JUSTICES' MANUAL

ARTHUR E. POPPLE. LL.B.

[Designed for the use of JP's in the outlying districts of Alberta.]

Not in Peel (E)

[See Peel "Author Index" p. 739]

JUSTICES' MANUAL

BEING A

MANUAL OF ELEMENTARY INFORMATION FOR JUSTICES OF THE PEACE

BY

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CONTENTS.

		PAGE
Chapter 1.	Jurisdiction, including (1) How to hold a Court, (2) Preliminary Enquiry, (3) Summary Conviction, Trial, etc.	1
" 2.	How to take down Evidence.....	77
" 3.	Where to find your Law.....	90
" 4.	How to draw up Forms.....	98
" 5.	What two Justices sitting together can do	119
" 6.	Common Errors	139
" 7.	Explanation of Legal Terms.....	155

PREFACE.

There are many books written on Magistrates' Law, but it is believed that in all of them will be found such an amount of technical language and case law that the average Justice of the Peace on assuming office finds it a somewhat hopeless task, without previous instruction, to understand and adopt the excellent advice contained in them. The endeavour in this work has been to place in narrative form the stages in proceedings before Justices. This method it is hoped will enable the most inexperienced Justice to avoid from the beginning the mistakes which may prove fatal on an appeal or review before a higher Court.

In every book some errors and omissions are inevitable. It will be deemed a kindness to the writer if the reader, being critical, will correct such as he may detect. There is no intention that the work should be an authority on the subject under consideration, but merely introductory to a deeper study of more learned authors. It

is primarily written for the benefit of Justices who live in the outlying districts of the Province where there is little or no facilities to gain legal knowledge.

In conclusion I may perhaps express the hope that the contents of these pages may be found of some use and interest not only to those who have to carry out the administration of the criminal law, but also to those who are or may hereafter be concerned in the administration of criminal law by the inferior Courts. And if I may be considered as having contributed something, however trifling, to a better arrangement in this respect, I am thereby amply repaid for my labours. I thank the various lawyers, police, and other officials who so kindly assisted by pointing out such of the common errors of Justices as they experienced from time to time.

A. E. P.

Edmonton, 1917.

JUSTICES' MANUAL

CHAPTER I.

Jurisdiction.

A Justice or Magistrate has authority over matters which are divisible into three classes:

1st. Preliminary Enquiries, *i.e.*—Matters in which he is charged with the duty of holding an enquiry as to whether there is a *prima facie* criminal case established against the person charged before him. In that event the accused would be sent before a higher Court there to be indicted.

2nd. Trials, *i.e.*—Cases in which he acts as a single Justice or with another Justice on summary conviction, or as a Magistrate (including two Justices) on a summary trial of an indictable offence. In such cases jurisdiction is given to convict the offender and award punishment.

3rd. Administrative. *i.e.*— Under provincial laws and ordinances, having reference to civil matters, legal disputes, fence arbitrations, or in criminal matters leading up to the hearing.

The Justice will see that his jurisdiction covers a wide variety of proceedings, in most cases requiring close attention to detail. He is earnestly urged to begin on the right path by watching at the commencement of the proceeding the nature of the case. In the exercise of his duties he should approach the matter with a fair open mind, taking a plain, ordinary, common-sense view of the matter, and when exercising a judicial function in Court he should, above everything, allow the accused every opportunity to give full answer in defence to the charge laid against him. The Justice may not himself benefit financially or otherwise from the proceeding, but he will have the satisfaction of knowing that at least one man or woman has had a fair and impartial trial and that justice and right was done in the case.

The following Table of Code offences is set out for his guidance and should be consulted in all cases. Where the Table shows that the proceeding is one for a higher Court, the Justice should hold a preliminary enquiry unless the section of the Code goes further and authorizes a trial in any other manner, as for example: assault, section 291 of the Criminal Code.

Where the Justice is asked to officiate in any case and he cannot find a reference to the offence in this Table, then it would apparently be outside of the Code, but it might be an offence under some Provincial or Dominion Statute. Where the Justice has not any information at hand on these various Provincial and Dominion Statutes he may obtain that information from the Crown officers, and should, in any case of doubt, before commencing the proceedings, write to the Crown officers and ask for instructions as to what form the proceedings should take, and he will, without a doubt, be granted that assistance.

TABLE I.

TABLE OF INDICTABLE AND OTHER OFFENCES MENTIONED IN THE CRIMINAL CODE, WITH NUMBERS OF SECTIONS, SHORT STATEMENT OF PUNISHMENTS PROVIDED AND ABBREVIATIONS IN CAPITAL LETTERS INDICATING TRIBUNAL HAVING JURISDICTION IN ONTARIO TO TRY OFFENCE.

PART II. OFFENCES AGAINST PUBLIC ORDER.

Treason and Other Offences against the King's Authority and Person.

74 Treason, H.C., death.

75. Conspiracy, treasonable, H.C., death.

75A. Assisting, etc., alien enemies to leave Canada, H.C., and G.S., 2 years.

76. Accessories to treason, H.C., 2 years.

77. Levying war by subjects of a state at peace with His Majesty—subjects assisting, H.C., death.

78 Treasonable offences, H.C., imprisonment for life.

79. Conspiracy to intimidate a legislature, H.C., 14 years.

80. Assaults on the King, H.C., 7 years and whipping.

81. Inciting to mutiny, H.C., imprisonment for life.

82. Enticing soldiers or sailors to desert, H.C., and G.S., fine and imprisonment; Sum, 2 J.P., $80 to $200 and costs, in default, not exceeding 6 months.

83. Resisting execution of warrant for arrest of deserters; Sum, 2 J.P., fine $80.

84. Enticing militiamen or members of the N. W. M. police to desert, and accessories thereto; Sum. 1 J.P., 6 months' imprisonment with or without hard labour.

85. Unlawfully obtaining and communicating official information, H.C., 1 year or fine not exceeding $100, or both. If obtained for foreign state, H.C., and imprisonment for life.
86. Communicating information acquired by holding office made or attempted to be made to foreign state, H.C., imprisonment for life; in any other case, H.C., 1 year or not exceeding $100 or both.

Unlawful Assemblies, Riots, Breaches of the Peace.

89. Unlawful assembly, H.C. and G.S., 1 year.
90. Riot, H.C. and G.S., 2 years.
92. Riot Act, oppose or hinder from being read, H.C. and G.S., imprisonment for life.
94. Neglect of peace officer to suppress riot, H.C. and G.S., 2 years.
95. Neglect to aid peace officer in suppressing riot, H.C. and G.S., 1 year.
96. Riotous destruction of buildings, H.C. and G.S., imprisonment for life.
97. Riotous damage to buildings, H.C. and G.S., 7 years.
98. Unlawful drilling, H.C. and G.S., 2 years.
99. Being unlawfully drilled, H.C. and G.S., 2 years.
100. Affray, H.C. and G.S., 1 year with hard labour.
101. Challenge to fight a duel, H.C. and G.S., 3 years.
103. Forcible entry and detainer, H.C. and G.S., 1 year.
104. Challenging to fight a prize fight, Sum. 1 J.P., $100 to $1,000 or not exceeding imprisonment for 6 months, or both, with or without hard labour.
105. Principal in prize fight, Sum. 1 J.P., imprisonment 3 to 12 months, with or without hard labour.

106. Attending or promoting prize fight, Sum. 1 J.P., $50 to $500, or 12 months, with or without hard labour or both.
107. Leaving Canada to engage in a prize fight, Sum. 1 J.P., $50 to $400, or imprisonment not exceeding 6 months with or without hard labour, or both.
108. Where the fight is not a prize fight, Sum. 1 J.P., $50.
109. Inciting Indians to riotous acts, H.C. and G.S., 2 years.

Unlawful Use and Possession of Explosive Substances and Offensive Weapons—Sale of Liquors.

111. Causing dangerous explosions, H.C. and G.S., imprisonment for life.
112. Attempt to destroy property with explosives, H.C. and G.S., 14 years.
113. Doing anything, or possessing explosive substances with intent to cause dangerous explosion, H.C. and G.S., 14 years.
114. Unlawfully making or possessing explosive substances, H.C. and G.S., 7 years.
115. Possession of arms for purposes dangerous to public peace, H.C. and G.S., 5 years.
116. Two or more persons openly carrying weapons so as to cause alarm, Sum. 2 J.P., $10 to $40, or imprisonment for 30 days.
117. Smugglers carrying offensive weapons, H.C. and G.S., 10 years.
118. Carrying dangerous weapon without permit, Sum. 1 J.P., $100 or 3 months, or both.
119. Selling pistol or air gun to minor, Sum. 1 J.P., not exceeding $50.
120. Having weapons on person when arrested, Sum. 2 J.P., $20 to $50, or 3 months, with or without hard labour.

121. Having weapons with intent to injure another, Sum. 2 J.P., $50 to $200, or not exceeding 6 months' hard labour.
122. Pointing a firearm at any person, Sum. 2 J.P., $10 to $100, or 30 days with or without hard labour.
123. Carrying offensive weapon—(bowie knife, dagger, etc.), on person, Sum. 2 J.P., $10 to $50, or 3 months with or without hard labour, or to both, and 3 months additional if fine not paid.
124. Carrying sheath knife (not required by his lawful calling), Sum. 2 J.P., $10 to $50, or three months or both fine and imprisonment, with or without hard labour.
126. Refusing to deliver weapon to J.P. at or on way to public meeting, H.C. and G.S., or 1 J.P., $8.
127. Coming armed within one mile of public meeting, H.C. and G.S., $100 or 3 months, or both.
128. Lying in wait for persons returning from public meeting, H.C. and G.S., $200 or 6 months, or both.

Seditious Offences.

129. Administers oath binding person to commit crime punishable by death or imprisonment, or for more than 5 years, H.C., 14 years.
130. Administers, etc., other unlawful oaths, H.C., 7 years.
134. Seditious language, H.C., 2 years.
135. Libels on foreign sovereigns, H.C., 1 year.
136. Spreading false news, H.C., 1 year.

Piracy.

137. Piracy by the law of nations, H.C., imprisonment for life. Death.
138. Piratical acts, H.C., imprisonment for life.
139. Piracy with violence, H.C., death.

140. Not fighting pirates, H.C., 6 months and forfeits wages.
141. Intoxicating liquors on board His Majesty's ships, Sum. 2 J.P., $50 or not exceeding 1 month, with or without hard labour.
146. Possessing weapons near public works, Sum. 1 J.P., $2 to $4 for each weapon.
147. Receiving or concealing any weapons near public works, Sum. 1 J.P., $40 to $100.
151. Sale of liquors near public work, Sum. 1 J.P., $200 and costs, or 3 months with or without hard labour, or second offence $300 and not exceeding 6 months additional, with or without hard labour. or both fine and imprisonment.

PART IV.

Offences against the Administration of Law and Justice. Corruption and Disobedience.

156. Judicial corruption, H.C., 14 years.
157. Corruption by justice of the peace, peace officer or public officer, H.C., 14 years.
158. Frauds upon government, H.C., $100 to $1,000 and to imprisonment from 1 month to 1 year, and in default of payment 6 months additional.
160. Breach of trust by public officer, H.C., 5 years.
161. Corrupt practices in municipal affairs, H.C., $100 to $1,000 and to imprisonment from 1 month to 2 years, and in default of payment 6 months additional.
162. Selling office, appointment, etc., or purchasing same, H.C., 5 years.
163. Rewards for corrupt municipal acts, H.C. and G.S., 5 years.
164. Disobedience to a statute, H.C. and G.S., 1 year.
165. Disobedience to orders of Court, H.C. and G.S., 1 year.

166. Misconduct of officer intrusted with execution of writs, H.C. and G.S. Fine and imprisonment for five years.
167. Neglect to aid peace officer in arresting offenders, H.C. and G.S., 6 months.
168. Obstructing public officer in execution of his duty, H.C. and G.S., 10 years.
169 (a). Obstructing peace officer in execution of his duty, H.C. and G.S., 2 years, or Sum. 2 J.P., 6 months hard labour or $100.
(b). Obstructing person in lawful execution of process against lands or goods, or in making lawful distress or seizure, H.C. and G.S., 2 years; Sum. 2 J.P., 6 months' hard labour or $100.
169A. Falsely representing himself to be a constable; Sum. 1 J.P., $100, or 3 months, or both.

Misleading Justice.

174. Punishment of perjury, H.C. and G.S., 14 years or life.
175. False oaths, H.C. and G.S., 7 years.
176. False statements, H.C. and G.S., 2 years.
177. Fabricating evidence, H.C. and G.S., 7 years.
178. Conspiring to bring false accusations, H.C. and G.S., 10 to 14 years.
179. Administering oaths without authority, H.C. and G.S., $50 or 3 months.
180. Corrupting juries and witnesses, H.C. and G.S., 2 years.
181. Compounding penal actions, H.C. and G.S., fine not exceeding penalty compounded.
182. Corruptly taking a reward for helping to recover stolen property without using diligence to bring offender to trial, H.C. and G.S., 7 years.
183. Unlawfully advertising a reward for return of stolen property, Court of competent jurisdiction, penalty $250 and costs.

184. Signing false declaration respecting execution of judgment of death, H.C. and G.S., 2 years.

Escapes and Rescues.

185. Being at large while under sentence of imprisonment, H.C. and G.S., 2 years.
186. Assisting escape of prisoners of war, H.C. and G.S., 5 years.
187. Breaking prison, H.C. and G.S., 7 years.
188. Attempting to break prison, H.C. and G.S., 2 years.
189. Escape from custody after conviction or from prison, H.C. and G.S., 2 years.
190. Escape from lawful custody, H.C. and G.S., 2 years.
191. Assisting escape in certain cases, H.C. and G.S., 7 years.
192. Assisting escape in other cases, H.C. and G.S., 5 years.
192 (b). Officer aiding and permitting escape, H.C. and G.S., 5 years.
193. Escape by failure to perform legal duty, H.C. and G.S., 1 year.
194. Aiding escape from prison, H.C. and G.S., 2 years.
195. Unlawfully procuring discharge of prisoner, H.C. and G.S., 2 years.

PART V.

Offences against Religion, Morals and Public Convenience.

Offences against Religion.

198. Blasphemous libels, H.C. and G.S., 1 year.
199. Obstructing officiating clergyman, H.C. and G.S., 2 years.

200. Violence to officiating clergyman, H. C. and G.S., 2 years.
201. Disturbing public worship, Sum. 1 J.P., $50 and costs or 1 month.

Offences against Morality.

202. Unnatural offence, H.C. and G.S., imprisonment for life.
203. Attempt to commit sodomy, H.C. and G.S., 10 years.
204. Incest, H.C. and G.S., 14 years and whipping.
205. Indecent acts, Sum. 2 J.P., $50 or 6 months with or without hard labour.
206. Acts of gross indecency, H.C. and G.S., 5 years and whipping.
207. Publishing obscene matter, H.C. and G.S., 2 years.
208 (1). Giving immoral theatrical performance, H.C. and G.S., 1 year, or fine of $500, or both, or Sum. 1 J.P., $50 or 6 months, or both.
208 (2). Actor putting on immoral play, Sum. 1 J.P., 3 months or $20, or both.
208 (3). Indecent costume, Sum. 1 J.P., 6 months or $50, or both.
209. Posting immoral books, etc., H.C. and G.S., 2 years.
211. Seduction of girls under sixteen, H.C. and G.S., 2 years.
212. Seduction under promise of marriage, H.C. and G.S., 2 years.
213. Seduction of a ward, servant, etc., H.C. and G.S., 2 years.
214. Seduction of females who are passengers on vessels, H.C. and G.S., $400 or 1 year.
215. Parent or guardian procuring defilement of a girl under fourteen, H.C. and G.S., 14 years, if girl over fourteen, 5 years.

216. Procuring girl for defilement or for prostitution, or enticing girl to house of ill-fame, H.C. and G.S., 5 years, with addition of whipping for second offence.
217. Householders permitting defilement of girl on their premises, H.C. and G.S., 10 years if girl is under 14; 2 years if girl is between 14 and 18.
218. Conspiracy to defile, H.C. and G.S., 2 years.
219. Carnally knowing idiots, H.C. and G.S., 4 years.
220. Prostitution of Indian women, H.C. and G.S., $10 to $100 or 6 months' imprisonment.

Nuisances.

222. Common nuisances which are criminal, H.C. and G.S., 1 year.
224. Selling things unfit for food, H.C. and G.S., 1 year, 2nd offence 2 years.
228. Disorderly houses, H.C. and G.S., 1 year.
228A. Use of premises as disorderly house, Sum. 1 J.P., $200 and costs, or 2 months, or both.
229. Being, without lawful excuse, in a disorderly house, Sum. 1 J.P., $100 and costs or 2 months.
229A. Inmate of a bawdy house, H.C. and G.S., $100 and costs or 2 months, or 12 months without option of fine.
230. Obstructing peace officer entering a gaming house, Sum. 2 J.P., not exceeding $100 or 6 months with or without hard labour.
231. Gaming in stocks and merchandise, H.C. and G.S., 5 years and fine of $500.
233. Habitually frequenting places where gaming in stocks is carried on, H.C. and G.S., 1 year.
234. Gambling in public conveyances, H.C. and G.S., 1 year.

Conductor, master, or superior officer on railroad car or steamboat who neglects his duty to have offenders punished, Sum. 1 J.P., $20 to $100.

Company or person failing to keep copy of s. 234 posted up in conspicuous place, Sum. 1 J.P., $20 to $100.

235. Betting and pool selling, H.C. and G.S., 1 year and fine not exceeding $1,000.

236. Lotteries, H.C. and G.S., 2 years and fine not exceeding $2,000.

Buying or receiving lottery ticket or other device, Sum. 1 J.P., $20.

