarily to inquire what the power of the Lieutenant Governor was before the Union but simply to ascertain what power if any to issue Commissions of the kind in question here has been given to a Lieutenant-Governor by a Commission from the Governor General under the Imperial Confederation Act-within its terms.

The party so Commissioned has no reserved power; but the office and its powers and duties are limited to the subjects over which a Lieutenant-Governor so Commissioned, and appointed would have jurisdiction. Any question as to a reserved power is not I think to be considered in the face of the provision of sec. 12 of the B. N. A. Act 1867 which provides "that all the "powers authorities and functions vested in the Governor or Lieutenant-Governor of the several "Provinces shall be vested in and exercisable by the Governor General subject nevertheless to "be abolished or altered by the Parliament of Canada." I cannot imagine how then the Lieutenant-Governor of a Province can be claimed to have any power whatever except what is given by the Act in question and his Commission from the Lieutenant-Governor there under. Sec. 129 provides that except as otherwise provided by that Act all laws in force in the several Provinces mentioned and subsequently made applicable to British Columbia, all laws in force at the Union and all Courts of Civil and Criminal jurisdiction and all legal Commissions powers and authorities and all officers judicial administrative and ministerial existing at the Union shall continue in each of the said Provinces respectively as if the Union had not been made subject nevertheless to be repealed abolished or altered by the Parliament of Canada or by the Legislature of the respective Province according to the authority of the Parliament or of that Legislature under that Act.

By sub-section 8 of section 91, the Parliament of Canada has the authority and duty of making laws for "The fixing of and providing for the salaries and allowances of Civil and "other officers of the Government of Canada, and by sub-section 27 the criminal law, except "the constitution of Courts of Criminial Jurisdiction but including procedure in criminal matters." In another section the salaries of the Judges were expressly provided to be paid by the Government of Canada.

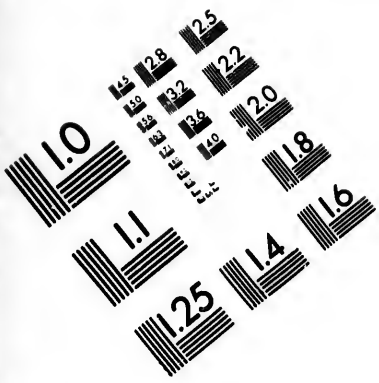
Sub-section 14 of section 92 gives to the Legislature of each Province the right to make laws for "The administration of justice in the Province including the constitution, maintenance "and organization of Provincial Courts both of Civil and Criminal Jurisdiction, and including "procedure in Civil matters in those Courts."

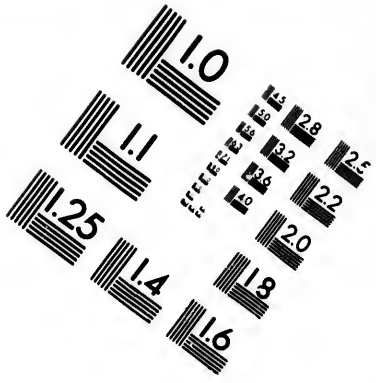
In regard then to jurisprudence in Civil matters the Legislatures of the Provinces have the entire legislative authority, except that in relation to the fixing and providing for the salaries and allowance of the Judges.

The authority and duty of legislation in regard to the administration of justice in Criminal cases including procedure in Criminal matters, is given to the Parliament of Canada, except (as provided in sub-sec. 27 of sec. 91 before recited) "the *constitution* of Courts of Criminal Jurisdiction."

By a comparison of sub-sec. 27 of sec 91 and sub.-sec. 14 of sec. 92 it will be observed that the latter in addition to the word "constitution" has the words "maintenance and organization." I do not however consider that the difference between the two sub-sections has any material bearing on the case under consideration but if it has I think, that in view of the terms of the concluding clause of sec. 91, we should confine the operation of sub-sec. 14 of sec. 92 so as to make it harmonise with sub-sec. 27 of sec. 91.

Reading it in that way the Parliament of Canada has the right to legislate in all matters of a criminal nature including procedure, including the appointment and paying of Judges except the constitution of the Courts.





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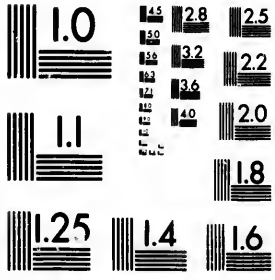

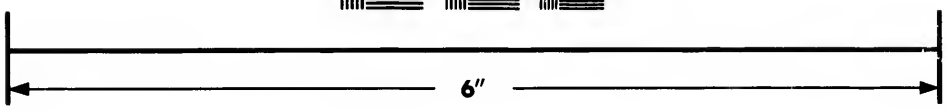

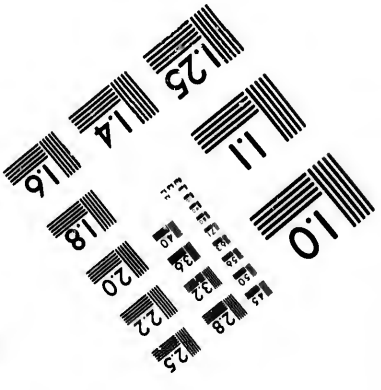

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It was clearly not intended that the word "maintenance" should include the payment of the Judges salaries as they, as I have shown are otherwise provided for. It may however have been intended to include the other expenses of the Courts and in otherwise maintaining them when constituted or organized. The words "constitution" and "organization" in this connection I consider synonimous as applicable to Courts. To constitute a Court means to form, make or establish it and, necessarily, to prescribe the powers jurisdiction and duties of those who are to operate it. It however does not necessarily in all cases include the power of appointment of the Judges to preside in them If the Local Legislatures had been given plenary power to *provide* for their appointment but with the limited and prescribed powers of legislation awarded to the Province by the Imperial Act such power does not exist. There is no award of deputed executive powers by the Act in relation to the exercise of any prerogative right of the Soverign by the Lieutenant Governors of the Provinces and their Commissions do not contain any. How then can they have any? The Commissions to Lieutenant Governors before confederation included such powers and it was only from them they derived authority.