237. Misconduct in respect to human remains, H.C. and G.S., 5 years.

Vagrancy.

239. Idle and disorderly persons, Sum. 1 J.P., $50 or not exceeding 6 months with or without hard labour, or both.

PART VI.

Offences against the Person and Reputation—Duties Tending to Preservation of Life.

244. Neglecting duty to provide necessaries, H.C. and G.S., 3 years.

245. Abandoning children under two years of age, H.C. and G.S., 3 years.

249. Causing bodily harm to apprentices or servants, H.C. and G.S., 3 years.

Murder and Manslaughter, etc.

263. Punishment of murder, H.C., death.

264. Attempts to commit murder, H.C., for life.

265. Threats in writing to murder, H.C., 10 years.

266. Conspiracy to murder, H.C., 14 years.

267. Accessories after the fact to murder, H.C., for life.

268. Punishment of manslaughter, H.C., for life.
269. Aiding and abetting suicide, H.C. and G.S., for life.
270 Attempt to commit suicide, H.C. and G.S., 2 years.
271. Neglecting to obtain assistance in childbirth, H.C. and G.S., for life or 7 years, depending upon the intent of the Act.
272. Concealing dead body of child, H.C. and G.S., 2 years.

Bodily Injuries, and Acts and Omissions Causing Danger to the Person.

273. Wounding with intent, H.C. and G.S., for life.
274. Wounding, H.C. and G.S., 3 years.
275. Shooting at His Majesty's vessels—wounding customs or inland revenue officers, H.C. and G.S., 14 years.
276. Disabling or administering drugs with intent to commit an indictable offence, H.C. and G.S., for life and whipping.
277. Administering poison so as to endanger life, H.C. and G.S., 14 years.
278. Administering poison with intent to injure, H.C. and G.S., 3 years.
279. Causing bodily injuries by explosives, H.C. and G.S., for life.
280. Attempting to cause bodily injuries by explosives, H.C. and G.S., with intent, for life, or 14 years.
281. Setting spring-guns and man-traps, H.C. and G.S., 5 years.
282. Intentionally endangering the safety of persons on railways, H.C. and G.S., life.
283. Negligently endangering the safety of persons on railways, H.C. and G.S., 2 years.

284. Negligently causing bodily injury to any person, H.C. and G.S., 2 years.
285. Injuring persons by furious driving, H.C. and G.S., 2 years.
285A. Driver of motor car not stopping after accident, Sum. 1 J.P., $50 and costs or 30 days.
285B. Taking away motor car without leave, Sum. 1 J.P., $50 and costs or 30 days.
286. Preventing the saving of the life of any person shipwrecked, H.C. and G.S., 7 years.
287. Leaving holes in the ice and excavations unguarded, Sum. 1 J.P., fine and imprisonment, or both.
288. Sending unseaworthy ships to sea, H.C. and G.S., 5 years.
289. Taking same to sea, H.C. and G.S., 5 years.

Assaults.

291. Common assault, H.C. and G.S., 1 year or $100 fine, or Sum. 1 J.P., and fine $20 or two months with or without hard labour.
292. Indecent or aggravated assaults on females, H.C. and G.S., 2 years and whipping.
293. Indecent assaults on males, H.C. and G.S., 10 years and whipping.
295. Assaults causing bodily harm, H.C. and G.S., 3 years.
296. Aggravated assault, H.C. and G.S., 2 years.
297. Kidnapping, H.C. and G.S., 25 years.

Rape and Abortion.

299. Punishment for rape, H.C., death or imprisonment for life.
300. Attempt to commit rape, H.C., 7 years.
301. Defiling children under fourteen, H.C. and G.S., imprisonment for life and whipping.

302. Attempt to commit such offence, H.C. and G.S., 2 years and whipping.
303. Attempt to procure abortion, H.C. and G.S., imprisonment for life.
304. Woman procuring her own miscarriage, H.C. and G.S., 7 years.
305. Supplying means to procure abortion, H.C. and G.S., 2 years.
306. Killing unborn child, H.C. and G.S., life.

Offences against Conjugal Rights—Bigamy—Unlawful Solemnization of Marriage—Abduction.

308. Punishment of bigamy, H.C. and G.S., 7 years, 2nd offence, 14 years.
309. Feigned marriages, H.C. and G.S., 7 years.
310. Punishment of polygamy, H.C. and G.S., 5 years and fine of $500.
311. Solemnization of marriage without lawful authority, H.C. and G.S., 2 years or fine, or both.
312. Solemnization of marriage contrary to law, H.C., and G.S., 1 year or fine.
313. Abduction of a woman with intent to marry, etc., H.C. and G.S., 10 years.
314. Abduction of an heiress, H.C. and G.S., 14 years.
315. Abduction of girl under sixteen, H.C. and G.S., 5 years.
316. Stealing children under fourteen, H.C. and G.S., 7 years.

Defamatory Libel.

332. Extortion by defamatory libel, H.C., 2 years or $600, or both.
333. Punishment of defamatory libel known to be false, H.C., 2 years or $400, or both.
334. Punishment for defamatory libel, H.C., 1 year or $200, or both.

PART VII.

Offences against Rights of Property and Rights Arising out of Contract and Offences Connected with Trade.

Punishment of Theft and Offences Resembling Theft.

358. Thefts by persons required to account or holding power of attorney or moneys under direction, H.C. and G.S., 14 years.
359. By clerks and servants, cashiers or government employees, H.C. and G.S., 14 years.
360. By tenants and lodgers, H.C. and G.S., 2 years, if value exceeds $25, 4 years.
361. Testamentary instruments, H.C. and G.S., imprisonment for life.
362. Document of title to lands or goods, H.C. and G.S., 3 years.
363. Judicial or official documents, H.C. and G.S., 3 years.
364. Stealing post letter bags, H.C. and G.S., imprisonment for life or not less than 3 years.
365. Stealing post letters, packets and keys, H.C. and G.S., from 3 to 7 years.
366. Stealing mailable matter other than post letters, H.C. and G.S., 5 years.
367. Election documents, H.C. and G.S., fine or 7 years, or both.
368. Railway tickets, H.C. and G.S., 2 years.
369. Cattle, H.C. and G.S., 14 years.
370. Dogs, birds, beasts and other animals, if value exceeds $20, H.C. and G.S., fine $50 over value, or 2 years, or both, and, if value not over $20, Sum. 1 J.P., $20 over and above value of animal, or 1 month with hard labour; 2nd offence, 3 months with hard labour.

371. Oysters, H.C. and G.S., 7 years.
Using dredge within limits of oyster-bed, H.C. and G.S., 3 months.
372. Things fixed to buildings or to land, H.C. and G.S., 7 years.
373. Trees in pleasure grounds, etc., of five dollars' value, H.C. and G.S., 2 years.
Trees elsewhere of twenty-five dollars' value, H.C. and G.S., 2 years.
374. Trees of the value of twenty-five cents or more, Sum. 1 J.P., $25 over and above value of trees, 2nd offence, 3 months hard labour.
375. Roots, plants, etc., growing in gardens, etc., Sum. 1 J.P., $20 over and above value, or 1 month with or without hard labour; 2nd offence indictable, 3 years.
376. Roots, plants, etc., growing elsewhere than in gardens, etc., Sum. 1 J.P., $5 over and above value or 1 month hard labour; 2nd offence, 3 months hard labour.
377. Fences—stiles—gates, Sum. 1 J.P., $20 over and above value; 2nd offence, 3 months hard labour.
378. Ores of metals, etc., H.C. and G.S., 2 years.
379. Stealing from the person, H.C. and G.S., 14 years.
380. Stealing in dwelling houses, H.C. and G.S., 14 years.
381. Stealing by picklocks, etc., H.C. and G.S., 14 years.
382. Stealing from ships, wharves, etc., H.C. and G.S., 14 years.
383. Stealing wreck, H.C. and G.S., 7 years.
384. Stealing on railways, H.C. and G.S., 14 years.
385. Stealing things deposited in Indian graves, Sum. 1 J.P., 1st offence, $100 or 3 months; 2nd offence, $100 or 6 months.
386. Stealing things not otherwise provided for, H.C. and G.S., 7 years; 2nd offence, 10 years.

387. If value of thing stolen exceeds $200, two years may be added to punishment.
388. Stealing in manufactories, etc., H.C. and G.S., 5 years.
389. Fraudulently disposing of goods entrusted for manufacture, H.C. and G.S., 2 years.
390. Criminal breach of trust, H.C. and G.S., 7 years.
391. Public servants refusing to deliver up property lawfully demanded, H.C. and G.S., 14 years.
392. Fraudulently taking cattle, H.C. and G.S., 3 years.
393. Injuring or taking pigeons, Sum. 1 J.P., fine $10 over value of bird.
394. Fraudulently taking, possessing, etc., drift timber, etc. H.C. and G.S., 3 years.
395. Possessing trees, etc., without being able to account for them. Sum. 1 J.P., $10 above value of article.
396. Destroying, etc., documents, H.C. and G.S., 3 years.
397. Concealing same, H.C. and G.S., 2 years.
398. Bringing stolen property into Canada, H.C. and G.S., 7 years.

Receiving Stolen Goods.

399. Receiving property dishonestly obtained, H.C. and G.S., 14 years.
400. Receiving stolen post letter or post letter bag, etc., H.C. and G.S., 5 years.
401. Receiving property obtained by offence punishable on summary conviction, Sum. 1 J.P., as for stealing.

False Pretences.

405. Punishment of false pretence, H.C. and G.S., 3 years.
405A. Obtaining audit by false pretences, H.C. and G.S., 1 year.

406. Obtaining execution of valuable security by false pretence, H.C. and G.S., 3 years.
406A. False advertisements to promote sales, Sum. 1 J.P., $200 or 6 months, or both.
407. Falsely pretending to enclose money in a letter, H.C. and G.S., 3 years.
407A. False statements in writing as to financial standing, H.C. and G.S., 1 year and fine of $2,000.
407B. Fraudulently obtaining food or lodging, Sum. 1 J.P., $100 and costs or 3 months.

Personation.

408. With intent fraudulently to obtain property, H.C. and G.S., 14 years.
409. Personation at examinations, H.C. and G.S., or Sum. 1 J.P., $100 fine or 1 year's imprisonment.
410. Personation of owner of shares or stock or land grant or scrip, in order to obtain transfer, H.C. and G.S., 14 years.
411. Acknowledging instrument in false name, H.C. and G.S., 7 years.

Fraud and Fraudulent Dealing with Property.

412. Obtaining passage by false ticket, H.C. and G.S., 6 months.
413. Falsification of books, etc., by official, H.C. and G.S., 7 years.
414. False prospectus, etc., by directors, H.C. and G.S., 5 years.
415. False accounting by clerk, H.C. and G.S., 7 years.
416. False return by public officer, H.C. and G.S., 5 years and fine not exceeding $500.
417. Disposal of property with intent to defraud creditors or not keeping books, H.C. and G.S., $800 and 1 year.
418. Destroying or falsifying books with intent to defraud creditors, H.C. and G.S., 10 years.

419. Concealing deeds or encumbrances, or falsifying pedigree, H.C. and G.S., fine or 2 years, or both.
420. Frauds in respect to the registration of titles of land, H.C. and G.S., 3 years.
421. Fraudulent sales of property, H.C. and G.S., 1 year and fine not exceeding $2,000.
422. Fraudulent hypothecation of real property, H.C. and G.S., 1 year and not exceeding $100 fine.
423. Fraudulent seizures of land in Quebec, H.C. and G.S., 1 year.
424. Unlawful dealings with gold or silver mine, H.C. and G.S., 2 years.
424A. Unlawful possession of rock, ore or quartz containing gold or silver, H.C. and G.S., 2 years.
425. Warehousemen, etc., giving false receipts—knowingly using the same, H.C. and G.S., 3 years.
426. Owners of merchandise disposing thereof contrary to agreements with consignees who have made advances thereon, H.C. and G.S., 3 years.
427. Making false statements or receipts for property that can be used under "The Bank Act," fraudulently dealing with property to which such receipts refer, H.C. and G.S., 3 years.
429. Selling vessel or wreck not having title thereto, H.C. and G.S., 7 years.
430. Other offences respecting wrecks, H.C. and G.S., 2 years, or Sum. 2 J.P., $400 or 6 months, with or without hard labour.
431. Dealers in old marine stores, buying them from person under sixteen, Sum. 1 J.P., $4 first offence, $6 each subsequent offence.
2. Such dealer taking into his shop such purchaser, except between sunrise and sunset, Sum. 1 J.P., $5 first offence, $7 each subsequent offence.
3. Possession of secreted stolen marine stores, H.C. and G.S. 5 years.

433. Unlawfully applying marks to public stores, H.C. and G.S., 2 years.
434. Obliterating marks from public stores, H.C. and G.S., 2 years.
435. Unlawful possession, sale, etc., of public stores, H.C., and G.S., 1 year, or if value does not exceed $25, Sum. 2 J.P., $100 or 6 months with hard labour.
436. Not satisfying justices that possession of public stores is lawful, Sum. 1 J.P., $25, or 3 months with or without hard labour.
436A. Fraud, etc., in connection with sale, etc., of military stores, H.C. and G.S., 2 years or $5,000 fine, or both fine and imprisonment.
437. Searching for stores near H. M. vessels, Sum. 2 J.P., $25 or 3 months.
438. Receiving regimental necessaries, etc., from soldiers or deserters, H.C. and G.S., 5 years; Sum. 2 J.P., $20 to $40 and costs or 6 months' imprisonment with or without hard labour.
439. Receiving, etc., necessaries from marines or seamen, H.C. and G.S., 5 years; Sum. 2 J.P., $20 to $120 and costs or 6 months.
440. Receiving, etc., a seaman's property, H.C. and G.S., 5 years, Sum. 1 J.P., $100; 2nd offence, $100 or 6 months with or without hard labour.
441. Not satisfying justice that possession of seaman's property is lawful, Sum. 1 J.P., $25.
442. Cheating at play, H.C. and G.S., 3 years.
443. Pretending to practice witchcraft, H.C. and G.S., 1 year.
444. Conspiracy to defraud, H.C. and G.S., 7 years.

Robbery and Extortion.

446. Punishment of aggravated robbery, H.C. and G.S. imprisonment for life and whipping.
447. Punishment of robbery, H.C. and G.S., 14 years.

448. Assault with intent to rob, H.C. and G.S., 3 years.
449. Stopping the mail, H.C. and G.S., imprisonment for life or not less than 5 years.
450. Compelling execution of documents by force, H.C. and G.S., imprisonment for life.
451. Sending letter demanding property with menaces, H.C. and G.S., 14 years.
452. Demanding with intent to steal, H.C. and G.S., 2 years.
453. Extortion by certain threats, H.C. and G.S., 14 years.
454. Extortion by other threats, H.C. and G.S., 7 years.

Burglary and Housebreaking.

455. Breaking place of worship and committing offence, H.C. and G.S., 14 years.
456. Breaking place of worship with intent to commit offence, H.C. and G.S., 7 years.
457. Burglary, H.C. and G.S., imprisonment for life.
458. Housebreaking and committing an indictable offence, H.C. and G.S., 14 years.
459. Housebreaking with intent to commit an indictable offence, H.C. and G.S., 7 years.
460. Breaking shop and committing an indictable offence, H.C. and G.S., 14 years.
461. Breaking shop with intent to commit an indictable offence, H.C. and G.S., 7 years.
462. Being found in dwelling-house by night, with intent, etc., H.C. and G.S., 7 years.
463. Being armed with intent to break a dwelling-house, H.C. and G.S., 7 years.
464. Being disguised or in possession of housebreaking instruments, H.C. and G.S., 5 years.
465. Punishment after previous conviction, H.C. and G.S., 14 years.

Forgery and Preparation therefor.

467. Uttering forged documents, H.G. and G.S. Same as forgery of the documents.
468. Forgery of any of the documents mentioned in this section, H.C., and G.S., imprisonment for life.
469. Forgery of any of the documents herein mentioned, H.C. and G.S., 14 years.
470. Forgery of any of the documents herein mentioned, H.C. and G.S., 7 years.
471. Preparation for forgery, H.C. and G.S., 14 years.
472. Counterfeiting government seals, H.C. and G.S., imprisonment for life.
473. Counterfeiting seals of courts, registry offices, etc., H.C. and G.S., 14 years.
474. Unlawfully printing counterfeit proclamation, etc., H.C. and G.S., 7 years.
475. Sending telegram in false name, with intent to defraud, H.C. and G.S., as for forgery.
476. Sending false telegram with intent to injure, etc,, H.C. and G.S., 2 years.
477. Drawing document without authority, H.C. and G.S., as for forgery.
478. Using probate obtained by forgery or perjury, H.C. and G.S., 14 years.
479. Counterfeiting stamps, etc., H.C. and G.S., 14 years.
480. Falsifying registers, H.C. and G.S., 14 years.
481. Falsifying extracts from registers, and concealment of, H.C. and G.S., 10 years.
482. Uttering false certificates, H.C. and G.S., 7 years.
483. Falsifying certificates, H.C. and G.S., 2 years.
484. Making false entries in books relating to public funds, H.C. and G.S., 14 years.
485. Clerks issuing false dividend warrants, H.C. and G.S., 7 years.

Forgery of Trade Marks—Fraudulent Marking of Merchandise.

491. Forgery of trade marks, etc., in violation of ss. 488, 489 or 490, H.C. and G.S., 2 years, with or without hard labour or fine, or both; Sum. 1 J.P., 4 months' imprisonment with or without hard labour, or fine not exceeding $100, 2nd offence 6 months' imprisonment with or without hard labour, or fine not exceeding $250.
492. Falsely representing that goods are manufactured for His Majesty, Sum. 1 J.P., fine not exceeding $100.
493. Unlawful importation of goods liable to forfeiture under this part, Sum. 1 J.P., $200 to $500.

Offences Connected with Trade and Breaches of Contract.

498. Conspiracy in restraint of trade, H.C., $200 to $4,000, or 2 years, if by a corporation, $1,000 to $10,000.
499. Criminal breaches of contract, H.C. and G.S., or Sum. 2 J.P., $100 or 3 months, with or without hard labour.
If by corporation or company, fine of $1,000, or by railway company in certain cases, $100.
500. Not posting up copies of provisions respecting criminal breaches of contract, Sum. 1 J.P., $20 for every day.
Defacing same, Sum. 1 J.P., $10.
501. Intimidation, H.C. and G.S., or Sum. 2 J.P., $100 or 3 months with or without hard labour.
502. Intimidation of any person to prevent him from working at any trade, H.C. and G.S., 2 years.

503. Intimidation of any person to prevent him dealing in wheat, etc. Unlawfully preventing seamen from working, H.C. and G.S., or Sum. 2 J.P., not exceeding $100 or 3 months with or without hard labour.
504. Intimidation of any person to prevent him bidding for public lands, H.C. and G.S., $400 or 2 years, or both.
505. Disposing of trading stamps to a merchant, H.C. and G.S., 1 year and $500.
506. Merchant disposing of, to customer, H.C. and G.S., 6 months and $200.
507. Executive officer of offending company liable to same punishment.
508. Purchaser receiving or taking same, Sum. J.P., $20.
508A. Performing dramatic, etc., copyrighted works without consent of author. Sum. 1 J.P., $250; for 2nd offence same fine or 2 months, or both.
508B. Unauthorized changing title, etc., of copyrighted drama. Sum. 1 J.P., $500; 2nd offence same fine or 4 months' imprisonment, or both.

PART VIII.

Wilful and Forbidden Acts in Respect of Certain Property—Mischief.

510. Wilful damage to property, H.C. and G.S. In Class A, imprisonment for life. In Class B, 14 years. Class C, 7 years. Class D, 5 years. Class E, 2 years.
511. Arson, H.C. and G.S., imprisonment for life.
512. Attempt to commit arson, H.C. and G.S., 14 years.
513. Setting fire to crops, trees, timber, etc., H.C. and G.S., 14 years.
514. Attempt to set fire to crops, etc., H.C. and G.S., 7 years.

515. Recklessly setting fire to forests, etc., H.C. and G.S., 2 years, Sum. 2 J.P., $50 or 6 months without or without hard labour.
516. Threats to burn, etc., H.C. and G.S., 10 years.
517. Mischief on railways, H.C. and G.S., 5 years
518. Obstructing railways, H.C. and G.S., 2 years.
519. Injuries to packages in the custody of railways, or who unlawfully drinks or spills or allows to run waste any liquors, Sum. 1 J.P., $20 over and above value, or 1 month with or without hard labour, or both.
520. Mischief to mines, H.C. and G.S., 7 years.
521. Injuries to electric telegraph, etc., H.C. and G.S., 2 years.
Attempt to commit, Sum. 1 J.P., $50 or 3 months with or without hard labour.
522. Wrecking, H.C. and G.S., imprisonment for life.
523. Attempting to wreck, H.C. and G.S., 14 years.
524. Preventing the saving of wrecked vessels, H.C. and G.S., 7 years.
Wilfully prevents or endeavours to prevent saving wreck, H.C. and G.S., 2 years, or Sum. 2 J.P., $400 or 6 months with or without hard labour.
525. Injuries to rafts of timber and works used for the transmission thereof, H.C. and G.S., 2 years.
526. Interfering with marine signals, H.C. and G.S., 7 years; mooring vessel to buoys, etc., Sum. 1 J.P., $10 or 1 month.
527. Removing natural bar necessary for a harbour, Sum. 1 J.P., $50.
528. Injuries to or erasures in election documents, H.C. and G.S. 7 years.
529. Injuries to buildings by tenants, H.C. and G.S., 5 years.
530. Injuries to fences, etc., Sum. 1 J.P., $20 over and above damage; 2nd offence, 3 months with hard labour.

531. Injuries to landmarks indicating municipal divisions, H.C. and G.S., 7 years.
532. Injuries to other landmarks, H.C. and G.S., 5 years.
533. Injuries to trees, etc., wheresoever growing, amounting to 25 cents in the least, Sum. 1 J.P., $25 over and above damages or 2 months; 2nd offence, $50 or 4 months hard labour; 3rd offence, H.C. and G.S., 2 years.
534. Injuries to vegetable productions growing in gardens, etc., Sum. 1 J.P., $20 over amount of the injury done, or 3 months' imprisonment with or without hard labour; 2nd offence, indictable, 2 years.
535. Injuries to cultivated roots and plants growing elsewhere, Sum. 1 J.P., $5 over and above injury done, or 1 month with or without hard labour; 2nd offence 3 months hard labour.
536. Attempting to injure or poison cattle, H.C. and G.S., 2 years.
537. Injuries to other animals, Sum. 1 J. P., $100 over and above damage, or 3 months' imprisonment; 2nd offence, indictable.
538. Threats to injure cattle, H.C. and G.S., 2 years.
539. Injuries not otherwise provided for, Sum. 1 J.P., $20 and also not exceeding $20 compensation with costs, or imprisonment not exceeding 2 months with or without hard labour.

Cruelty to animals.

542. Cruelty to animals, Sum. 2 J.P., $50 or 3 months with or without hard labour, or both.
543. Keeping cock-pit, Sum. 2 J.P., $50 or 3 months with or without hard labour, or both.
544. Cruelties in the conveyance of cattle, Sum. 1 J.P., $100.

545. Search of premises to ascertain breach of s. 544 —Penalty for refusing admission to peace officer, Sum. 1 J.P., $5 to $20 or 30 days.

PART IX.

Offences Relating to Bank Notes, Coin and Counterfeit Money.

550. Purchasing, receiving or possessing forged bank notes, H.C. and G.S., 14 years.
551. Printing circulars, etc., in likeness of bank notes, Sum. 2 J.P., $100 or 3 months.
552. Counterfeiting coins, etc., H.C. and G.S., imprisonment for life.
553. Dealing in and importing counterfeit coin, H.C. and G.S., imprisonment for life.
554. Manufacture of copper coin and importation of uncurrent copper coin, Sum. 1 J.P., $20 for every lb. troy thereof.
555. Exportation of counterfeit coin, H.C. and G.S., 2 years.
556. Making instruments for coining, HC. and G.S., life.
557. Bringing instruments for coining from mints into Canada, H.C. and G.S., life.
558. Clipping current gold or silver coin, H.C. and G.S., 14 years.
559. Defacing current coins, H.C. and G.S., 1 year.
560. Possessing clippings of current coin, H.C. and G.S., 7 years.
561. Possessing counterfeit coin, H.C. and G.S., 3 years.
562. Offences respecting copper coin, H.C. and G.S., 3 years.
563. Offences respecting foreign coins, H.C. and G.S., 3 years.

564. Uttering counterfeit gold or silver coins, H.C. and G.S., 14 years.
565. Uttering light coins, medals, counterfeit copper coins, etc., H.C. and G.S., 3 years.
566. Uttering defaced coin, Sum. 2 J.P., not exceeding $10.
567. Uttering uncurrent copper coins, Sum. 1 J.P., fine twice the value of coin and in default 8 days.
568. Punishment after previous conviction, H.C. and G.S., imprisonment for life, 14 years, 7 years.
569. Advertising counterfeit money, etc., H.C. and G.S., 5 years.

PART X.

Attempts—Conspiracy—Accessories.

570. Attempting to commit certain indictable offences, H.C. and G.S., 7 years.
571. Attempting to commit other indictable offences, H.C. and G.S., one-half longest term for offences.
572. Attempting to commit statutory offences, H.C. and G.S., 1 year.
573. Conspiring to commit certain indictable offences, H.C. and G.S., 7 years.
574. Accessories after the fact to certain indictable offences, H.C. and G.S., 7 years.
575. Accessories after the fact to other indictable offences, H.C. and G.S., one-half longest term for offence.

NOTE.—If the offence charged is one of conspiring or attempting to commit, or being accessory after the fact to, any offence which could not itself be tried at General Sessions, then only the High or Superior Court can try it. C.C., s. 583 (i).

1. How to Hold a Court.—A Justice of the Peace can hold his Court practically in any place he may choose. The Court is usually held in a Court room in a Court House, Police Station, Town Hall, or it may be held in the Justice's private house or office. In any event the place where the Court is held should be of easy accessibility to all the parties and their witnesses. In certain cases this may require taking into consideration the question of expense where there are a large number of witnesses, some coming from long distances. It is advisable to fix the Court at some point nearest to the greater number of witnesses. The first things, therefore, to consider in holding a Court are that of convenience to the parties concerned and the question of expense.

Assuming that there is a case to be tried and the place of trial has been agreed upon, the next question will be that of the date of the trial. This date should be fixed also with a view to the convenience of the parties, and the distance which the witnesses have to come might well be taken into consideration. The Justice will take care, where the accused is in custody, to see that he is pro-

perly kept in custody according to law. This means that where the accused is in custody there must be some authority for holding him there; this is usually a warrant of remand. Where the accused is arrested on a warrant, he should be immediately brought before the Justice, who should thereupon remand him in custody. This is done by intimating to the accused that he is remanded until a certain hour and day named by the Justice then and there. This hour and date is marked on the information and complaint, which the Justice or some other Justice will have taken. This remand should be on the proper form and cannot in any event exceed eight days at any one time, and if at the end of that period the trial has not yet begun, the accused would be again remanded. There is an alternative procedure. The Justice may grant bail. The rule as to this is contained in the Criminal Code, and if the Justice has any doubt as to how to exercise this alternative procedure, he should communicate in serious cases with the Crown officers, the Attorney-General's agent or deputy. This right to grant bail before hearing is obviously to be used with discretion. If a

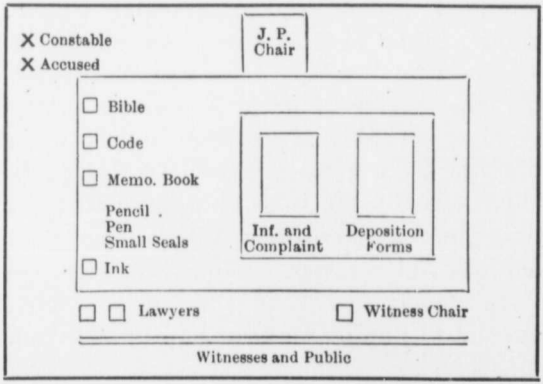
summons is issued instead of a warrant for the arrest of the accused, such question hardly ever arises.

The day for the trial having arrived, the Justice will be at the place appointed in good time so as to familiarize himself with the proceedings which are to take place.

There should be present with him a constable. With this person present, the Justice may find that the proceedings run a good deal smoother. The constable will be necessary where the prisoner is to be escorted from one place to another, and generally he will be found useful. A person who specializes in constable's work, such as members of the Royal North-West Mounted Police and Provincial Police, know a good deal of the procedure to be followed in Justices' Courts, and these persons can be of great assistance to the Justice. A cordial relationship between the Justice and the constable resulting in harmonious work is to be appreciated; at the same time, however, the Justice must not look to the constable to exercise discretions which rest with the Justice, *e. g.*, amount of fine imposed or bail to be given.

On the arrival of the constable, the Justice shall ask him to see if all the parties are present, and if any of them are represented by a lawyer, and ready to go on with the case. On being assured that all the parties are ready to go on, the Justice may then commence the proceedings. If a particular hour has been fixed for the hearing, the Justice should really take his seat at that time, but it is usually a matter of accommodation and courtesy to ascertain if the parties are ready to go on, as the accused might be prejudiced.

The Justice having taken his seat at his desk, he should find the Court room something like this:



The Justice then reads over the information and complaint to himself and notes carefully the charge. The constable should then be asked to open the Court. This is a formality which should not be omitted, although it may appear to the Justice and all concerned an empty formality. The constable calls out "order," and he will without further instruction see that the Court is properly opened to the public.

The Court having been opened the question then arises, what kind of a trial is it going to be? This is all important. The trial may be either (1) a preliminary enquiry, (2) a summary conviction trial, (3) a trial of an indictable offence (with another Justice) under sec. 773 of the Code, (4) an insanity case, or (5) hearing under some provincial law of a civil or half civil and half criminal matter. The Justice may, and rightly too, say, "How am I to know which of these it is going to be?" There is an easy way out of the difficulty. Look at the information and complaint and see what is the offence. It must be either an indictable offence or an offence punishable on summary conviction,

or it may not be an offence at all. If the Justice does not know the difference between an indictable offence and that punishable on summary conviction, he should look up the section in the Act dealing with the matter, and the table giving offences punishable on summary conviction and on indictment. If the section contains the words "punishable on summary conviction," the Justice will realize that he is holding a summary conviction trial. If the section says it is an indictable offence then he can only hold a preliminary hearing when he is sitting alone, or, when sitting with another Justice, a trial for certain offences only under sec. 773. This information should settle any doubt in the mind of the Justice as to these matters. If the matter is neither punishable on summary conviction nor indictment, it would be well for the Justice to find out how he comes to be sitting on the case at all. If it is a hearing under some statute, such as insanity or wage cases, the Justice should look up the Act dealing with the matter and carefully read how far his jurisdiction extends. If it is a hearing under sec. 773 of the Criminal Code, he should (unless he

is a police magistrate, etc., having powers of two Justices) look around for his brother Justice and see that he is sitting by his side.

Having decided to which of these different classes the case belongs, the Justice should dismiss from his mind any other kind of procedure and not mix a trial with a hearing, nor commence one way and change to another, for this error may be fatal to the legality of the proceedings, and if any change is to be made, the proceedings had better be commenced over again.

2. How to Hold a Preliminary Hearing.—Upon holding a preliminary hearing a Justice would be well advised to first consult the table of indictable offences to reassure himself that the offence charged is an indictable one.

A preliminary hearing, sometimes called a preliminary enquiry, is nothing more or less than an investigation into the facts upon which the information and complaint has been laid. The object in holding the enquiry is to ascertain whether there is what is known as a "prima facie" case against the person charged. A prima facie

case may be explained as a case which on the face of it, after hearing the story of the witnesses for the prosecution without further explanation from the accused, apparently shows that he has committed an indictable offence. The accused, however, is given an opportunity on a preliminary hearing to make a statement, though not under oath, and this is known as the "statement of the accused." In addition to this the accused has the privilege of giving evidence on oath by himself and by witnesses.

The hearing is an enquiry preliminary to another trial before a Court having higher authority than that over which the Justice presides, and, therefore, it is essential that the proceedings should be regularly and carefully conducted, as they come under the scrutiny of Judges and officials and consequently reflect on the Justice's capabilities should any irregularities take place.

The first step is to see that the accused is present in person. If he is under arrest he should be in charge of the constable. Upon the Justice taking his seat as at any other trial, he should look over the papers

before him on the desk, which he will no doubt find equipped with pen, pencil, ink, paper, a criminal code, a Bible, the information and complaint, statement of accused, some deposition forms and his own seal of office, or in lieu thereof some small red seals. The accused is politely asked to stand up in his place and the charge as contained in the information and complaint should be distinctly and audibly read to him. If he is a foreigner, not understanding English, the charge should be interpreted to him. The accused now resumes his seat. He is not asked to make any statement at this particular time and he should not be called on to plead "guilty" or " not guilty." The Justice is not holding a trial, he is holding an *enquiry,* and it is immaterial to him whether the accused is guilty or not guilty. That is for a higher Court to decide.

The next step is for the Justice to call upon the informant to come forward with his witnesses to give his story. The witness, whether it be the informant himself or some other person, should be sworn on the Bible or other book, according to the creed of the witness, or he may affirm.

Where the oath is taken on the Bible the following oath will be sufficient: "You swear that the evidence you shall give the Court touching the matters in question shall be the truth, the whole truth and nothing but the truth. So help you God." If the witness wishes to affirm he may be allowed to do so, and the following words used: "I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth and nothing but the truth."

In all cases the witness stands up when he takes the oath or makes his affirmation. His head should be uncovered, except in cases where his belief is such that it is otherwise required, as it does in some cases, for instance when a Jew swears upon the Pentateuch. The Bible should be held in the right hand, and after repeating the words, should be kissed by the witness. It might be well to note that Ruthenians, Bukowinians, Roumanians, Poles and Russians, either Greek or Roman Catholic, are sworn on the Crucifix. The manner followed is somewhat as follows:

Two candlesticks with candles in them are placed in front of the witness and between the candles is placed the Crucifix. The

candles are lighted, the witness holds up the thumb and first two fingers of his right hand and the following oath is then administered: "You swear by God Almighty, Father, Son and Holy Ghost, and by the Virgin Mary and all that is holy, that the evidence you will give to the Court shall be the truth, the whole truth and nothing but the truth, so help you God."

The witness repeats the oath as it is administered word by word, and at its conclusion kisses the Crucifix.

The Justice may think there is quite a lot of formality about swearing an oath, but he should remember that the object of an oath is to bind the conscience of the person who takes it, and consequently whatever form has the most effect according to the religious belief is the best.

Where the witness is a child of tender years, the evidence may be taken without the formality of an oath. It is advisable, however, that the evidence of a child of tender years should be corroborated by some other material evidence. This, however, does not affect the taking of such evidence, but only the *value* of it when taken.

The witness having been sworn, or made affirmation, gives his testimony. Where the witness is a woman, the Justice should out of courtesy to her see that she is provided with a chair to sit on while giving her testimony. The witness may have the assistance of a lawyer while giving testimony, but if the witness is being questioned by the lawyer for party by whom the witness is called, the Court should see that what are known as "leading questions" are not asked. These questions are asked with the intention of prompting the witness. A certain amount of latitude is, of course, necessary to get at the matter at issue, but the story must come from the witness and not from the person who is assisting the witness. The Justice takes down the evidence on the deposition forms in longhand or by shorthand reporter.