We must construe an Act by taking it altogether.

By it (sec. 9) the Executive Government and authority over Canada is declared to continue and be vested in the Queen. Section 10 provides that "The provisions of this Act referring "to the Governor extend and apply to the Governor-General for the time being of Canada or "other the Chief Executive Officer or Administrator for the time being carrying on the "Government of Canada on behalf, and in the name, of the Queen, by whatever title he is "designated."

In England the sovereign was and is the source of all judicial appointments to the higher Courts of law. It is a prerogative right that while existing cannot be usurped and until removed or cancelled by an Act of Parliament assented to by the sovereign cannot be controlled or interfered with.

When British Columbia became a part of Canada its Courts were already established and constituted and by the terms of the Confederation Act sec. 129 before cited was so continued—and so also was the position of the Judges. They then held and derived authority from Commissions appointing them as Judges of the Supreme Court or Court of Queen's Bench during good behavior. But none as permanent Judges of the Court of Oyer and Terminer and General Gaol Delivery for which Commissions *pro re nata* had been issued by the Lieutenant-Governors from time to time. As in England the Judges appointed to this duty were styled and called Commissioners and the Acts in British Columbia providing for the appointment of such Commissioners limited their selection by the Lieutenant-Governors.

The Judges of the Supreme Court or Court of Queen's Bench had no authority without such commission to hold a court of Oyer and Terminer and general gaol delivery. In connection with this part of the subject I have considered the effect of the provision contained in sec. 14, of cap. 12 of the Acts of British Columbia, 1879, which is as follows: "Courts of Assize and *Nisi Prius*, or of Oyer and Terminer and General Gaol Delivery, may be held with or without commissions at such times and places as the Lieutenant-Governor may direct, and providing when no commissions are issued the said Courts, or either of them, shall be presided over by the Chief Justice or one of the other Judges of the said Supreme Court. It is doubtful if that Act, except sec. 17, ever came into operation, requiring as it does the Lieutenant-

Governor's proclamation for that purpose, and I understand that no such proclamation was issued. In Regina vs. McLean & Hare, British Columbia, in 1880, reported by one of the Judges, the learned Chief Justice alluding to the Supreme Court of that Province, says: "Those powers and authorities were and are no other than those possessed by the Queen's "Bench in England. It would have been exceedingly important if one English case had been "cited in which a Judge of the Queen's Bench had sat and tried without commission and "without removal by certiorari or otherwise, a criminal committed by a justice of the peace to "take his trial at the next Court of Oyer and Terminer. But no such case was produced from "the records of several centuries, and it is believed none is producible." The learned Chief Justice further said: "It is true one case was produced from the Ontario Courts (Whelan vs. "the Queen) 28 U.C.Q.B.R. 27, in which an attempt was made to impeach such a trial "unsuccessfully, The trial was actually impeached, although an extant enactment by competent "legislature had expressly declared that a Court of Oyer and Terminer might be presided in by "a Judge of the Supreme Court without commission. It is impossible to read the arguments "and judgments upon this point without perceiving what the result would have been in the "absence of such a statute. And there is no statute in force here. It is true the Ontario "provision has been copied into a local Act here, but being matter of criminal procedure it is "*extra vires* of the Local Legislature; and moreover it only purports to come into force from a "day not yet named. All these Acts of Parliament are in effect statutory declarations that by "the law of England and the Provinces, these commissions are necessary to confer jurisdiction "and that nothing less than an Act of Parliament can render them unnecessrry. The whole "argument upon this point, based upon Whalen vs. the Queen, which was referred to at great "length by Counsel for the Crown, is almost decisive in favor of the prisoners."

The learned Chief Justice concluded his judgment as follows:—"The Gaoler alleges two "causes of detention. One the sentence of Mr. Justice Crease the other a Warrant of commit- "ment by Mr. Senator Cornwall, J. P. The rule *Nisi* was obtained on the sole ground of the "invalidity of the sentence and the various informalities at the late alleged trial. With these "objections we agree and we consider that the prisoners have never been tried at all. But as "to the second cause of detention, the Warrant of commitment, it has not been at all impeach- "ed, and we cannot at this stage allow it to be now impeached. I think therefore the proper "Order is to remand the prisoners to be held in custody according to the exigence and tenor "of the last mentioned Warrant."

The case of the prisoners had been brought before the Court by a rule *Nisi* for a Writ of *Habeas Corpus ad subjiciendum* for their discharge on account of the invalidity of the conviction, and they were discharged therefrom but remanded under the Warrant for their commitment.