When the witness has told his story, either with or without the assistance of a lawyer for the party who calls him, and he has nothing to add to it, he has given what is called evidence " in chief." In other words he has given the facts so far as he knows them. The Justice can, during this

or afterwards, ask the witness any questions which may have arisen in his mind during the time he has been listening to this witness. The other party also has the right to ask the witness questions, and this is called "cross-examination." The idea of this is to find out whether the witness is telling the true facts as known to that witness. A good deal of latitude is allowed in asking these questions in cross-examinations, and direct and leading questions are allowable. The Justice should see, however, the witness is having fair play.

This procedure will continue in respect of each witness who gives testimony, and the Justice will take charge of any articles or things referred to in the evidence when produced in Court. These are called "Exhibits," and form very material evidence in a trial and should be carefully marked so that they can be identified and kept for future use.

All the evidence having been given for the informant, or prosecution as it is called, the Justice will ask the accused politely to stand up in his place. He will now ask the accused whether he wishes the

depositions to be read again. After the depositions have been read or the reading dispensed with there is read to the accused what is known as the " statement of the accused." This is a form which the Justice will have on hand. This form speaks for itself. It is intended to ascertain what the accused has to say in explanation of what the witnesses for the prosecution have put forward against him. He is not bound to say anything and usually remains mute or says the word " nothing," in answer thereto. Whatever the accused says should be put down in his exact words. If he does not make any statement at all the word " nothing " may be inserted in the space in the form. This having been done, the accused should sign the form and the Justice should also sign the form in order to make it complete and regular.

The accused should then be addressed by the Justice, who asks him if he wishes to give evidence on his own behalf, or if he has any witnesses whom he desires to call. If he wishes to give evidence, he should leave his place and go to the witness stand and there be sworn and give his evi-

dence, and he can be cross-examined like any other witness. Any witnesses he may wish to call should be sworn and then in their turn give their evidence and submit to a cross-examination in the usual way. The evidence on both sides being complete it is the turn of the Justice to take a hand in the proceedings.

The Justice may or may not wish to read the evidence over, but in any event he should glance through it to see if he has got all the facts clear in his mind. There may be questions of law which he would like to have explained, and would like to hear what the lawyers (if any) on the case have to say. If one is given this opportunity, the other also should have the privilege. That is only fair. Having heard what they have to say the Justice will then be in a position to make up his mind as to what he is going to do with the case. The question will probably have already run through his mind, "What can a Justice do with the case"? He can do one of three things.

(1) Dismiss the case;

(2) Commit for trial;

or (3) Remand on bail.

The Justice may well say, "Yes, I can do any of these things, but when shall I do the one and not the other"? This is one of the places where the good judgment and common sense of a magistrate is to be taken into account. If the assistance of other persons' opinions can be of any use to the Justice, the words in Daly's Book on Canadian Criminal Procedure may here be given for the Justice's guidance:

"The Justice is not called upon to decide the guilt or innocence of the accused, but after considering the whole evidence he has to form an opinion as to whether or not a sufficient case has been made out to put the accused on his trial. It is not for the Justice to balance or weigh the evidence as if he were trying the accused for the offence charged. If the witnesses for the accused have explained away the facts given in evidence by the witnesses for the prosecution which go to the root of the matter and they establish the prisoner's innocence, or the utter improbability of the story put up by the prosecution, this will render further proceedings

unnecessary and the accused should be discharged."

If the Justice thinks that the evidence is sufficient to put the accused on his trial, he should commit him for trial or remand him *to appear* under recognizance at the *next Court of competent Criminal Jurisdiction,* on bail. It need hardly be said that where the evidence is perfectly clear and if the case is a very serious one a committal is the safest course to pursue, as the Justice has very limited powers to grant bail.

If committed for trial the warrant of commitment should be very carefully made out and handed to the constable to escort the prisoner to gaol. This warrant of commitment is signed and sealed by the magistrate. These precautions should never be overlooked.

If it is the intention of the Justice to remand on bail he can do this alone where the imprisonment for the offence would be less than five years, or with the services of another Justice where the offence is punishable with five years' imprisonment or over, except offences punishable with death. A remand on bail is granted

on the accused entering into the recognizance with sureties. This recognizance should be carefully drawn up in order that the accused will be on hand for his trial before the Superior Court. In particular he should see that he is called upon *to appear at the next Court of competent criminal jurisdiction.*

The recognizance having been entered into the accused will be released. In all cases the witnesses should be bound over to give evidence after a committal or remand for trial. A committal for trial should be reported at once to the Crown officers as in Table II.

TABLE II.

Report of Committal.

Leduc, Alberta,
20th September, 1916.

Sir,—I have the honour to report as follows: re James Johnson, charged with theft from the person. Heard at Leduc on 20th day of September, 1916, and today committed to Provincial Gaol at Fort Saskatchewan, for trial at the next Court of competent jurisdiction at Edmonton.

Depositions forwarded to Clerk of Court at Edmonton on 20th September, 1916.

Solicitor for defence, John Bright, of Edmonton.

Witness to be called for prosecution at trial: 1. Thomas Jones, Leduc, Alberta, farmer.

I have the honour to be, Sir,
Your obedient servant,
(Signed) WM. BROWN,
Justice of the Peace.

To the Deputy Attorney-General.

The Justice may think that so far as he is concerned the trial is now over, but he has yet important duties to perform. He has disposed of the case before him and now his duty is to put the matter in the hands of a higher authority. How is he going to do this?

There is an officer called the Clerk of the Peace, or Clerk of the Court, situate in the district where the accused is to have his trial. To him then should be sent the (1) depositions, (2) exhibits (which should be carefully wrapped up so as not to be injured in transit); (3)

Statement of Accused; (4) The adjudication of committal or recognizance of bail, and other papers. On receipt of this the clerk enters the accused's name on the docket for hearing. In addition to this the Justice would be well advised to send to the Crown officers, the Attorney-General's agent or deputy, a report of the committal or remand on bail, as they will have to see that the Crown is represented at the trial of the accused. In this report of committal there should be given as in Table II., names and addresses of the witnesses who are to give evidence at the trial. Any accounts which may have to be paid for expenses at the preliminary hearing should be certified as to attendance, and the Justice will sign the same as to this. These accounts are not paid as a matter of course, but are paid as a matter of grace, as no costs are allowed by the Court on preliminary hearings, and it is only in exceptional cases like murder trials that these accounts are given consideration. The Justice should, therefore, not promise that the same will be paid, but that they may receive consideration.

The question of expense to the accused and to the Crown in criminal cases is one to be borne in mind. The committal of weak cases where there is no grand jury to sift the evidence, and the subsequent acquittal of the accused is to be avoided as far as practicable. There is the expense of the prisoner's defence and that of witnesses travelling long distances and the counsel for the Crown, jury fees and also expense of keeping accused in gaol, which soon assume large proportions. By the use of good judgment and common sense in such cases, not only is the accused given fair treatment, but the Province is not burdened with unnecessary expense.

Summarizing the events which happen in a preliminary hearing, the Justice will note the following:

1. Justice takes his seat.
2. Reads charge to accused.
3. Swears the witness.
4. Witness gives evidence in chief.
5. Witness is cross-examined.
6. Witness is possibly re-examined.
7. Witness is cross-examined on his re-examination.

8. Evidence for prosecution closed.
9. Justice reads statement of accused.
10. Accused asked if he wishes to say anything in answer to it.
11. Accused asked if he wishes to give evidence by himself or by witnesses.
12. Accused and witness give evidence and are examined and cross-examined.
13. Evidence for defence is all given.
14. Exhibits all marked.
15. Justice commits, discharges or remands accused.
16. Commitment signed and sealed.
17. Recognizance signed.
18. Depositions and exhibits sent to Clerk of Court.
19. Committal reported to Deputy Attorney-General.

3. How to Hold a Summary Conviction Trial.—Upon holding a summary conviction trial the Justice would be well advised to first consult the table of offences which by the Criminal Code are punishable on summary conviction. Care should be taken where two Justices are required

to constitute the Court. For other offences the statutes should be consulted.

Trials on summary conviction are the commonest trials which take place before a Justice of the Peace. Frequently the Justice will be asked for advice on subjects which may or may not be the subject of a summary conviction. and when in doubt the Justice should never take up such a case without first going into the facts with the person submitting the case, and then only should he accept the information and complaint when he has found that the facts constitute an offence against the law.

Quite a number of Dominion and Provincial Acts besides the Criminal Code make offences punishable on summary conviction, and where a party claims to be acting in the enforcement of these Acts it might be well for him to point out to the Justice the section in the Act. The benefit of this is obvious. The Justice will then have no difficulty in framing his information and complaint correctly, and he will not fall into the error of assuming to act in cases where he has no jurisdiction.

A summary conviction proceeding is commenced by an information and complaint. This is one of the forms supplied to the Justice. It is said to be "laid" when it is sworn to by the informant before the Justice, signed by the informant and signed by the Justice.

The information and complaint having been laid, the next question is for the Justice to decide on the issuing of a summons. It is advisable in summary conviction matters to issue a summons instead of a warrant, although both are applicable. The summons contains a memorandum of the charge, and the date upon which the case is to be heard, and is signed by the Justice and served on the accused by a constable.

When served the constable should mark on the back of the copy or original which he retains a memorandum of this service and hand the same to the Justice. This memorandum will be a good answer to any person who says he was never served. The same applies to summons for witnesses, which is a similar form.

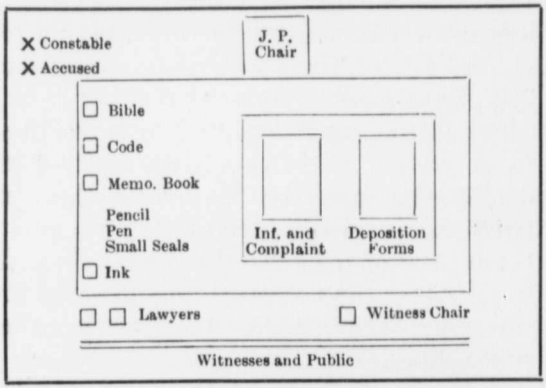
The day having arrived for the hearing, the Justice should attend in good time

in order to familiarize himself with the proceedings. The constable should be asked to ascertain if the parties are ready to go on with the case. All being ready the Justice takes his seat. It may be that the parties have come to an amicable settlement of their difficulty unknown to the Justice and the party who laid the information may wish to withdraw it. So long as the Justice is of opinion that no miscarriage of justice will result in this procedure, he may allow this to be done. His duties in that case will be very light and there will be little else to do but make up the bill of costs according to section 770 of the Code.

Should the parties not be in a position to go on but wish an adjournment, it is discretional with the Justice whether or not he shall give it, but in no case must the refusal of it by the Justice be allowed to prejudice the accused in his defence, or this may be a ground for upsetting the proceedings.

Assuming that the parties are ready to go on with the case, and do not wish an adjournment and do not withdraw the information, then the Justice may proceed.

The first thing for the Justice to do is to read over the information and complaint first to himself and then audibly and distinctly to the accused, who should be standing up in his place. On the desk before the Justice there should be in the information and complaint, blank deposition forms, and, of course, the Criminal Code, a Bible, pen and pencil, ink and paper and his seal of office, or in lieu of that small red seals. The Court will look something like this:



In answer to the charge as read, the accused should be asked to plead either "guilty" or "not guilty." No other

words or statement should be accepted from him at this time. If he stands mute the Justice should enter a plea of "not guilty," stating on the information that the accused stood mute. Whatever be the plea the Justice should mark it on the face of the information.

Plea of Guilty.

Perhaps the Justice will think on receiving a plea of guilty in answer to his question that there is nothing much more to do than sentence the accused. The accused may be pleading guilty to something of which he knows nothing, and possibly to something which is not an offence at all. The Justice could, without any great inconvenience, in such cases take down depositions of the informant and his witnesses to safeguard any such questions arising after the proceedings are closed. The Justice might well also explain to the accused the meaning of the plea of guilty, to see that he understands the proceedings and that his opportunity to explain things is prevented by giving such a plea. The accused has under the Code a right to give a full answer and defence to the

charge laid. If the plea of guilty remains unchanged after this, the Justice should consider what punishment will meet the case. Having made up his mind the decision should first be written down on the information and complaint, and then read to the accused without being changed. To do this the Justice will ask the accused politely to stand up and will address him as follows:

JUDGMENT.

"Having pleaded guilty to a charge of I sentence you to forfeit and pay forthwith as a penalty, the sum of $ and to pay to the informant his costs, amounting to $, and in default you will serve days' imprisonment with hard labour in the Provincial Gaol at ."

This done, the accused will exercise his option to pay the fine or take the imprisonment. This is called a penalty or conviction with the option of a fine in the first instance. Where the accused pays the fine and costs the Justice should give a receipt for the money paid and enter the receipt of the money in his memoran-

dum book, in which he keeps a record of the proceedings.

Where the accused on a plea of guilty does not exercise his option and pay the fine, but takes his imprisonment in default, the Justice will have to make out, sign, seal, and hand to the constable a warrant of commitment (with the option of a fine in the first instance) to prison, usually the nearest Provincial Gaol.

Upon the Justice handing the warrant of commitment to the constable where imprisonment is to be served, or upon giving the receipt for the fine and costs, where the fine is paid, the Justice should ask the constable to close the Court.

TABLE III.

Form of Remittance of Fine.

Leduc, Alberta,

Province of Alberta. }
Canada }

12th September, 1916.

Sir,—I enclose herewith the sum of $10 (ten dollars) being the amount of the penalty collected on the 12th day of September, 1916, from James Johnson, upon the

information of Thomas Jones, of Leduc, imposed by William Brown at Leduc, on the 11th day of September, 1916, on conviction for unlawfully assaulting the complainant, Thomas Jones, contrary to the provisions of section 291 of the Criminal Code of Canada.

I also certify that costs to the amount of $3 (three dollars) were imposed upon the defendant as follows:

Information	$ .50
Arrest on warrant	1.50
Hearing	1.00
	$3.00

Your obedient servant,

WILLIAM BROWN,

J.P.

The Deputy Attorney-General.

N.B.—If informant is entitled to a moiety of the fine and the same has been paid to him, his receipt must accompany this statement. Cheques should be made payable to "The Attorney-General," and should be marked by the bank on which they are drawn.

The Justice having now dealt with the case so far as the prisoner and the pub-

lic are concerned, has yet to make his report of the proceedings to his superior officers. This can be done as follows:

Take two large envelopes, address one to the Deputy Attorney-General for the Province, or other person to whom the fine is payable, and address the other to the Clerk of the Court for the judicial district in which the Justice resides. Place inside the envelope addressed to the Deputy Attorney-General or other person to whom the fine is payable, a form as in Table III., together with the money paid as a fine or penalty in the case, if any. In the envelope addressed to the Clerk of the Court place the information and complaint, the depositions and a form of conviction or memorandum of the disposition of the case. Both these envelopes should be posted not later than the day following the trial, as in many instances the parties wish to appeal from the conviction and 15 days only is allowed within which this can be done. It is essential, therefore, that all the papers should be in the hands of the Clerk of the Court at the first available opportunity.

Plea of Not Guilty.

The Court having been opened and the Justice having taken his seat, and the accused in answer to the Justice's question as to how he intends to plead, says "not guilty," the proceedings will take a little longer than on a plea of "guilty."

The first step where there is a plea of not guilty is for the Justice to so mark the information and complaint. He will do this by writing on the face of it the words, "Accused pleaded 'not guilty.' Date 16th August, 1916, *J.P.*"

Having done this the Justice will call on the prosecution to prove its case. This is done by the calling of witnesses who make their statements under oath. Each witness will come forward to a place not far from the desk of the Justice and is sworn on the Bible or in other appropriate manner according to the religious belief of the witness, or he may affirm. The first witness having been sworn, his testimony is commenced, the Justice taking the same down himself in longhand, where there is no Court reporter taking the evidence. If the witness is a woman

the constable will in order to be as courteous as possible provide her with a chair to sit on while giving her testimony. The Justice may allow any other witness to sit or stand as he pleases. The testimony having been duly given by the witness with or without the assistance of a lawyer, the evidence in chief is said to be all in. That means the main part of the witness' story has been given, and so far as the party for whom testimony is given, the witness has told all he knows. The opposite party has, however, the right to question the witness about the story already told. This is called a cross-examination or cross questioning. There are certain rules regarding evidence regulating the kind of questions which can be asked on an examination in chief or a cross-examination, and as they are very intricate the giving of them here might confuse the Justice. It might be well here to mention that on an examination in chief, no direct questions can be given with the intention of prompting the witness in his story, for it is intended that he shall give the story as he knows it, and not as someone else knows it. Upon a cross-examination it is

different, for in this case the intention is to find out whether the witness is hiding something which would assist the Court, or whether the story told is true or false. Considerable latitude is therefore allowed in cross-questioning the witness. The Justice will see, however, that the witness is given fair play.

The witneses for the accused or defence are also entitled to give their side of the story, and they in their turn having been sworn, given their testimony, are subject to be cross-examined by the other side. When all the evidence for both sides is complete, the Justice can now take a hand in the proceedings. No doubt he has been sitting patiently waiting for the end of the many versions of the same story, and his mind may or may not be very clear on the facts. He may also wish to know more about the law on the subject. This opportunity where there are lawyers acting for the parties is always available, as they are there to assist the Court. There is not the slightest doubt that lawyers can be of great assistance to the Justice in rendering a fair, impartial decision correct both in law and on the facts.