The "Ontario" Statute referred to was passed before Confederation by the Legislature of combined Provinces, Upper and Lower Canada, and was therefore *intra vires*, but that of British Columbia was after its Union with Canada, and therefore was as the learned Chief Justice I think properly says *extra vires*. Such being the case there is no Parliamentary dispensation of Commissions in Criminal cases, and as in my opinion the Lieutenant-Governor had no power to issue them the learned Judge who tried and sentenced the prisoner had for those reasons no jurisdiction.

There was another point of objection raised to the jurisdiction. The venue in the margin of

the indictment is "British Columbia to wit." No County, Shire, Division, district or place is mentioned; and there is no venue stated in the body of it. The whole Province was formerly one shrievalty but for many years past it has been divided into several Court Districts and shrievalties—one of which is Kootenay. There is no Sheriff of "British Columbia," and the indictment did not indicate in what Bailiwick it should be preferred to a Grand Jury or from what Bailiwick the Petit Jury should be summoned. The provisions of sections 32 and 33 of the Criminal Procedure Act, 1869, are, however, very comprehensive, and, in my opinion, were intended to provide for such a case if indeed it be not covered by the provisions of section 21, in regard to which there might be some doubt.

Section 32 enacts that "Every objection to any indictment for any defect apparent on the face thereof must be taken by demurrer or motion to quash the indictment before the Defendant has pleaded and not afterwards, &c., and power to amend is given to the Court." Whether the power could be exercised to relate back so as to warrant the finding of the Grand Jury is a question that would admit of a discussion which I consider unnecessary here. Section 33 provides that "If any person being arraigned upon an indictment for any indictable offence "pleads thereto a plea of 'Not guilty,' he shall by such plea without further form be deemed "to have put himself upon the country for trial, and the Court may in the usual manner order "a jury for the trial of such person accordingly."

The provisions of the three sections would certainly seem to cover every possible objection and I am inclined to the opinion that the objection being apparent on the face of the indictment the party might, under section 32, have demurred; and if the venue was wrongly stated the question as to the power of amendment could then have been raised. That course was not taken and it is not now necessary to consider the matter. And as the result does not depend upon any decision I might arrive at I think it unnecessary to refer further to that objection.

Another as to the polling of the Jury was submitted; but it would be of no practical service were I to consider it as my doing so will not affect the decision. I may say however that I consider such an objection is altogether for a Court of Error to decide. It does not in my opinion affect the jurisdiction and therefore not in my province to consider.

For the reasons I have given as to the first point referred to I think there was no jurisdiction to try the prisoner at Victoria; and that the learned Judge who presided had no jurisdiction to try the prisoner in the absence of any Legislative authority or a Commission from the Governor General and, therefore, that the trial was a nullity and as if the prisoner had never been tried. The prisoner is shown by the return and certificate of the Sheriff to be detained solely on the calendar of the Assize Court containing the sentence of death and the formal sentence and a remand dated the 27th of February last the prisoner having been brought before the Court sitting in error, and the sentence having been unrevoked.

No Warrant of commitment or other cause of detention was produced or shown in this case. And, as in my opinion the trial was a nullity and the sentence therefore illegal no other course is I think open to me but to Order the discharge of the prisoner and to adopt the necessary proceedings therefor. It is the bounden duty of a Judge to declare the law as he finds it and believes it to be regardless of consequences and all other considerations.

CANADA,
TO WIT:

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To the Sheriff of Vancouver Island, in the Province of British Columbia,

GREETING:

We command you that you have the body of Robert Evan Sproule detained in our prison, under your custody (as it is said) under safe and sure conduct, together with the day and cause of his being taken, by whatsoever name he may be called in the same, before the Honorable Mr. Justice Henry, one of the Judges of our Supreme Court of Canada, at his Chambers at the City of Ottawa, immediately after the receipt of this writ to do and receive those things which our said Judge shall then and there consider of him in this behalf: and have you then there this writ.

Witness, the Honorable Sir William Johnstone Ritchie, Knight Chief Justice of our said Supreme Court of Canada, this twenty-fifth day of June, one thousand eight hundred and eighty-six.

(Signed,) ROBERT CASSELS,
Registrar of the Supreme Court of Canada.

Pro statutem tricisimo primo Caroli secundi regis; and under the Supreme and Exchequer Courts Act of the Parliament of Canada. Thirty-eight Victoria, chapter eleven; and the Act of the parliament of Canada thirty-nine Victoria, chapter twenty-six.

(Signed), W. A. HENRY,
A Judge of the Supreme Court of Canada.

The within named Robert Evan Sproule was convicted and sentenced to death at the last Victoria Assizes for the crime of wilful murder, and the conviction and sentence was afterwards unanimously affirmed on Writ of Error, by the Supreme Court of British Columbia in full bench.

I hold the prisoner accordingly and humbly submit that such affirmed conviction and sentence is paramount to the within writ.

I have not received or been tendered any expenses of the conveyance of the prisoner.

For the above reasons I respectfully decline to produce the prisoner.

VICTORIA, B.C., 19 July, 1886. The answer of James Eliphalet McMillan, the Sheriff for Vancouver Island, to the within writ.

IN THE SUPREME COURT OF CANADA.

In the matter of a Writ of *Habeas Corpus* directed to the Sheriff for Vancouver Island directing him to bring before the Court the body of ROBERT EVAN SPROULE.