The Justice will do well to listen to their arguments and give every consideration to their statements of the law. At the same time the Justice may feel that they are not giving the Court the assistance they should. The lawyers are there to assist the Court and in the interest of their respective clients far rather wish the Court to be with them than against them, and consequently will not place all kinds of objections to the Court's proceedings without quoting the law. Where this does happen the Justice should not hesitate to ask the lawyer for the authority upon which he bases his argument. There must be some statute or case law or book on the subject, and if he can, he will readily point the same out to the Justice. If he cannot so point out the authority to the Justice then the Court can exercise its own discretion. If the Justice prefers to look up the law on the subject he can adjourn the case to do this. He has a further alternative. He can consult the Crown officers, the agent of the Attorney-General or his Deputy, on the subject, and he should not hesitate to do this, if it

is an important matter, or one upon which they cannot agree.

The Justice has now reached that part of the proceedings known as the adjudication. That means the decision which he is going to give on the facts. The accused has pleaded not guilty. The question now arises, does the evidence disclose guilt or innocence? Is the evidence consistent with his plea? Whatever the Justice may like to do, he can only arrive at a decision to dismiss or to convict, or make order as provided in sec. 726 of the Criminal Code.

On a Dismissal.

If the Justice decides to dismiss the case, he should first write down on the face of the Information the following words: "Judgment—I dismiss the case with costs," date it, and sign or initial it. He will then discharge the accused from custody, reading his decision aloud so that the accused and all present can hear it. The accused will be standing up waiting to receive this information. This having been done the costs will have to be made

up according to the tariff laid down in section 770 of the Code. These costs are paid to the accused where the case is dismissed. Having settled this bill the Justice may leave his seat and the constable can close the Court.

The Justice has yet, however, certain executive acts to perform and should not lose any time in making out his returns. This can be done by taking two large envelopes, one addressed to the Deputy Attorney-General, the other to the Clerk of the Court. In the envelope addressed to the Deputy Attorney-General should be put a form of Dismissal of Information. In the envelope addressed to the Clerk of the Court should be put the information and complaint, the depositions and any other papers relating to the case. The Justice might well enter up in his memorandum book a record of the cases, so that when making out the half-yearly returns he will have all information on hand.

TABLE IV.

Tariff of Fees.

770. The fees mentioned in the following tariff and no others shall be and con-

stitute the fees to be taken on proceedings before Justices under (summary conviction) Part XV.

Fees to be taken by Justices of the Peace or their Clerks.

1. Information or complaint and warrant or summons	$0.50
2. Warrant where summons issued in first instance	0.10
3. Each necessary copy of summons or warrant	0.10
4. Each summons or warrant to or for a witness or witnesses. (Only one summons on each side to be charged for in each case, which may contain any number of names. If the justice of the case requires it, additional summonses shall be issued without charge)	0.10
5. Information for warrant for witness and warrant	0.50
6. Each necessary copy of summons or warrant for witness..	0.10
7. For every recognizance	0.25
8. For hearing and determining case	0.50

9. If case lasts over two hours $1.00
10. Where one Justice alone cannot lawfully hear and determine the case, the same fee for hearing and determining to be allowed to the associate Justice.
11. For each warrant of distress or commitment 0.25
12. For making up record of conviction or order where the same is ordered to be returned to sessions or on certiorari 1.00

    But in all cases which admit of a summary proceeding before a single Justice and wherein no higher penalty than $20 can be imposed, there shall be charged for the record of conviction not more than 0.50
13. For copy of any other paper connected with any case, and the minutes of the same if demanded, per folio of 100 words 0.05
14. For every bill of costs when demanded to be made out in detail 0.10

(Items 13 and 14 to be chargeable only when there has been an adjudication.)

Constables' Fees.

1. Arrest of each individual upon a warrant $1.50
2. Serving summons 0.25
3. Mileage to serve summons or warrant, per mile (one way) necessarily travelled 0.10
4. Same mileage when service cannot be effected, but only upon proof of due diligence.
5. Mileage taking prisoner to gaol, exclusive of disbursements necessarily expended in his conveyance 0.10
6. Attending Justices on trial, for each day necessarily employed in one or more cases, when engaged less than four hours ... 1.00
7. Attending Justices on trial, for each day necessarily employed in one or more cases, when engaged more than four hours .. 1.50
8. Mileage travelled to attend trial (when public conveyance can be taken, only reasonable disbursements to be allowed), one way per mile 0.10

9. Serving warrant of distress and returning same $1.00
10. Advertising under warrant of distress 1.00
11. Travelling to make distress or to search for goods to make distress, when no goods are found (one way) per mile 0.10
12. Appraisements, whether by one appraiser or more—two cents in the dollar on the value of the goods.
13. Commission on sale and delivery of goods—five cents in the dollar on the net proceeds.

Witnesses' Fees.

1. Each day attending trial $0.75
2. Mileage travelled to attend trial (one way) per mile 0.10

55-56 V., c. 29, s. 871; 57-58 V., c. 57, s. 1.

Interpreter's Fees.

1. Each day attending trial $2.00
2. Mileage travelled to attend trial (one way) per mile 0.10

8-9 Ed. 7, c. 9.

On a Conviction.

If the Justice decides to convict the accused he should first write down on the face of the information this fact. It could be done as follows: "Judgment—I find the accused guilty of the offence as charged and sentence him to forfeit and pay forthwith the sum of $10, and $3 the costs, and in default to 15 days imprisonment with hard labour in the Provincial Gaol at Fort Saskatchewan. Date, 16th August, 1916, signed J. P." This is the memorandum of adjudication, and every Justice inflicting the penalty of a fine should make an adjudication in writing. Having done this, the Justice will ask the accused to stand up in his place and address him in terms similar to that which he writes on the face of the information, making on it, of course, personal reference to the name of the accused.

This done, the accused will exercise his option of paying the fine or taking his imprisonment in default, as this kind of a sentence is called a conviction with the option of a fine in the first instance. Where the accused is sentenced without

the option of a fine, this means straight imprisonment in the first instance. This can only be done when the statute specially says that imprisonment may be given.

If the accused pays his fine, the Justice should give him a receipt for the amount and see that the costs are made up according to section 770 of the Code, as the same appears in the table of tariff of fees. Where imprisonment either in the first instance or in default is to be served, then a warrant of commitment (for imprisonment) will be necessary. The Justice will make this out on the proper form, sign and seal the same, and hand it to the constable to escort the prisoner to gaol.

The Justice has yet certain executive acts to perform and as soon as he enters the proceedings in his memorandum book he should get two large envelopes and address one to the Deputy Attorney-General and one to the Clerk of the Court for the Judicial District in which the Justice resides.

In the envelope addressed to the Deputy Attorney-General he will insert the Form

for remitting penalties, Table III., showing particulars of the fine and send along with it the money received. To the Clerk of the Court he will send the information and complaint, depositions and exhibits (if any), along with a memorandum of his adjudication and a conviction under his hand and seal of office. This ends the case so far as the Justice is concerned, unless an appeal is taken from his decision. This is done by serving the Justice with a notice of appeal and filing one copy of the same notice with the Clerk of the Court, to whom the papers will already have been sent. Usually the accused gets a lawyer to do this, and the Justice should immediately on being served with a notice of appeal send the same in an envelope addressed to the Deputy Attorney-General. If this is done right away the Deputy Attorney-General will see that the case is attended to on the subsequent hearing. All the Justice will have to do is to see that the fine and costs are paid and that there is collected from the accused an additional deposit of $25 for the costs of the appeal or in lieu thereof a recognizance on appeal. This

should also be sent to the Clerk of the Court.

Summarizing the proceedings the Justice will see that the information and complaint is the most common form he will have to deal with, and that it is the document upon which all summary proceedings are or should be recorded. During an extended case it will no doubt have an appearance something like Table VI.

TABLE. V.

A Complete Information and Complaint

Canada
Province of Alberta }

The information and complaint of Thomas Jones of Leduc, in the Province of Alberta, farmer, taken this 10th day of September in the year 1916, before the undersigned William Brown, one of His Majesty's Justices of the Peace in and for the said Province, who saith that James Johnson of Leduc aforesaid, farmer, on or about the 8th day of September, A.D. 1916, at or near Leduc, in the said Province, did unlawfully assault the complainant, Thomas Jones, by striking

him in the face with his fist, contrary to the Criminal Code of Canada.

RECORD.

A.M.

11/9/16 Court opened ..... T.J.
11/9/16 Court adjourned to 2 p.m.... T.J.

P.M.

11/9/16 Court opened 2 p.m..... T.J.
11/9/16 Accused pleaded not guilty.. T.J.
11/9/16 Found guilty ..... T.J.
11/9/16 Fine paid, $. ..... T.J.

COSTS.

Information	$0.50
Arrest on warrant	1.50
Hearing	1.00
	$3.00.

Minute of Adjudication.

James Johnson found guilty of assault and fined $10 and $3 (costs) of the Court, or in default of payment forthwith, 3 months' imprisonment in the Provincial Gaol at Saskatchewan, with hard labour.

WILLIAM BROWN,
Leduc: 11 Sept., 1916. *J.P.*

(Signature of Informant) THOMAS JONES.

Sworn before me the day and year first above mentioned, at Leduc, in the said Province.

(Signed) WILLIAM BROWN,
A Justice of the Peace in and for the Province of Alberta.

CHAPTER II.

How to Take Down Evidence.

Evidence given before a Justice of the Peace is usually either oral or documentary.

Oral Evidence.

This is evidence by word of mouth, usually on oath or affirmation. The person giving the oral evidence is called a witness and the statement made is called a deposition. There are three essentials to a deposition, namely, (1) The deposition must be taken in the presence of the accused; (2) That the accused and his lawyer, if he has any, had the opportunity to cross-examine the witness, and (3) that the deposition is signed by the Justice and by way of precaution by the witness also.

The deposition begins with certain words (called "the caption") showing the name, place of residence, occupation of the witness, date and place, that it is taken under oath or affirmation before a

Justice, and giving short particulars of the charge.

Assuming that the Justice is sitting in Court on a case and the proceedings having arrived at the stage where evidence is given, then a witness will be called by name by the constable or the prosecutor. The witnesses answering to the name called will come to the Justice's table to be sworn. The Justice will already have a Bible on his desk and the Justice should then hand the Bible to the witness to hold in his right hand with head uncovered, standing, and address the witness as follows:

"The evidence you shall give the Court touching the matters in question shall be the truth, the whole truth and nothing but the truth, so help you God." The witness will then kiss the Bible.

It may so happen that the Justice may be called upon to swear a Chinaman, a Jew or some person having a special religious belief. In such cases the Justice will find out what his religious belief is. For these special oaths are necessary, the object being to take the evidence in such a way as will be most binding on the wit-

ness' conscience. Some witnesses object to taking an oath, and in such cases should be allowed to affirm. To do this the Justice will ask the witness to repeat the following:

"I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth and nothing but the truth."

The witness may then take his seat and the Justice having before him deposition forms upon which to write down the witness' testimony, he should first fill in the commencement of the form and ask the witness for his full name, address and occupation. This being given by the witness he may proceed with his testimony.

The Justice will take the testimony down on one side of the paper only in longhand, when a stenographer is not employed, and in taking down the same in longhand the Justice should follow the requirements of the Code very carefully. Sec. 590 of the Code deals with this subject and should be referred to. As far as possible the testimony should read like a well connected story, and any objections made by parties or lawyers to the evidence should be noted immediately the same are

made, and if placed as part of the story they will be of value and assistance both to the Justice and to any Court which may have to deal with the question at a later date.

The evidence which such witness gives up to this point is called evidence in chief. His testimony, however, may be questioned by the opposite party and the lawyer, if any, for the opposite party will commence to question the witness. This is called cross-examination. It is a very valuable part of the proceedings, because in many instances it will reveal the truth or falsehood of the witness' story. A good deal of latitude in cross-examination should be allowed by the Justice so long as the witness is receiving fair treatment at the hands of the party cross-examining the witness.

The testimony of a witness therefore is secured by questions put to the witness by the party or his lawyer, followed in cross-examination by questions put by the other party or his lawyer. After this there sometimes may take place what is called a re-examination. This is limited to explanation of matters stated in cross-exam-

ination and is conducted by the party or his lawyer brings forward the witness as his witness.

The evidence being all complete and having been reduced to writing by the Justice, it should be read over to the witnesses by the Justice or the constable. Some small errors may have taken place in the taking down of the evidence and the witness may wish to have these corrected. This he is entitled to do, but it is obvious that this is not to be used as an opportunity to contradict statements which he has actually made. If the witness wishes to add anything further to his story, this should be received and written at the end of the deposition.

It may so happen that a witness will while giving his testimony object to answering a question. If this arises when lawyers are present the Justice should call on the lawyers for both parties to argue the point and the Justice will then be in a position to dispose of the matter. There are cases where the witness is justified in refusing to answer questions, as will be seen later. If the Justice finds that the

witness is not justified in refusing to answer, then he is at liberty to exercise with discretion the powers given by Code, section 585. In any event the witness' objections to answer should be noted by the Justice in the deposition, and the question should be put clearly and distinctly to the witness a second time, so as to give him an opportunity to reconsider his decision.

The deposition can now be signed by the Justice and the witness at the foot of each page of the evidence, so that there can be no question of interleaving any other evidence. This having been done, the evidence of this witness is complete and he may be discharged.

In important trials such as murder, cattle stealing cases or other serious crimes, the services of a competent shorthand reporter will usually be available. To obtain this assistance, the Justice should write to the Deputy Attorney-General, giving the facts of the case and asking permission to employ a stenographer for use at the trial. When this permission is granted, the fee payable will be fixed by the Department of Attorney-General,

but in any event the account of the stenographer should bear a certificate of the Justice as to the time and place of attendance, and the necessity for the work, and sign the same.

Where a shorthand reporter takes the evidence, he should invariably be sworn as follows:

"You swear that you will truly and faithfully report all the evidence given at the trial of John Smith, so help you God."

At the end of the evidence when translated into longhand, the following affidavit should be attached.

"I, John James, of the City of Forest, stenographer, make oath and say:

"(1) That I was duly sworn by John Williams, J.P., to truly and faithfully report all the evidence given at the trial of John Smith.

"(2) That the transcript of evidence hereunto annexed signed by John Williams as Justice of the Peace is a true report of all the evidence taken down by me in the case before the said John Williams in the presence of the accused and his witnesses.

"Sworn, etc."

(Signed) JOHN JAMES,
Shorthand Reporter.

The transcript of evidence is signed by the Justice.

The depositions taken in any case other than an insanity hearing should be forwarded to the Clerk of the Court for the district, along with all other papers in the case.

Documentary Evidence.

The Justice when listening to the evidence given before him will not infrequently hear references made to written documents. Wherever this happens, it is essential that these documents should be properly before the Court, and in this particular it would be well to bear in mind that some documents cannot be referred to without certain preliminaries.

Documents are either of a public or private nature. Public documents such as proclamations, Orders in Council, etc., are usually referred to by producing the originals or a publication in some official gazette, or a certified copy.

Wherever possible the Justice should require the original of private documents being submitted, and not a copy, as the

original is the first best evidence, and where that is not available, copies are sometimes allowable, as the second best evidence, or as it is technically called, "secondary evidence."

Private documents are more in the nature of personal documents, and if not privileged, can be used to explain matters. If any objection is made to the Justice to his accepting by documentary evidence, the fact of the objection should be carefully noted on the records by the Justice of the Peace, and then if the matter is dealt with by a higher Court, all the objections which took place on the previous trial will be in possession of the Court and there can be then no regrets or disputes as to what occurred.

TABLE VI.

Form of Deposition.

A form of deposition is as follows:

"Canada

Province of Alberta.

The deposition of John Smith of the City of Edmonton in the Province of Alberta, Labourer, taken before the under-

signed William Smith, a Justice of the Peace in and for the said Province, this 1st day of January, 1916, at Edmonton aforesaid, in the presence and hearing of John Jones, who stands charged that he did on or about the 3rd day of December, A.D. 1915, at Edmonton aforesaid, unlawfully steal two tons of hay, contrary to Statute in that behalf made and provided.

The said deponent saith on his oath as follows:

NOTE: The deposition here follows in the first person thus; 'I saw, etc., at such and such a place on such and such a day. The deposition should contain the full evidence, cross-examination and re-examination (if any) as well as the examination in chief. Any interruption by the accused should be taken down and may be evidence against him. All objections by the accused or complainant or their lawyers should be correctly noted. Only evidence which is clearly irrelevant or not admissible should be left out — all other evidence should be taken down. If the Justice has any doubt it should be taken down and left to a higher tribunal to deal with, all objections being carefully noted. The depositions must be

read over and signed by the witnesses and the Justice, both of which acts must be performed in the presence of the accused. The witness is entitled to make any corrections before he signs. It is the best plan to put these alterations at the *foot* of the deposition as they may amount to a contradiction or change of statement without the intention of correcting errors. These additions should be signed also.

The conclusion will be as follows:

"The deposition of John Smith of the City of Edmonton in the Province of Alberta, Labourer, written on the several sheets of paper to the last (or each) of which my signature is annexed were taken in the presence and hearing of John Jones and signed by the said John Smith respectively in his presence.

In witness whereof, I have in the presence of the said John Smith and John Jones signed my name.

Signed

"John Jones"
Witness.

William Smith,
Justice of the Peace in and for the Province of Alberta.

The Justice will realize that depositions are important, as they form the basis of the evidence, and in taking down the statements great care should be exercised and all objections properly noted, all exhibits marked for identification, and all signatures and certificates properly attached. See Table VI. for form of deposition.

Questions Which May be Objected to.

For the guidance of Justices unfamiliar with the various kinds of questions not allowed under the rules of evidence it may be mentioned that there are several which should not be permitted: For example:

(1) Questions should not be asked a prisoner who is giving evidence in his own behalf tending to show that the prisoner has been committed, convicted or charged with any offence other than that wherewith he is then charged. As a general rule these are things to be proved by evidence other than that of the prisoner.

(2) Questions which are "leading" or amount to a cross-examination of one's own witness should not be asked on examination in chief. There is however an

exception where the witness proves hostile to the party producing him, in which case the Court can allow the leading questions to be put to the witness.

(3) Questions put to obtain the "opinion" of a witness should not be allowed unless the witness is brought forward as an "expert or scientific" one.

(4) Questions asked of "A" as to what "B" (not the accused) said are generally not allowed as they amount to hearsay evidence.

CHAPTER III.

Where to Find Your Law.

In dealing with criminal matters the Justice will have occasion to find the law governing the subject before him. The criminal law is largely contained in the Criminal Code, but Provincial Statutes provide penalties for certain offences, and from time to time reference will be made to these.

The Criminal Code is divided into the following parts, each part being self-contained.

	Sec.
Part 1. Interpretation of Words	1-7
Application of the Code	8-15
Matters of justification or excuse	16-68
Parties to offences	69-72
Part 2. Offences against public order	73-141
Part 3. Preservation of peace near public works.....	142-154

	Sec.
Part 4. Offences against administration of law and justice	155-196
Part 5. Offences against religion, morals and public convenience	197-239
Part 6. Offences against the personal reputation ..	240-334
Part 7. Offences against rights of property	335-508
Part 8. Wilful and forbidden acts in respect of certain property	509-545
Part 9. Offences relating to bank notes, coin and counterfeit money	546-569
Part 10. Attempts, conspiracies and accessories ...	570-575
Part 11. Jurisdiction	576-588
Part 12. Special procedures and powers	589-645
Part 13. Compelling appearance of accused before Justices	646-667
Part 14. Procedure on appearance of accused...	668-704
Part 15. Summary convictions	705-770

	Sec.
Part 16. Summary trials of indictable offences	771-799
Part 17. Juvenile offenders for certain indictable offences	800-821
Part 18. Speedy trials	822-842
Part 19. Indictments	843-1025
Part 20. Punishment, fines, etc.	1026-1085
Part 21. Sureties and recognizances	1086-1119
Part 22. Habeas corpus and certiorari	1120-1132
Part 23. Returns	1133-1139
Part 24. Limitation of actions	1140-1151
Part 25. Forms.	

The Justice will easily see that there are a good many of these parts that he will have very little to do with. The part which will be referred to more than any other will be Part 15, dealing with summary convictions. The Justice will at first find it very difficult to read the Criminal Code intelligently, and he is urged to persevere. Once a section has been looked up it is a good plan to note the sections in

the inside of the cover, either at the beginning or end of the book, for future reference, as they will frequently occur again and then they will be readily found.

Provincial Laws.

Provincial laws are contained in the Provincial Statutes and Ordinances. There are also Orders in Council passed from time to time by the Executive Council of the Province under authority contained in the various Statutes. Orders in Council have the force of law.

The Provincial laws are from time to time revised and consolidated. They may also be substituted, amended or repealed by other Acts. The Justice should always consult the latest Acts and Amendments, as a conviction under a repealed Statute is of little use.

Revisions or consolidations have a complete index and where the Justice is asked to take an information under any Provincial law, he should look up the index in these volumes, and having found the section, he should then look in the index of the Statute Law Amendment Act for

each of the succeeding years and see whether the section has been amended, repealed or substituted.

In some provinces in the yearly Statutes the Justice will also find at the end of the volume a chronological table or index showing all the subjects upon which there were Acts of the Province, and also a table giving the amendments to all Acts and Ordinances. These should be of great assistance to the Justice in seeing whether the law, as he finds it, has been altered.

Dominion Laws.

The Statutes of Canada were revised in 1906, and the reference R. S. C. means Revised Statutes of Canada, 1906. This revision is issued in several volumes, with a volume containing an excellent index, and whenever available, this should be consulted.

After finding the Statutes in this volume, each succeeding year's Dominion Statutes should be consulted. On looking through any succeeding year's Statutes there will be found a table giving the

amendments in that year to preceding Statutes on the same subject.

Where the revised Statutes are unavailable, the Justice can obtain separate copies of the more general Acts from the King's Printer at Ottawa; and where the Justice is continually dealing with subjects regulated by Dominion law, it would be well to obtain a copy of the Acts together with the regulations and orders in council passed under the same.

The Dominion Government appoints certain officers to enforce laws regarding immigration, employment agencies, fisheries, inland revenue, weights and measures, etc. Where such subjects come under the consideration of the Justice, he should obtain from these officials copies of the latest Acts and regulations, as they will from time to time make application to the Justice for the issue of summons on informations that are laid under these Statutes.

Municipal By-laws.

In various Provinces the Statutes provide for the passing of by-laws by rural

municipalities, villages, towns and cities. The Justice will do well to have a copy of his local by-laws under the seal of the municipality, as he will be frequently called upon to hear cases under these by-laws. The reason for the copy being under seal is that the copy can then be used in evidence and referred to at the trial. It is obvious that the document produced should be authentic and to have it under the seal of competent authority is about the best authentication possible.

Conflict of Laws.

It may just so happen that upon the Justice looking up the law on a given subject he will find the same matter dealt with by both Dominion and Provincial legislation, or by Provincial legislation and municipal by-laws.

The obvious thing to do under such circumstances is for the Justice to follow the highest authority, namely, the Dominion law, first, the Provincial, second, and the by-laws, third. This may not be absolutely correct in an odd instance, but for all practical purposes the Justice would be well advised to follow this principle.

Take for example disorderly houses; these are dealt with by the Criminal Code, by some Provincial Statutes and by some city and town by-laws.

Where the Criminal Code deals with the offence, it is advisable to bring all informations under that law, and the Justice should on taking informations see that this is done, so as to avoid any irregularities or illegality in the proceedings by reason of their being commenced under the wrong Act.

Summarizing, the Justice will realize that the field of legal knowledge is very wide and that there are Dominion Statutes, Dominion regulations under these Statutes, Provincial Statutes and Provincial Orders in Council under these Statutes, municipal by-laws under Provincial charters and Statutes, and in addition there are the decisions of the Courts and the text books of learned authors. In many instances he may find a conflict of opinion on a given subject and then the Justice will have to rely on common sense to help him on the right path.

CHAPTER IV.

How to Draw up Forms.

This is rather a difficult matter to do correctly. No two persons will draw up a form in the same way, but the Criminal Code gives the foundation for a great number of forms used in criminal cases.

For the guidance of the Justice the forms following (usually to be found at a summary conviction trial and a preliminary hearing) have been drawn as complete as possible without leaving many blanks. These must not be considered to contain all that is absolutely necessary in each case because the forms have from time to time to be altered to comply with amendments of the law. The names of parties are of course fictitious.

Particular care should be taken not to abbreviate words. The object of a form is to set forth *in a legal manner* all that should be set forth therein. Full christian and surnames should invariably be used. Figures for dates are allowable, but these when used should be clear and distinct.

The occupation or designation of persons should accompany their names in places where the context would call for them.

Signatures should be legible and should be accompanied, where a seal is necessary, by a small red seal if the Justice's own seal is not used.

No blanks should be left in a form after it has been signed, and no forms should be issued in blank. Finally, the form should be read over after it has been signed and sealed.

Summary Conviction Forms.

1. Information or Complaint.
2. Warrant to Apprehend (or a summons may be used).
3. Conviction under Seal.
4. (*a*) Commitment Warrant (imprisonment in first instance).
   (*b*) Commitment Warrant (fine in first instance).

Preliminary Hearing Forms.

1. Information and Complaint.
2. Warrant to Apprehend.

3. Summons to Witness.
4. Warrant remanding prisoner until date of hearing.
5. Statement of Accused.
6. Warrant of Commitment.
7. Recognizance to Prosecute and give Evidence.

No. 1. Summary Conviction.

Information and Complaint.

Canada
Province of Alberta

The information and complaint of Thomas Jones of Leduc, in the Province of Alberta, farmer, taken this 10th day of September, in the year 1916, before the undersigned William Brown, one of His Majesty's Justices of the Peace in and for the said Province, who saith that James Johnson of Leduc, aforesaid, farmer, on or about the 8th day of September, A.D. 1916, at or near Leduc, in the said Province, did unlawfully assault the complainant Thomas Jones by striking him in the

face with his fist, contrary to the Criminal Code of Canada.

(*Signature of Informant*)
"THOMAS JONES."

Sworn before me the day and year first above mentioned, at Leduc, in the said Province.

(Signed) WILLIAM BROWN,
A Justice of the Peace in and for the Province of Alberta.

No. 2. SUMMARY CONVICTION.

Warrant to Apprehend.

Canada,
Province of Alberta }

To all or any of the Peace Officers of the said Province:

Whereas James Johnson of Leduc, in the Province of Alberta, farmer, has this day been charged upon oath before the undersigned, William Brown, a Justice of the Peace in and for the said Province, for that he, on the 8th day of September, A.D. 1916, at or near Leduc, in the said

Province, did unlawfully assault the complainant, Thomas Jones, by striking him in the face with his fist, contrary to the Criminal Code of Canada.

These are therefore to command you in His Majesty's name forthwith to apprehend the said James Johnson, and to bring him before me (or some other Justice of the Peace in and for the said Province) to answer unto the said charge, and to be further dealt with according to law.

Given under my hand and seal this 10th day of September, A.D. 1916, at Edmonton, in the Province aforesaid.

(Signed) WILLIAM BROWN, [Seal]
A Justice of the Peace in and for the said Province.

No. 3. SUMMARY CONVICTION.

Conviction.

Canada
Province of Alberta }

Be it remembered, that on the 11th day of September, in the year 1916, at Leduc,

in the said Province, James Johnson, being charged before the undersigned, William Brown, a Justice of the Peace in and for the said Province, he the said James Johnson is convicted before the undersigned Justice, for that he the said James Johnson, on the 8th day of September, A.D. 1916, at or near Leduc, in the said Province, did unlawfully assault the complainant, Thomas Jones, by striking him in the face with his fist, contrary to the Criminal Code of Canada.

And I adjudge the said James Johnson, for his said offence, to forfeit and pay a fine of ten dollars, and also to pay to the informant, Thomas Jones, the sum of three dollars, for his costs in that behalf, and in default of payment of the said fine and costs forthwith, I further adjudge that the said James Johnson shall be imprisoned in the Provincial Gaol at Fort Saskatchewan, in the said Province, for the term of three months with hard labour. *Or* (where there is imprisonment in the first instance, the words can be as follows: " be imprisoned in the Provincial Gaol at Fort Saskatchewan in the said Province

for the term of three months with hard labour.")

Given under my hand and seal, the day and year first above mentioned, at Leduc, in the Province aforesaid.

.....[Seal]

(Signed) WILLIAM BROWN, [Seal]
A Justice of the Peace in and for the Province of Alberta.

No. 4. SUMMARY CONVICTION.

"A" (Imprisonment in first instance).

Warrant of Commitment.

Upon award of Imprisonment *without Option of a Fine.*

Canada
Province of Alberta }

To all or any of the Peace Officers in the said Province and to the Keeper of the Provincial Gaol at Fort Saskatchewan, in the said Province.

Whereas James Johnson of Leduc, in the Province of Alberta, farmer, was this day convicted before me the undersigned,

William Brown, a Justice of the Peace in and for the said Province, for that he, the said James Johnson, on the 8th day of September, A.D. 1916, at or near Leduc, in the said Province, did unlawfully assault the complainant, Thomas Jones, by striking him in the face with his first, contrary to the Criminal Code of Canada. And it was thereby adjudged that the said James Johnson, for his offence, should be imprisoned in the Provincial Gaol at Fort Saskatchewan, in the said Province, with hard labour, for the term of three months.

These are therefore to command you, the said Peace Officers, to take the said James Johnson, and him safely to convey to the Provincial Gaol at Fort Saskatchewan aforesaid, and there to deliver him to the Keeper thereof, together with this precept:

And I do hereby command you, the said Keeper of the said Gaol, to receive the said James Johnson into your custody in the said Gaol there to imprison him, and keep him at hard labour, for the term of three months, and for your so doing this shall be your sufficient warrant.

Given under my hand and seal this 11th day of September, in the year of our Lord 1916, at Leduc, in the Province aforesaid.

(Signed) WILLIAM BROWN, [Seal]
A Justice of the Peace in and for the Province of Alberta.

No. 4. SUMMARY CONVICTION.

"B" (Fine in first instance).

Warrant of Commitment.

Upon a conviction for a penalty in the first instance.

Canada
Province of Alberta

To all or any of the Constables and other Peace Officers in the said Province, and to the Keeper of the Provincial Gaol at Fort Saskatchewan, in the said Province.

Whereas, James Johnson, late of Leduc, in the Province of Alberta, farmer, was on this day convicted before the undersigned William Brown, a Justice of the Peace in and for the said Province, for

that he, the said James Johnson, on the 8th day of September, 1916, at or near Leduc aforesaid, did unlawfully assault the complainant, Thomas Jones, by striking him in the face with his fist, contrary to the Criminal Code of Canada, and it was thereby adjudged that the said James Johnson, for his offence, should forfeit and pay the sum of ten dollars, and should pay to the said Thomas Jones, the informant, the sum of three dollars for his costs in that behalf; and it was thereby further adjudged that if the said several sums were not paid (forthwith) the said James Johnson should be imprisoned in Provincial Gaol, at Fort Saskatchewan, in the said Province (and there kept at hard labour) for the terms of three months, unless the said several sums and the costs and charges of the commitment and of the conveying of the said James Johnson to the said Provincial Gaol, were sooner paid.

And whereas the time in and by the said conviction appointed for the payment of the said several sums has elapsed, but the said James Johnson has not paid the same, or any part thereof, but therein has made default:

These are therefore to command you, the said Peace Officers, or any one of you, to take the said James Johnson, and him safely to convey to the Provincial Gaol at Fort Saskatchewan in the said Province, and there to deliver him to the said Keeper together with this precept; and I do hereby command you the said Keeper of the said Gaol to receive the said James Johnson into your custody in the said Gaol, there to imprison him (and keep him at hard labour) for the term of three months, unless the said several sums, and the costs and charges of the commitment and of the conveying of the said James Johnson to the said Gaol, are sooner paid unto you, the said Keeper; and for you so doing this shall be your sufficient warrant.

Given under my hand and seal this 11th day of September, in the year 1916, at Leduc, in the Province aforesaid.

(Signed) WILLIAM BROWN [Seal]
A Justice of the Peace in and for the Province of Alberta.

No. 1. Preliminary Hearing.

Information and Complaint.

Canada)
Province of Alberta)

The information and complaint of Thomas Jones, of Calgary, farmer, taken this 10th day of September, in the year 1916, before the undersigned, William Brown, one of His Majesty's Justices of the Peace in and for the said Province, who saith that James Johnson of Leduc, in the said Province, farmer, on or about the 8th day of September, A.D. 1916, at Edmonton, in the said Province, did unlawfully steal from the person of the complainant, Thomas Jones, the sum of fifty dollars, the property of the said Thos. Jones, contrary to the Criminal Code of Canada.

(*Signature of Informant*) Thomas Jones.

Sworn before me the day and year first above mentioned, at Edmonton, in the said Province.

(Signed) William Brown,
A Justice of the Peace in and for the Province of Alberta.

No. 2. Preliminary Hearing.

Warrant to Apprehend.

Canada)
Province of Alberta)

To all or any of the Peace Officers of the said Province:

Whereas, James Johnson, of Leduc, has this day been charged upon oath before the undersigned William Brown, Justice of the Peace in and for the said Province, for that he, on the 8th day of September, A.D. 1916, at Edmonton, in the said Province, did unlawfully steal from the person of the complainant Thomas Jones the sum of fifty dollars, the property of the said Thomas Jones, contrary to the Criminal Code of Canada.

These are therefore to command you in His Majesty's name forthwith to apprehend the said James Johnson, and to bring him before me (or some other Justice of the Peace in and for the said Province) to answer unto the said charge, and to be further dealt with according to law.

Given under my hand and seal this 10th day of September, A.D. 1916, at Edmonton in the Province aforesaid.

(Signed) WILLIAM BROWN [Seal]
A Justice of the Peace in and for the said Province.

No. 3. PRELIMINARY HEARING.

Summons to a Witness.

Canada }
Province of Alberta }

To Mark Thomson, of Leduc, in the Province of Alberta, farmer.

Whereas information has been laid before me the undersigned, William Brown, a Justice of the Peace in and for the said Province, that James Johnson of Leduc, in the said Province, farmer, on the 8th day of September A.D. 1916, at Edmonton, in the said Province, did unlawfully steal from the person of the complainant, Thomas Jones, the sum of fifty dollars, the property of the said Thomas Jones, contrary to the Criminal Code of Canada.

And it has been made to appear to me that you are likely to give material evidence for the prosecution;

These are therefore to require you to be and appear before me on Wednesday, the 13th day of September, A.D. 1916, at ten o'clock in the forenoon, at my office, Leduc, in the said Province (or before such other Justice or Justices of the Peace of the said Province as shall then be there) to testify what you know concerning the said charge so made against the said James Johnson, as aforesaid. Herein fail not.

Given under my hand and seal this 11th day of September, in the year 1916, at Leduc, in the Province aforesaid.

(Signed) WILLIAM BROWN, [Seal]
A Justice of the Peace in and for the Province of Alberta.

No. 4. PRELIMINARY HEARING.

Warrant Remanding a Prisoner.

Canada)
Province of Alberta.)

To all or any of the Peace Officers in the said Province, and to the Keeper of the Provincial Gaol at Fort Saskatchewan, in the said Province.