Take Notice of motion to be made unto his Lordship Mr Justice Henry at his Chambers in the City of Ottawa on Monday the 2nd. day of August next at the hour of eleven in the forenoon by Mr. McIntyre of Counsel for the said Robert Evan Sproule that the return of the Sheriff for Vancouver Island to the Writ of *Habeas Corpus* may be deemed to be insufficient

and that the prisoner may be forthwith discharged out of custody without the production of his body before the Court or a Judge or in the alternative that a Writ of attachment do issue against the said Sheriff for his disobedience to the Writ of *Habeas Corpus* herein

Dated this 20th. July A. D. 1886.

THEODORE DAVIE.
Solicitor for the said Robert Evan Sproule.

To the Sheriff for Vancouver Island and to Her Majesty's Attorney General for the Province of British Columbia.

THE QUEEN *VS.* SPROULE.

HENRY, *J.*

This matter came before me under an order made by me in May last on a petition of Sproule setting forth that he had been illegally convicted of murder at British Columbia and was under sentence of execution. The order was returnable on the twenty-fifth day of May last, and was directed to the Sheriff of Vancouver Island in whose custody, under the conviction and sentence, the prisoner then was. It called upon him to show cause why a writ of *Habeas Corpus* should not issue to bring up the body of the prisoner and why in the event of the order being made absolute he should not be discharged without the writ being absolutely issued and without the prisoner being personally brought before me. The order was duly served on the Sheriff of Vancouver Island and on the Attorney-General of British Columbia. The Sheriff returned the whole of the proceedings in the prosecution including a copy of the conviction and sentence. The proceedings having been returned before me and the Crown having been represented by Messrs. Burbridge and Gormully and the prisoner by Messrs. McCarthy and Davie at the hearing objections were raised on the part of the prisoner to the jurisdiction of the tribunal by which he was tried and convicted. The objections were argued and answered on behalf of the Crown and upon two of them I decided and gave judgment in favor of the prisoner holding that the tribunal had not jurisdiction and that the prisoner was entitled to his discharge. The argument was confined to the objections so raised on the part of the prisoner.

After my decision I heard counsel on the part of the Crown and the prisoner as to proper course to be pursued for giving effect to my judgment, the Counsel for the prisoner claiming that as the Order to shew cause was in the alternative, and as counsel appeared, were heard, and shewed cause and took no exception to the terms of the Order on the argument, the prisoner was entitled to an Order absolute for his discharge. This course was objected to by the Counsel for the Crown, and after deliberation I decided to grant an Order for a writ of *Habeas Corpus* to bring the prisoner before me so that he could be by me discharged. I gave no opinion or decision as to right of a Judge, under the circumstances, to make an Order absolute for the discharge of the prisoner, but rather yielded to the desire of the Counsel for the Crown to have the prisoner brought before me.

An order for the issue of the Writ was therefore made by me on the 25th. of June last past and the Writ directed to the Sheriff of Vancouver Island was duly issued on the same day.

The Writ was served on the Sheriff in the early part of July last past but not returned until the 19th. of that month. In fact it is not returned at all for although sent back to the Registrar of this Court and purporting to be a return of the Sheriff the endorsement thereon

bears no signature. Neither does it appear to be in the hand writing of the Sheriff. I have compared the writing with his signature to some of the Authenticated documents on file in this case and I have found little difficulty in concluding the indorsement in question not to be of his proper hand writing and there is no affidavit verifying it to be his return or that it was made by his authority. The endorsement is dated the 19th. of July 188 . Whoever wrote that endorsement seems to be of the opinion that a Sheriff—a Queens Officer can—refuse to execute the Queens Writ and to usurp judicial authority to decide as to the validity of the Writ, such an assumption by a Sheriff is a contempt of legal authority and cannot be permitted I am therefore strongly inclined to the opinion that the endorsement is not that of the subordinate officer to whom the Writ was directed and that if proceeded against for contempt he would in all probability be found to deny that he authorized it. It was his duty under any circumstances to execute the Writ and make a proper return of and to it. At present I will only add that hereafter it may be found that subordinate officers such as Sheriffs cannot treat the rit of *Habeas Corpus* duly issued with contempt. The Writ required the Sheriff to produce the body of the prisoner and he has failed to obey it and must bear the consequences.

On the second instant pursuant to notice to the Attorney General an order absolute was again moved for by McIntyre counsel for the prisoner and Mr. Barbridge Q. C. and Mr. Sinclair were heard for the crown in opposition. It was contended by the latter gentlemen that in asmuch as a writ of *Habeas Corpus* was issued, the order could not be made and that further proceedings can be taken only by means to enforce its execution and that as that course that is by the issue of the *Habeas Corpus* had been adopted no other was available.

I have carefully reviewed the authorities furnished by the Counsel on each side and shall briefly give my views.

It is said in Addison on Torts at page 625 that " The validity of the commitment may be " tried on moving for a rule to show cause why a *Habeas Corpus* should not issue and why, in " the event of the rule being made absolute, the prisoner should not be discharged without the " writ actually issuing or the prisoner being personally brought before the Court " and the case of Eggington (Q. Ell. & Bla 731 and 23 L. J. M. C. 41) is cited.

The Counsel who shewed cause in that case said: " It may be questioned whether the " rule in this form can be made in *invitos*—there has been no consent, to which Lord Campbell C.J. replied, ' I have repeatedly granted it in vacation in this form without consent, in order " to avoid the necessity of bringing up the party.' " Other authorities sustain the same course.

The constitution of the Supreme Court in British Columbia is founded on a Proclamation of the Lieutenant Governor under a Statute and his commission. The proclamation provides " That the Supreme Court of civil justice of British Columbia shall have complete cognizance " of all pleas whatsoever, and shall have jurisdiction in all cases, civil as well as criminal arising " within the Colony of British Columbia."

The unlimited jurisdiction this gives to the Court includes the issuing of writs of *Habeas corpus ad subjiciendum* and the discharge of prisoners illegally imprisoned and in the performance of that part of their official duty the judges of the Court have authority to pursue the practice of the Courts and judges in England; and if the judges in the latter country have established the practice of ordering the discharge of a prisoner without requiring him to be brought personally before them, the judges in British Columbia are in my opinion at liberty to pursue the same course; and the same power is given to a judge of this Court.

IN THE SUPREME COURT OF CANADA.

In the matter of Robert Evan Sproule, a prisoner in the common jail at Victoria, British Columbia, in custody of James E. McMillan, the Sheriff for Vancouver Island.

Upon reading the rule or order granted the third day of May, in the year of Our Lord one thousand eight hundred and eighty-six, calling upon James E McMillan, Sheriff of Vancouver Island, to shew cause why a writ of *Habeas Corpus* should not issue, requiring him to bring before the Court the body of Robert Evan Sproule, together with the day and cause of his detention, and why, in the event of the writ being allowed, the prisoner should not be discharged without the writ actually issuing or the prisoner being brought before the Court.

And I, the said Judge, after hearing Counsel for the crown as well as for the said Robert Evan Sproule, having ordered and adjudged that the said Robert Evan Sproule was entitled to be, and should be discharged out of the custody of the said Sheriff.

And an order absolute for a writ of *Habeas Corpus ad subjiciendum* having been made by me for the purpose of having the said Robert Evan Sproule brought before me, that he might be discharged, in accordance with the tenor of my said judgment, and the said Writ having issued accordingly, and having been duly served upon the said sheriff as well as upon Her Majesty's Attorney General for British Columbia.

And upon application of Counsel for the said Robert Evan Sproule that he should be forthwith discharged out of custody, without the production of his body before the Court or Judge; the said Robert Evan Sproule not having been produced before me in accordance with the requirement of the said Writ.

Upon reading the notice of motion that the return of the said Sheriff should be deemed insufficient, and the said Robert Evan Sproule should be discharged out of custody as aforesaid, —without the production of his body before a Court or Judge—or in the alternative, that a Writ of Attachment do issue against the said Sheriff for disobedience to the said Writ.

And the Affidavit of Service of said Notice of Motion upon the said Sheriff, and the said Attorney-General.

Upon reading the Endorsement upon the said Writ, purporting to be a return to the same, by the said Sheriff.

And upon hearing Counsel as well for the Crown as for the said prisoner, I do Order that the said Robert Evan Sproule be forthwith discharged out of custody.

Dated in Chambers this 6th day of August, A.D., 1886.

(Sgd.) W. A. HENRY,
A Judge of the Supreme Court of Canada.

I have considered the objection, that having ordered the issue of the *Habeas corpus* I have no power to adopt the other means now sought for the discharge of the prisoner; but no case has been cited or argument advanced in favor of that proposition; and I can see no reason why if one alternative course has failed through the negligence or improper conduct of the Sheriff the other should not be adopted.

I have therefore decided to make an order for the discharge of the prisoner.

IN THE SUPREME COURT OF CANADA.

REGINA *VERSUS* ROBERT E. SPROULE.

Take notice that this Honorable Court will be moved on Wednesday the first day of September, A. D. 1886, at the hour of eleven o'clock in the forenoon at the Supreme Court House at the City of Ottawa by Mr. Christopher Robinson of Counsel for the Crown that the Writ of *Habeas Corpus* to J. E. McMillan Esquire the Sheriff for Vancouver Island directing him to produce the body of Robert Evan Sproule before Mr. Justice Henry at Ottawa and all subsequent proceedings including any order of the Honorable Mr. Justice Henry for the discharge of the prisoner be quashed and set aside upon the grounds amongst others that such writ, proceedings and order were issued and granted improvidently, and are in abuse of the process and constitution of the Supreme Court and of the powers of the Judges thereof.

Dated the seventh day of August, A.D. 1886.

ALEX. E. B. DAVIE,
Attorney-General for British Columbia.

To, the above named Robert E. Sproule, and to Theodore Davie Esq. his Counsel and Solicitor.

NOTE.—Upon the hearing of the above motion the following documents will be read.

1. The affidavits and documents on file in the Supreme Court of Canada which were read or produced before Mr. Justice Henry on shewing cause against the Rule *Nisi* for the Writ of *Habeas Corpus*.

2. The Writ of *Habeas Corpus* with the Sheriff's return indorsed.

3. The two affidavits of Paulus Æmilius Irving sworn respectively the 24th day of July A.D. 1886 and the 7th day of August A.D. 1886—copies of which are served herewith.

4. The affidavit of Theodore Davie on file in the Supreme Court of British Columbia sworn on the 15th day of February A.D. 1886 and a copy of which is served herewith.

ALEX. E. B. DAVIE.

IN THE SUPREME COURT OF CANADA.

REGINA *VERSUS* ROBERT EVAN SPROULE.