Whereas, James Johnson, of Leduc, was this day charged before me, the undersigned, William Brown, a Justice of the

Peace in and for the said Province, for that he the said James Johnson on the eighth day of September, A.D. 1916, at Edmonton, in the said Province, did unlawfully steal from the person of the complainant, Thomas Jones, the sum of fifty dollars, the property of the said Thomas Jones, contrary to the Criminal Code of Canada, and it appears to be necessary to remand the said James Johnson.

These are therefore to command you, the said Peace Officers, or any of you, in His Majesty's name forthwith to convey the said James Johnson to the Provincial Gaol at Fort Saskatchewan, in the said Province, and there to deliver him to the Keeper thereof, together with this precept.

And I hereby command you, the said Keeper, to receive the said James Johnson into your custody in the said Gaol, and there safely keep him until the 20th day of September, 1916, when I hereby command you to have him at my office at Leduc, in the said Province, at ten o'clock in the forenoon of the same day before me (or such other Justice or Justices of the Peace for the said Province as shall then be

there) to answer further to the said charge and to be further dealt with according to law, unless you shall be otherwise ordered in the meantime.

Given under my hand and seal this 13th day of September, in the year 1916, at Edmonton, in the Province aforesaid.

(Signed) WILLIAM BROWN, [Seal]
A Justice of the Peace in and for the Province of Alberta.

No. 5. PRELIMINARY HEARING.

Statement of the Accused.

Canada
Province of Alberta

James Johnson of Leduc, farmer, stands before me the undersigned William Brown, a Justice of the Peace in and for the Province aforesaid, this 20th day of September, in the year 1916, for that he the said James Johnson on the 8th day of September, A.D. 1916, at Edmonton, in the said Province, did unlawfully steal from the person of the complainant Thomas Jones the sum of fifty dollars, the property of the said Thomas Jones, contrary to the Criminal Code of Canada, and the said charge being read to the said James John-

son, and the witnesses for the prosecution, A.B., and C.D., and E.F., being severally examined in his presence, the said James Johnson is now addressed by me as follows: "Having heard the evidence, do you wish to say anything in answer to the charge? You are not bound to say anything unless you desire to do so; but whatever you say will be taken down in writing, and may be given in evidence against you at your trial. You must clearly understand that you have nothing to hope from any promise of favour, and nothing to fear from any threat which may have been held out to induce you to make any admission or confession of guilt, but whatever you now say may be given in evidence against you upon your trial, notwithstanding such promise or threat." Whereupon the said James Johnson says as follows: "I am not guilty, and reserve my defence."

NOTE.—Accused to sign here, if he will.

Taken before me at Leduc, in the said Province, the day and year first above mentioned.

(Signed) WILLIAM BROWN, [Seal]
A Justice of the Peace in and for the Province of Alberta.

No. 6. PRELIMINARY HEARING.

Warrant of Commitment.

Canada)
Province of Alberta)

To all or any of the Peace Officers in the said Province, and to the Keeper of the Provincial Gaol at Fort Saskatchewan, in the said Province.

Whereas James Johnson, of Leduc, farmer, was this day charged before me the undersigned William Brown, a Justice of the Peace in and for the said Province, on the oath of Thomas Jones of Calgary and others, for that he the said James Johnson on the eighth day of September, A.D. 1916, at Edmonton in the said Province, did unlawfully steal from the person of the complainant, Thomas Jones, the sum of fifty dollars, the property of the said Thomas Jones, contrary to the Criminal Code of Canada.

These are therefore to command you the said Peace Officers, to take the said James Johnson, and him safely to convey to the Provincial Gaol at Fort Saskatchewan aforesaid, and there to deliver him to the Keeper thereof together with this precept:

And I do hereby command you, the said Keeper of the said Gaol, to receive the said

James Johnson into your custody in the said Gaol, and there keep him safely until he shall be thence delivered by due course of law.

Given under my hand and seal this 20th day of September in the year of our Lord 1916, at Leduc, in the Province aforesaid.

(Signed) WILLIAM BROWN, [Seal]
Justice of the Peace in and for the Province of Alberta.

No. 7. PRELIMINARY HEARING.

Recognizance to Prosecute and Give Evidence.

Canada
Province of Alberta }

Be it remembered, that on the 15th day of September, in the year 1916, Thomas Jones of Leduc, in the Province of Alberta, farmer, personally came before me William Brown, a Justice of the Peace in and for the said Province, and acknowledged himself to owe to our Sovereign Lord the King, his heirs and successors, the sum of one hundred dollars, of good and lawful current money of Canada, to be made and levied of his goods and chattels, lands and tenements, to the use of our said Sovereign Lord the King, his heirs and successors, if

the said Thomas Jones fails in the conditions hereunder written.

Taken and acknowledged the day and year first above mentioned at Leduc, in the said Province, before me.

(Signed) WILLIAM BROWN,
A Justice of the Peace in and for the Province of Alberta.

1. *Condition to Prosecute.*

The condition of the above written recognizance is such that whereas one James Johnson of Leduc, farmer, was this day charged before me, William Brown, a Justice of the Peace, within mentioned, for that he the said James Johnson, on 8th day of September, A.D. 1916, at Edmonton in the Province of Alberta, did unlawfully steal from the person of the said Thomas Jones, the sum of fifty dollars, the property of the said Thomas Jones, contrary to the Criminal Code of Canada. If, therefore, he the said Thomas Jones, appears at the Court by which the said James Johnson is or shall be tried and there duly prosecutes such charge then the said recognizance to be void, otherwise to stand in full force and virtue.

CHAPTER V.

What Two Justices Sitting Together Can Do.

There are certain powers given by the Criminal Code to two Justices sitting together. These powers resolve themselves into various groups or classes, and these will be dealt with separately.

1. Summary conviction before two Justices. The following are some of the offences which are punishable on summary conviction and which owing to the seriousness of the offence or for other expedient reasons the legislature has provided that two Justices shall preside at the trial.

Code sec.	*Offence.*
542	Cruelty to animals.
543	Keeping cockpit.
551	Printing or using circulars or business cards in the likeness of bank notes.
566	Uttering defaced coin.
499	Criminal breaches of contract in certain cases.

Code sec.	*Offence.*
116	Carrying offensive weapons publicly.
120	Having weapon when arrested.
121	Having weapon with intent to injure any one.
122	Pointing any firearm at any one.
123	Carrying any bowie knife or other offensive weapon.
124	Carrying sheath knives.
230	Wilfully preventing, obstructing or delaying officer entering disorderly house.
230	Wilfully preventing, obstructing or delaying officer entering a gaming house, &c.
205	Indecent acts in public place with intent to insult or offend.
501	Intimidation by violence.
503	Intimidation of wheat dealers, seamen, &c.
436	Not satisfying Justice of lawful possession of public stores.
437	Unlawfully dredging for public stores.
435	Unlawfully possessing public stores not exceeding value of $25.
439	Receiving necessaries from marines and deserters.

Code sec.	*Offence.*
438	Receiving regimental necessaries.
524	Preventing saving wreck.

A number of Dominion Statutes require cases taken on summary conviction to be tried by two Justices of the Peace, and it is always advisable before trying a case to consult the section under which the offence is drawn so that any error in this respect may be prevented.

TABLE VIII.—TABLE OF JURISDICTION SUMMARY TRIALS OF INDICTABLE OFFENCES.

Two Justices of the Peace.

(*a*) JURISDICTION UNDER SEC. 773.

By Section 776, in Alberta, this is absolute without consent of party charged for all offences mentioned in this section. The procedure is that contained in Section 778, and the punishment that contained in Sections 780 and 781. — Appeal under Sec. 797.

(*b*) JURISDICTION UNDER SEC. 782.

In Alberta the Magistrate has power to hold a preliminary hearing under Section 782, or to sentence, with consent and on a plea of guilty, after taking evidence for prosecution in the following cases under Section 783 :

(1) Theft.
(2) False pretences.
(3) Receiving stolen property

— Over $10.

The punishment is that contained in Section 783. The prisoner is to be told that he may be so tried and that if he pleads not guilty he will be remanded for trial. — No appeal expressly given.

(*c*) JURISDICTION UNDER SEC. 796.

Whenever any person is charged before any Justice in Alberta with any offence mentioned in Section 773, and in the opinion of such Justice the case is proper to be disposed of summarily by a Magistrate, the Justice before whom such person is charged may, if he thinks fit, remand such person for trial before the *nearest* Magistrate in the Province.

Police Magistrates Cities of 25,000 and incorporated Towns or Cities of 2,500.

(*a*) JURISDICTION OF GENERAL SESSIONS OF PEACE UNDER SECS. 582-3.

By Sub-section 5, Section 777 (added 1909), Jurisdiction in Alberta is absolute in cities of not less than 25,000, and does not depend on consent of accused in the following cases:

(1) Theft.
(2) False pretences.
(3) Receiving stolen property } Under $10.

In all other cases consent is necessary to give any Jurisdiction to try the accused, and the punishment upon conviction is that ordinarily given on indictment as allowed by Section 777 (1). It is doubtful if this Jurisdiction adds anything to Section 776, so far as Alberta is concerned, since the decision in Rex v. Crawford, 20 C. C. C. 49.

Appeal under Section 1013 on questions of law only.

(*b*) JURISDICTION ON SUMMARY TRIAL UNDER SEC. 773.

By Section 776, in Alberta, this Jurisdiction is absolute without consent of accused for any offence mentioned in Section 773.

The punishment given by Police Magistrates when exercising Jurisdiction under Section 773 may possibly be limited under Sections 780 and 781, although in Rex v. Conlin, 1 C. C. C. 43, the contrary view would appear to have been the opinion of the Court.

No appeal under Sec. 797.

2. Summary Trials of Indictable Offences.

Under the summary trials part of Code (Part XVI.) two Justices of the Peace sitting together are given the jurisdiction of a magistrate to try certain offences mentioned in Section 773, and to do certain other acts in relation to summary trials of indictable offences. Quite frequently errors are committed by Justices who assume jurisdiction beyond that authorised in section 773 and following sections of the Code. It is true that these sections of the Code are very technical. It is only in the light of judicial decisions that they can be construed and these decisions change from time to time as different views are accepted.

The Table of jurisdiction (Table VIII) is given for the assistance of the Justice who wishes to make a study of these sections. It should be remembered in all cases that *a single Justice has no jurisdiction whatever* to try any indictable offence not punishable on summary conviction.

It will be seen that to two Justices of the Peace sitting together Section 773 of

the Criminal Code is to be their guide. Other sections have to be read in conjunction with that particular section.

Upon reading section 773 and the sections immediately following the Justice will note that in all the provinces any two Justices of the Peace sitting together have jurisdiction to try offenders under paragraphs (*a*) and (*f*) of sec. 773 and that only in British Columbia, Prince Edward Island, Saskatchewan, Alberta, North-West Territories and the Yukon Territory two Justices of the Peace sitting together have jurisdiction to try the offences enumerated in the paragraphs (*b*), (*c*), (*d*), (*e*) and (*g*) of section 773.

The Justices of the Peace when exercising their jurisdiction under section 773 should be very careful indeed to see that the offence which they intend to try is contained in the section, or the conviction and all proceedings prior thereto may be void by reason of excess of jurisdiction.

It is also to be noticed that the punishment which the Justices can give in such cases is very limited. Under sec. 780 in the case of offences under paragraph (*a*) and (*b*), a penalty of six months impri-

sonment can be imposed, and under sec. 781 in the case of offences under paragraphs (*c*), (*d*), (*e*), (*f*), (*g*), the penalty imposed is that of six months' imprisonment, or to a fine not exceeding (with costs included) $200, or to both fine and imprisonment not exceeding the said sum or term.

The Justice may well ask what procedure is to be followed when trying an accused summarily as hereinbefore set out for an indictable offence.

It is somewhat difficult to give an accurate answer to this question in view of the conflicting decisions on the subject. However an endeavour is here made to give an outline of the procedure, but in all cases of doubt the Justice would be well advised to follow, and follow exactly, the instructions and provisions of the Criminal Code.

Assuming that the Justices have opened Court in the ordinary way and have before them an information and complaint, the first step is to look up the Code for the section dealing with the case, particularly sec. 773 of the Code, as it is under this section that the Court will be exercising its general jurisdiction. Having done this

and upon ascertaining that the wording of the information corresponds with one or other of the paragraphs in section 773, the course will be fairly clear. If there is any material difference between the wording of the offence in the information and the wording of the offence in section 773 the Justices should hesitate before trying the offence summarily. It were better to hold a preliminary inquiry and place the burden and responsibility on the higher Court.

The procedure which then follows will depend on the province in which the accused is being tried. In British Columbia, Prince Edward Island, Saskatchewan, Alberta, the North-West Territories and Yukon Territories, the accused can be tried for any of the offences contained in sec. 773 without his consent. In other provinces consent of the accused to be tried by the Justices will be necessary except where the offence charged is that contained in paragraphs (*a*) and (*f*) of section 773.

As a matter of precaution one of the Justices should intimate to the accused, where his consent is not necessary, that he is being tried summarily without his con-

sent. Upon this being done the charge against him should be reduced into writing. The wording of the information would be the basis of the charge when reduced into writing, and if there is not much time to do this the word "charge" could be written across the top of the information and complaint, or in the margin opposite the words describing the offence. This precaution is to comply with sec. 778 (sub-sec. 3), which required the charge to be reduced into writing. One of the Justices of the Peace after reducing the charge to writing will address the accused as follows:

" You stand charged that on or about such and such a date you did " so and so. (As contained in the information).

This will be followed by certain questions asked by the Court.

1st. " How do you plead, ' Guilty or not Guilty?' "

2nd. " Are you ready to proceed with your trial?"

3rd. " Have you counsel?" (lawyer).

The answers to these questions should be written down on the face of the information for future record.

The trial can now be said to have commenced as the accused has "pleaded" to the charge. In no case should the Justices change the procedure from one kind of trial to another after this stage unless a section of the Code expressly allows it to be done. The effect of the change would be to nullify the proceedings.

The examination of witness for the *prosecution* takes place in the usual manner and subject to the ordinary rules of evidence. Upon the evidence for the prosecution being all completed the Justice should pause before taking any further step in the trial. Why? Because section 784 says that where the offence is one which (owing to a previous conviction of the person charged or from any other circumstance) ought to be made the subject of prosecution by indictment rather than disposed of summarily, such magistrate may, before the accused has made his defence, decide not to adjudicate summarily.

The alternative put forward by section 784 is to treat the case as a preliminary hearing. At this point therefore the Court have to ask themselves two questions:

(1) Is the case to go forward as a summary trial?

(2) Is the case to go forward as a preliminary hearing?

Whichever decision is arrived at the same should be placed *on record* on the *face* of the information giving the place in the proceedings where this is done. Having done this the Justices should inform the accused, and it is for him to produce the full answer and defence which the law allows him, under section 786. This means the production of evidence for the defence and all other privileges and particularities on a trial of such a nature.

The evidence on both sides having been taken down, signed by the witnesses and the Justices, and all objections noted, and corrections made, the case will then have reached that stage when a decision from the Court is to be expected. Whatever this decision may be it should be given out in open Court, in the presence of the accused.

After a decision in a summary trial of an indictable offence there are many forms to be filled out and other executive acts to be performed. These are some of the most important of the Justices' duties

and powers, for if done incorrectly the whole proceedings, and the time and money spent in them are worthless, and may not infrequently result in a monetary loss to the Justice, the province and the prosecutor, and possibly the accused. However with care these can be avoided.

There is a right of appeal from the decision of two Justices of the Peace sitting as a Court trying an indictable case summarily, under paragraphs (*a*) or (*f*) of section 773, and the Justices should lose no time after a decision in forwarding the papers immediately to the Clerk of the Court for his Judicial District to provide for this contingency.

3. Bail.

(*a*) *Without Judges' order before committal.*

Under section 696 of the Code two Justices have a limited power to grant bail, without waiting for a Judge's order admitting the accused to bail. This section provides that where any person appears before any Justice charged with an indictable offence punishable by imprisonment for more than five years other than:

(*a*) Treason.

(*b*) An offence punishable with death (this includes rape).

(*c*) Any offence under sections 76-86 inclusive.

The Justice can jointly with another Justice admit the accused to bail. This is only allowed where the evidence, though sufficient to put the accused on his trial, does not furnish such a strong presumption of guilt as to warrant a committal.

The procedure in such a case is for the accused to provide two sureties satisfactory to the Justice hearing the case, who will, together with the accused, enter into what is technically called a "recognizance of bail." The entering into of this recognizance of bail is an important matter. Why? Because upon it rests the possibility of the appearance or disappearance of the accused at or before his trial. If the recognizance is irregular the Crown will have difficulty to enforce it, and even if regular the same may be worthless.

The sureties of the recognizance ought to be at least two men who in the opinion of the Justice will be actually sufficient to

ensure the appearance of the accused at the time and place appointed for trial. The sureties should justify, that is—make affidavit as to their being freeholders or householders and that they are worth the amount for which they become surety over and above any sum that will pay their debts and liabilities.

These sureties appear before the magistrate in person and after hearing the terms of the recognizance should be asked if they consent. This should be signified on the recognizance by their signature. The Justices also sign and seal the same and forward the recognizance to the Clerk of the Court along with all other documents in the case.

Care should be taken to see that the recognizance is drawn up correctly, that all blanks are filled in and that it is conditioned for the accused "*to appear at the next Court of competent criminal jurisdiction*" *in and for the Judicial District.*

(*b*) *Bail with Judges' order* (*after committal*).