I PAULUS ÆMILIUS IRVING of the City of Victoria, British Columbia, Deputy to the Attorney-General for British Columbia, make oath and say as follows:

1. I did, on Saturday the 7th day of August A. D. 1886, serve Robert E. Sproule personally with the annexed notice of motion by handing to and leaving with the said Robert

E. Sproule a copy thereof ; and at the time of serving the said notice of motion I handed to the said Robert E. Sroule copies of the affidavits mentioned in the note to the notice of motion as being served therewith, viz: the affidavits sworn by me respectively on the 24th day of July, A. D. 1886, and the 7th day of August, A. D. 1886, with the Exhibit thereto, and the affidavit of Mr. Theodore Davie sworn on the 15th day of February, A. D. 1886, with the Exhiblt thereto.

2. I did, on Saturday the 7th day of Augnst A.D. 1886, serve Mr. Theodore Davie (Connsel and Solicitor for the said Robert E. Sproule) personally with the annexed notice of motion by handing to and leaving with the said Theodore Davie a copy thereof ; and at the time of serving the said notice of motion I handed to the said Theodore Davie copies of the affidavits mentioned in the note to the notice of motion as being served therewith, viz: the affidavits sworn by me respectively on the 24th day of July A.D. 1886 and the 7th day of August, A. D. 1886, with Exhibit thereto and the affidavit of Mr. Theodore Davie sworn on the 15th day of February A.D. 1886, and the Exhibit thereto.

3. Copies of the affidavits with Exhibits thereto then served on the said Robert E. Sproule and Mr. Theodore Davie as stated in this my affidavit are hereunto annexed and marked respectively 1, 2 and 3.

Sworn at the City of Victoria, British Columbia, this 12th day of August, A. D. 1886.
HENRY S. PELLEW CREASE,
Judge of the S. C. of B. Columbia.

P. Æ. IRVING.

EXHIBIT 2.

This is the document marked 2 referred to in the annexed affi lavit of P. Æ. Irving sworn before me the 12th. day of Augnst A. D. 1886.

HENRY P. PELLEW CREASE, J.

IN THE SUPREME COURT OF CANADA.

REGINA VERSUS ROBERT E. SPROULE.

In the matter of a Writ of *Habeas Corpus* issued out of the Supreme Court of Canada directed to the Sheriff of Vancouver Island and commanding him to produce the body of one Robert Evan Sproule.

I, PAULUS ÆMILIUS IRVING of the City of Victoria, British Columbia, Deputy of the Attorney General of British Columbia make oath and say.

1. On the twenty-sixth day of May A. D. 1886, I received by post, an application addressed to the Attorney General by Mr. Theodore Davie for a *fiat* for a Writ of error *coram nobis* in the case of the Queen against the above named Robert E. Sproule. A copy of the application is hereunto annexed and marked with the letter A.

2. The Attorney General refused sneh application and by his direction I dispatched to Mr. Theodore Davie who was then at Ottawa a telegram of which the following is a copy:

27th. May 1886.

THEODORE DAVIE.

McIntyre & Lo .s, Ottawa.

Attorney General refuses *coram nobis*. Application only received yesterday.

IRVING.

3. I am unaware whether the writ of *certiorari* mentioned in the said application was issued but I have enquired of Mr. Prevost, the Registrar of the Supreme Court of British Columbia, who informed me that no such writ has been received by any of the Judges of the Supreme Court of British Columbia.

Sworn before me at the City of Victoria, in the Province of British Columbia, this 7th day of August, A.D. 1886. (Sgd) MATT. B. BEGBIE, C. J. } (Signed) P. Æ. IRVING. 10

A.

This is the document marked A, referred to in the annexed affidavit of P. Æ. Irving.

(Signed) MATT. B. BEGBIE, C. J.

Ottawa, May 4, 1886.

HON. ALEX. E. B. DAVIE,
Attorney-General B. C.

SIR,— 20

REGINA. *VS.* SPROULE.

I have the honor to inform you that a rule *nisi* was yesterday granted by Mr. Justice Henry, calling upon the Sheriff of Vancouver Island to shew cause why a writ of *Habeas Corpus* should not issue to him to bring up the body of the prisoner, and why, in the event of the writ being allowed, the prisoner should not be discharged without the actual issue of the writ or the attendance of the prisoner in Court. I have also the honor to state that concurrently with the rule His Lordship ordered a writ of *certiorari* to issue to bring up the proceedings.

I have now the honor to apply on behalf of the prisoner that upon the return to the *certiorari* you will grant a writ of *error Coram nobis*, as it may be deemed that without your consent to such a procedure, an objection could be urged to the Judge proceeding upon the 30 *Habeas Corpus* and the investigation of the case.

It would seem that even without the Crown's assent the Court can in urgent cases deal with the matter before it, but it would much facilitate matters if the fiat for the writ of *error Coram nobis* were granted. The points to be taken before His Lordship Mr. Justice Henry are those already urged in the Supreme Court of British Columbia, and in addition the questions as to the substituted order for change of venue and the matter of polling the Jury.

I would strongly urge the justice, both technically as well as upon meritorious grounds, of the Crown facilitating the endeavors on behalf of the prisoner to have every point in his case fully discussed.

In other Provinces further proceedings in review are allowed than in British Columbia 40 and I wish to say that Counsel who are associated with me here question the decisions which have been arrived at in British Columbia, and upon the question of polling the Jury I am

informed that it was conceded as a matter of right throughout Ontario, and general surprise is expressed that it should have been denied in British Columbia.

I have also to draw your attention to evidence which has come to light since the trial tending to establish an *alibi*, and to the declaration made by the Crown witness Charles Wolf that the evidence of his brother and himself is untrue.

I have the honor to be,
Sir,
Your obedient servant,
(Sgd) THEODORE DAVIE.

EXHIBIT 3.

This is the document marked 3 referred to in the annexed affidavit of P. E. Irving sworn before me the 12th day of August A.D. 1886.

HENRY P. PELLEW CREASE, J.

IN THE SUPREME COURT OF BRITISH COLUMBIA.

In the matter of the return to a writ of error issued out of this Honorable Court to the Court of Oyer and Terminer holden at Victoria wherein Robert Evan Spronle is alleged to have been convicted on the ninth day of December 1885 of the crime of Murder and sentenced to be hanged.

I, THEODORE DAVIE of the City of Victoria, Barrister at law, Counsel for the said Robert Evan Spronle make oath and say as follows:

1. That the order for the trial of the said Robert Evan Spronle at Victoria was made and drawn up on the 13th October 1885. Such order was made upon the application of Mr. Irving on behalf of the Crown, and was drawn up by him and signed by the Judge who signed the order on or about the date of the making of the same, *i. e.*, the 13th October 1885.

2. A true copy of the order was drawn up as aforesaid and as the same existed at the time of the trial of the said Robert Evan Spronle is now produced and shewn to me marked with the letter A, and in that order no stipulation was inserted as to payment of additional expense caused to the prisoner.

3. I never saw the order as drawn up and inserted in the record now returned until I read the copy of it in the record. The only order that I knew of as governing the proceedings and which had been drawn up and signed at the time of the trial and judgment was the one referred to in this affidavit marked A. I verily believe that none other was in existence and that the order in form as now inserted in the record was drawn up and signed since the sentence.

Before the verdict was recorded I applied on behalf of the prisoner to have the Jury polled but my application was refused.

Sworn before me at Victoria this 15 February 1886.
"H. DALLAS HELMCKEN,"
A Comr. for taking affidavits.

"THEODORE DAVIE."

This is the copy order in R. *v.* Spronle, referred to in the affidavit of Theodore Davie.
Sworn before me this 15th February, 1886.

(Sd.) H. DALLAS HELMCKEN,
A Comr., &c.

BRITISH COLUMBIA, }
TO WIT: }

Whereas, it appears to the satisfaction of me, Matthew Baillie Begbie, Chief Justice of the Supreme Court of British Columbia, a Judge who might hold or sit in the Court at which Robert E. Sproule, a prisoner now confined in New Westminster gaol, under a warrant for commitment, given under the hand and seal of Arthur W. Powell, one of Her Majesty's Justices of the Peace in and for the Province of British Columbia, is liable to be indicted for that he the said Robert E. Sproule did on the first day of June, A.D. 1885, feloniously, wilfully and of his malice aforethought did kill and murder one Thomas Hammill; that it is expedient that the trial of the said Robert E. Sproule should be held in the City of Victoria (being a place other than that in which the said offence is supposed to have been committed).

I do order that the trial of the said Robert E. Sproule shall be proceeded with at the Court of Oyer and Terminer and General Gaol delivery, to be holden at the City of Victoria, and I do order the keeper of the New Westminster gaol to deliver the said Robert E. Sproule to the keeper of the gaol at Victoria City, and I do order and command you, the keeper of the said gaol at Victoria city, to receive the said Robert Evan Sproule into your custody in the said gaol and there safely keep him until he shall be thence delivered by due course of law.

Dated at Victoria this 13th October, 1885.

(Signed) MATT. B. BEGBIE, *C.J.*

IN THE SUPREME COURT OF CANADA.

In the matter of a writ of *Habeas Corpus* issued out of the Supreme Court of Canada, directed to the Sheriff of Vancouver Island, and commanding the said Sheriff to produce the body of ROBERT EVAN SPROULE, a prisoner in the Common Gaol at the City of Victoria, in the Province of British Columbia.

I, PAULUS ÆMILIUS IRVING, of the City of Victoria, British Columbia, make oath and say as follows:

I am the Deputy of the Attorney-General for British Columbia, and on the 13th day of October, 1885, I applied in such capacity to the Honorable the Chief Justice of British Columbia, in Victoria, for an order fixing Victoria as the place of trial of Robert Evan Sproule, then a prisoner committed to stand his trial for the murder of one Thomas Hammil, at Kootenay Lake, in the Bailiwick of the Sheriff of Kootenay.

2. On the hearing of such application the said Robert Evan Sproule was personally present and was also represented on that occasion by his Counsel Mr. Theodore Davie.

3. No application for the payment of additional expenses or any expenses whatever was then or at any other time make on behalf of the prisoner for it was conceded on the part of the prisoner on the application to change the venue that no additional expense would be occasioned by changing the place of trial to Victoria but the Chief Justice would not make the order except upon my undertaking, which undertaking I then gave that the crown would abide by such order as the Judge who should try the case might think just to meet the equity of the Statutes of Canada chapter 29 section 11, an entry of such undertaking was made in writing by the Chief Justice in his note book at the time. The minute in the Chief Justice's note book is in the words and figures following.

"ORDER.—Crown undertaking to abide by such order as the Judge who tries the case may "think just to meet the equity of the statutes of Canada, 1869, c. 29, s. 11—Trial to take place "at Assizes here 23/11. Prisoner to remain at Victa. in custy."

4. In drawing up the order fixing the place of trial at Victoria, I omitted to set out the conditions the Chief Justice had imposed upon the Crown as a condition precedent to his making the order. The omission occurred in this way: at that time I required the order, so far as its immediate use was concerned, as a warrant, and an authority for the gaoler then producing the prisoner, in obedience to a writ of *Habeas Corpus* to hand the prisoner over to the gaoler at Victoria, and as a warrant and authority for the gaoler at Victoria to receive and detain the prisoner. It was my intention and I so stated it at the time of the drawing up of the first document to Mr. Theodore Davie, to draw up at a future time a more formal order, setting out the undertaking demanded as aforesaid by the Chief Justice. This was subsequently done and is the order set out in the record; the conditions prescribed in such order are in the very words pronounced by the Chief Justice on the 13th October, 1885.

5. No application for payment of additional expenses caused to the accused by such change of venue was ever made so far as I am aware, and I believe that no additional expenses were caused to the accused by such change of venue.

6. I myself travelled in the summer of 1885 in the District of Kootenay, from Farwell to Donald, and also from Farwell to Washington Territory, by way of the Columbia River, and thence to Victoria, by way of Spokane Falls, and the Northern Pacific Railway, and I say it was less expensive for prisoner's witnesses to come to Victoria than to proceed to Donald or Farwell. Besides which the services of Counsel could be obtained at Victoria at far less expense than at Farwell or Donald.

7. Neither at Kootenay Lake or at any other place at the Kootenay District, off the line of the Canadian Pacific Railway, were there in the year 1885 a sufficient number of persons to form Grand and Petit Juries, and the holding of an assize at any other place in the Kootenay District than at Donald or Farwell was impracticable.

8. Since the year 1873 no assizes have been held in the Kootenay District except at Donald and Farwell, and at those places only once, viz: in the months of June and July, 1885. The assizes were appointed for those occasions by the Lieutenant-Governor in Council, and none have been appointed for the Kootenay District by Statute.

9. The trial of the case was at the instance of the prisoner postponed for the arrival of one of his witnesses and was proceeded with only when his Counsel announced his readiness to proceed.

Sworn at the City of Victoria British Columbia this 14th day of August 1886 A.D. before me
(Sgd) J. F. McCREIGHT,
Judge of the S. C. of B. Columbia.

(Sgd.) P. E. IRVING.

This is Exhibit Z referred to in the affidavit of Paulus Emilius Irving sworn before me herein this 16th day of August A.D. 1886.

(Sgd.) J. H. GRAY,
A Judge of the Supreme Court of British Columbia.

IN THE SUPREME COURT OF CANADA.

REGINA, *VS.* ROBERT EVAN SPROULE,

Take Notice, that upon the hearing of the motion. before this honourable Court, on Wednesday, the first day of September, A.D. 1886, to set aside the writ of *Habeas Corpus* to J. E McMillan, Sheriff for Vancouver Island, directing him to produce the body of Robert Evan Sproule before Mr. Justice Henry, at Ottawa, and all subsequent proceedings, including any order of the Honourable Mr. Justice Henry, for the discharge of the said Robert Evan Sproule, whereof notice was served upon you on the 7th day of August, A.D. 1886, there will be read :

1. The affidavit of Paulus Æmilius Irving, sworn the 14th day of August, 1886, a copy of which is served herewith, and

2. The affidavit of Mr. Theodore Davie sworn herein, on the 1st May, 1886, and filed in the Supreme Court of Canada, on the 3rd day of May, A.D. 1886.

Dated the 14th day of August, A.D. 1886.

(Sgd.) ALEX. E. B. DAVIE,
Attorney General for British Columbia.

To the above-named Robert E. Sproule, and to Theodore Davie, Esq , his Solicitor and Counsel.

This is the notice referred to in the annexed affidavit of Paulus Æmilius Irving, sworn before me herein, this 16th day of August, A.D. 1886.

(Sgd.) J. H. GRAY,
A Judge of the Supreme Court of British Columbia.

IN THE SUPREME COURT OF CANADA.

In the matter of a writ of *Habeas Corpus* issued out of the Supreme Court of Canada directed to the Sheriff of Vancouver Island and commanding the said Sheriff to produce the body of ROBERT EVAN SPROULE, a prisoner confined in the common gaol at the City of Victoria, in the Province of British Columbia.

I, PAULUS ÆMILIUS IRVING of the City of Victoria British Columbia Deputy Attorney General make oath and say as follows :

1. I did on the 14th day of August A.D. 1886, personally serve Robert Evan Sproule, mentioned in the notice hereunto annexed, with the said notice, by delivering a copy of the said notice to the said Robert Evan Sproule personally at Victoria gaol and at the same time I delivered to him a copy of my affidavit sworn herein on the 14th day of August A.D. 1886.

2. I did on the same day personally serve Mr. Theodore Davie mentioned in the notice hereunto annexed, with the said notice, by delivering a copy of the said notice to the said Theodore Davie personally at the residence of the said Theodore Davie in the City of Victoria and at the same time I delivered to him a copy of my affidavit sworn herein on the 14th day of August A.D 1886.

3. A copy of my affidavit sworn herein on the 14th day of August A.D. 1886 and mentioned in paragraphs 1 and 2 of this my affidavit as being served with the annexed notice is now shewn to me and marked Z.

Sworn at the City of Victoria, British Columbia, this 16th day of August A.D. 1886, before me, (Sgd.) "J. H. GRAY."
Judge of the Supreme Court of British Columbia.

(Signed) P. E. IRVING.