Where the Justice on a preliminary enquiry commits the accused for trial the

question of bail is practically out of his hands and it rests with the Judge of the Superior Court. No matter how serious a case may be the accused can always make his application to a Superior Court Judge for bail, and the Justice will see that if the accused wishes to have his liberty until trial he will make this application. Upon the Judge granting bail he issues an order of the Court authorizing the entry into the recognizance and fixes the amount of the bail. This order also provides for the appearance of the accused before two Justices, with sureties, there to enter into a recognizance of bail. The same procedure is followed as in granting any other kind of bail, the sureties justifying in the usual way.

4. JUVENILES.

These are either:—

(a) *Neglected,*
or (b) *Delinquent.*

(a) *Neglected Children:*

The law on this subject is, in most cases, Provincial. In Alberta the Children's Protection Act, 1909, gives authority to *two* Justices of the Peace to hear and deter-

mine cases arising under this Act. They constitute together "a Court." It will be seen that a single Justice has no jurisdiction at all unless he holds a commission as a Commissioner under this Act, in which case he can hear and determine such cases alone. The Act has reference to children of 18 years of age or under who are *neglected* within the meaning of section 2 (b) of the Act. The procedure in such cases follows that of a summary conviction trial, but the forms to be used (with the exception of the information and complaint) are those provided by the Provincial Department dealing with neglected children. It is important to note that juveniles are not to be treated as ordinary criminals, and the hearing under this Act should be separate from any Criminal Court and with as much privacy as possible under the circumstances, the parents being present along with the child wherever this can be done.

(b) *Delinquent Children:*

The law on this subject is, in most cases, Dominion. In Alberta and in many other

provinces the Dominion law is supplemented by provincial legislation. These laws deal with *delinquent* children of 16 years of age or under, and the procedure is that contained in the Dominion Juvenile Delinquents Act, 1908, as supplemented by provincial legislation. A Judge of the Juvenile Court under that Act has jurisdiction.

Juveniles (*Generally*).—The procedure, therefore, in dealing with children's cases whether they be (*a*) neglected or (*b*) delinquent, is first to communicate the facts of the case to Superintendent of Neglected Children, and (where necessary) to obtain the consent of that Department to hold the trial, or hearing, as the case may be. At the time of writing it would be well to ask for the assistance of one of the officers of the Department, and if available the assistance is usually granted. The forms to be used are provided in all cases by the Department of the Province dealing with such cases, and could be obtained at the same time. Those in the Criminal Code, except perhaps the information and complaint, are not applicable to juvenile cases.

Upon the conclusion of any such case the child should never be sent to the ordinary gaol or prison. By doing this the very object of the Acts would be defeated. The best way is to place the child in charge of the provincial officers or some other responsible person until such time as the matter can be gone into by the Superintendent. If it is the intention to send the child to an industrial school a recommendation to that effect could be made to the provincial officers by the Court, and such recommendation will receive every consideration. Finally, although the procedure must be correctly followed, the Court may be an informal one.

Summarizing:—The Justice will realize that when sitting with another Justice he constitutes a Court having extended jurisdiction. In the result, however, it means that the work becomes more technical and needs greater attention to detail. It will be further noticed that in bail proceedings there is a distinction between bail before and bail after committal. Where the accused is committed for trial a Judge's order is the usual procedure in

order to grant bail, the Justices merely seeing that the formal duties of entering into the recognizance are correctly carried out.

Finally, it may be mentioned that from time to time statutes give other powers to two Justices sitting together, and where they are called upon to exercise that jurisdiction the statute should be first consulted and followed implicitly in provinces in which the Act has been proclaimed in force by Order in Council. It will be seen that in Alberta neither a single Justice nor two Justices can try juvenile delinquents without first obtaining the consent, under sec. 4 of the Juvenile Courts Act of Alberta, of the Attorney-General or the Superintendent of Neglected Children unless, of course, they are duly appointed by commission either as a Judge of the Juvenile Court or a Commissioner of Dependent and Neglected Children.

CHAPTER VI.

Common Errors.

A Justice of the Peace, like any other human being, makes mistakes. These may arise from some fault of his own or the fault of others. Although to be regretted, the mistakes may have a beneficial result more often than not, however, in favour of the prisoner, as he may be released from imprisonment on *habeas corpus,* and the conviction against him quashed on the ground of irregularities. It is desirable to reduce to a minimum the grounds upon which such applications are made. The procedure usually adopted by parties who wish to question the validity of a conviction by a Justice of the Peace is to have the case reviewed by a higher Court. There are several ways in which this may be done. The case may be appealed, in which event the evidence is all taken, and the case is commenced from the very beginning before a Judge sitting in Court. A further procedure is by application to

the Supreme Court by way of *habeas corpus* or *certiorari*. The *habeas corpus* application is made when the accused is in prison, and the object is to obtain his release from custody. A *certiorari* application is taken where a fine has been paid by the accused, and the object is to have the conviction struck off the records or, as it is technically called, quashed. Where it is desired to have the prisoner released from custody and also have the conviction struck off the records as against the prisoner an application is made by *habeas corpus* with *certiorari* in aid. This is a combination of procedure having for its object concurrent remedies. All such applications are governed by Rules of the Court and these Rules require written notice in most instances to the Justice of the Peace or the Attorney-General or the informant. This notice usually gives the grounds for the application and it is here the errors of the Justice are shown, or, at least, objections are put forward on the ground of irregularities. As an example of grounds upon which such applications are made, the following, taken from a recent case, will give the Justice some idea

as to where the errors are to be looked for. The objections taken were as follows:

(1) That the informations charged no offence.

(2) That the charges should have been and were not laid before the nearest magistrate.

(3) That the charge was not tried by the Justice who took the information, and that there was no evidence of a request to the convicting Justice to try the case.

(4) That the two charges, being separate charges of common assault against each of the defendants, were tried altogether without the consent of the defendants.

(5) That the informations and convictions contained two separate and distinct offences.

(6) That evidence was wrongly admitted by way of a petition.

(7) That the evidence did not sustain the conviction.

(8) That the conviction assigned no date to the offence.

(9) That the information was not re-sworn after amendment.

(10) That an adjournment to enable counsel to be engaged to represent the accused was refused.

(11) That the costs fixed were excessive.

It will be noticed that these are eleven in number and cover a wide field of imagination. Although there may be (and usually is) little foundation for some of the objections, yet it may so happen that on one or other of the grounds the accused may be successful in his application and though guilty of some offence may yet gain his liberty.

The examples below will give the Justice some idea how to avoid these common errors, and it is hoped that he, benefiting by the experience of others will realize that it is in his power to protect the liberty of the subject, and save the expense to the Crown of defending such applications. The Justice if he does succeed in this will have achieved something and his services to the community in general will not have been given in vain.

Examples of Common Errors.

WRONG.

It is wrong to arrest *without* warrant (not on a view) on a charge of keeping a common bawdy house.

WHY WRONG?

Because if objection is taken to the jurisdiction of the Magistrate at the trial, the conviction will, on *certiorari*, be quashed as illegal.

(Rex v. Wallace, 32 W. L. R., p. 264).

RIGHT.

It would have been right to arrest *upon a warrant* in such a case, after information laid.

WRONG.

It is wrong after a conviction and sentence to hold over for 48 hours the Warrant of Commitment to permit the person to leave town, where no definite time has been fixed as to how long the party should remain away.

WHY WRONG?

Because at the expiration of the term of imprisonment the effect of the conviction was spent and no power existed to arrest such person again on his

RIGHT.

It is questionable whether it would be right in any instance to do this as it might amount to the banishment of the individual from a particular place for a given time, which is presumably beyond the power of the individual. It would be better to execute the warrant or suspend sentence if there is that power.

return on a warrant based on the old conviction.

(Rex v. Fitzpatrick, 32 W. L. R., p. 423).

WRONG.

It is wrong for one Justice to issue a Warrant of Commitment upon a conviction made before two Justices.

RIGHT.

It would have been right if the Warrant of Commitment had been signed and sealed by *both* Justices.

WHY WRONG?

Because the form of conviction will be defective by reason of its being issued by one Justice only.

(Rex v. James, 32 W. L. R. 533).

WRONG.

It is wrong to accept an information for a search warrant not alleging an offence, nor stating causes of suspicion.

RIGHT.

It would have been right if the information for the search warrant had contained a description of the offence in the words of the Statute creating it, giving causes of suspicion and in all respects conforming with sec. 629 of the Criminal Code or other Statute under which authority was issued.

WHY WRONG?

Because a search warrant issued on such an information is bad and will be quashed.

(Rex Ex. Rel. Guloien v. Frain, 32 W. L. R. 387).

WRONG.

It is wrong to issue a conviction without a seal.

WHY WRONG?

Because it is void.

(Bond v. Conmee, 15 O. R. 716).

It may, however, be treated as a minute of adjudication.

(Rex v. Dickey, 32 W. L. R. 405).

RIGHT.

It would have been right if the conviction were signed, sealed and otherwise in accordance with the law.

WRONG.

It is wrong to have depositions taken irregularly.

WHY WRONG?

Because it is liable to be criticized by the Court and may also be the subject of objections on indictment of the accused as in Rex v. McClain, 30 W. L. R. 391.

RIGHT.

It would be right to have the depositions comply with sec. 682 of the Criminal Code.

A form of deposition is as follows:

"CANADA,

Province of Alberta.

The deposition of John Smith, of the City of Edmonton, in the Province of Alberta, labourer, taken before the undersigned William Smith, a Justice of the Peace in and for the said Province, this 1st day of January, 1916, at Edmonton aforesaid, in the presence and hearing of John Jones, who stands

WRONG.

RIGHT.

charged that he did on or about the 3rd day of December, A.D. 1915, at Edmonton aforesaid, unlawfully steal two tons of hay, contrary to Statute in that behalf made and provided.

The said deponent saith on his oath as follows:

NOTE. — The deposition here follows in the first person thus: "I saw," etc., at such and such a place on such and such a day. The deposition should contain the full evidence, cross-examination and re-examination (if any) as well as the examination in chief. Any interruption by the accused should be taken down and may be evidence against him. All objections by the accused or complainant or their lawyers should be correctly noted. Only evidence which is clearly irrelevant or not admissible should be left out—all other evidence should be taken down. If the Justice has had doubt it should be taken down and left to a higher tribunal to deal with, all objections being

WRONG.	RIGHT.
	carefully noted. The depositions must be read over and signed by the witnesses and the Justice, both of which acts must be performed in the presence of the accused. The witness is entitled to make any corrections before he signs. It is the best plan to put these alterations at the *foot* of the deposition, as they may amount to a contradiction or change of statement without the intention of correcting errors. These additions should be signed also.
	The conclusion will be as follows:
	"The deposition of John Smith, of the City of Edmonton, in the Province of Alberta, labourer, written on the several sheets of paper to the last (or each) of which my signature is annexed, were taken in the presence and hearing of John Jones and signed by the said John Smith respectively, in his presence.
	In witness whereof, I have in the presence of the said John Smith and

John Jones, signed my name.

Signed,
"JOHN JONES,"
Witness.
WILLIAM SMITH,
Justice of the Peace in and for the Province of Alberta.

WRONG.

It is wrong to think that all irregularities can be amended by the Court.

RIGHT.

It is better to have a criminal case correctly dealt with in the first instance, rather than rely on the Court's powers of amendment.

WHY?

Because sec. 1124 of the Criminal Code is very limited in its application. If the Magistrate has done no more than return in case of conviction the form of conviction in a mere formal shape instead of sending it up in the informal manner in which it was first drawn, and supposing that the facts as they really happened would warrant him in the return he has now made, the contrary of which is not imputed, it is not only legal but laudable in him

to do as he has done, and he would have done wrong if he had acted otherwise.

WRONG.

It is wrong to accept an information charging no offence.

WHY WRONG?

Because to be a valid conviction there must have been a criminal offence committed. An example of this may be seen in Rex v. Chitnita, 27 W. L. R., p. 268, where the Justice accepted an information charging that the defendant did "neglect his wife," the intention being to charge him with an offence under sec. 242 (a) of the Code, "neglecting or refusing to provide necessaries for his wife and child under 16." The defendant pleaded guilty, but the Court would not allow an amended conviction, as the defendant had been charged merely with "neglecting his wife" which, of course, was not an offence against the Statute. The Court regretted to make the Order quashing

RIGHT.

It would have been right to accept an information charging an offence in the wording of the Statute. In all cases it is advisable, before accepting an information, to look up the section of the Act creating the offence, and if it cannot be found, then consult the Crown officers to ascertain what the law is and whether the facts (giving them) constitute a criminal offence.

the conviction, as the material showed the defendant might have been guilty of an offence under sec. 242 (a) of the Criminal Code.

WRONG.

It is wrong to take into account a previous conviction of the accused without proof of the fact in open Court at the subsequent trial.

RIGHT.

It would have been right to have followed the procedure laid down respecting previous convictions contained in such Acts as the Canada Temperance Act and the Liquor Acts of the various Provinces where a second conviction is being made under these Acts. Where, however, no such procedure is laid down in the Act itself, it is necessary that the prosecutor should allege and also prove the first conviction as part of the case before conviction of the subsequent offence.

(See Rex v. Cruickshanks, 27 W. L. R. 759, as an alternative procedure. Where there is reference to a first offence the procedure laid down in Rex v. L'Hirondelle, 10 W. L. R. p. 837, might be followed).

WRONG.

It is wrong to deny the defendant any right which he has to make full answer and defence.

RIGHT.

It would have been right to give the defendant every privilege in this respect, even though subject to objection.

WHY WRONG?

Because sec. 786 of the Criminal Code says that the person accused shall be allowed to make his full answer and defence and to have all witnesses examined and cross-examined by counsel or solicitor.

WRONG.

It is wrong to convict on insufficient evidence.

RIGHT.

It would have been right if the defendant had been convicted on evidence which, "beyond a reasonable doubt," established the guilt of the accused.

WHY WRONG?

To avoid a miscarriage of justice the evidence should clearly establish guilt of the accused. It might so happen that insufficient evidence might result in a want of jurisdiction which is always a ground for quashing a conviction.

WRONG.

It is wrong to assume jurisdiction which the Justice does not possess.

RIGHT.

It is right to correctly exercise the full jurisdiction which the law allows,

Why Wrong?

Because it is fatal to any criminal proceedings and the accused can be immediately discharged on *habeas corpus*.

as thereby expense of trials before higher tribunals can be avoided.

Summarising. — The errors of Justices usually arise out of (1) Jurisdiction, and (2) Forms. With regard to Jurisdiction errors can only be prevented by strictly watching at the *commencement* of any criminal proceeding the information and complaint to see that the offence is drawn correctly. Some of the most absurd offences have been charged in the information and complaint without any foundation in law. A woman was charged with "maliciously cutting her own wire fence, whereby another person's stock strayed from their land and were killed by eating green oats and causing sickness to others." There have been many other informations drawn reciting *facts* without the least mention of any *law* or wording of the statute against which the offence was supposed to have been committed. The *facts* may constitute the *evidence* for an offence, but the offence itself must be *legally* described

according to the statute which makes such an offence. Herein then lies one of the principal errors, namely that *facts* are recited as the *offence* whereas the offence should be recited first and then the facts should be examined to see whether they do in fact constitute the offence and are against the law. There are a good many acts and omissions which are not crimes and a Justice often falls into the error of assuming that certain acts should be punished whether they are crimes or not, and on seeking for the offence, and finding none, quotes the facts as an offence, convicts the defendant, and then finds that there is no law to uphold the conviction. In other words he assumes jurisdiction which he does not possess.

With regard to forms, the wording of which are of course legal and technical, very little can be mentioned. A careful Justice always looks to see that the form he uses is the right one. For instance, where there are several forms of Warrant of Commitment, he will pick out the proper warrant. A warrant of commitment for imprisonment in the first instance is not the proper warrant to give where there is

the option of a fine and the imprisonment is being given in default of payment. In the same way a warrant of commitment for trial is no use in summary conviction matters. In the Criminal Code there will be found in quite a number of sections reference to certain numbers by which forms are known and recognised. When these are to be seen the Justice should see that the form he is using corresponds with that number and where he is dealing with any matter under the section in which the form number appears he can always obtain this form on applying to the parties from whom his supplies came in the first instance.

CHAPTER VII.

Explanation of Legal Terms.

Accessory before the fact.

Is one who being absent at the time of the commission of a felony, yet procures, counsels or commands another to commit a crime.

Accessory after the fact.

May be said to be where a person knowing a felony to have been committed receives, relieves, comforts, or assists the felon.

Accomplices.

Parties concerned with another or others in the commission of a crime.

Accused.

A person formally charged with a crime.

Acquittal.

A deliverance and setting free of a person from the suspicion or guilt of an offence.

ACTION.

May be either civil or criminal. Criminal actions are more properly called prosecutions.

ADJOURNMENT.

A putting off to another time or place.

ADJUDICATION.

A giving or pronouncing of a judgment or decree.

ADMISSIONS IN EVIDENCE.

Concessions of certain facts by an opponent.

ADVERSE WITNESS.

One objecting to give evidence or answer questions during examination.

ADVOCATE.

A person who aids another in the conduct of a suit or action. This term is used also to mean members of the legal profession.

AFFIDAVIT.

A written statement sworn before a person having authority to administer an oath.

AFFIRMATION.

A solemn declaration without oath.

ALTERNATIVE REMEDY.

The one or the other of the two remedies.

AMENDMENT.

A correction of any errors in pleadings, actions, suits or prosecution.

APPEAL.

The removal of a cause from an inferior to a superior Court for the purpose of testing the soundness of the decision of the inferior Court.

APPEARANCE.

When a person is served with a summoning process from a Court he generally comes into such a Court to defend himself by appearing.

APPLICATION.

A motion to a Court or Judge.

ARRAIGNMENT.

The bringing of a prisoner to the bar of the Court to answer the matter

charged upon indictment. It consists of calling upon him by name and reading to him the indictment and demanding of him whether he be guilty or not guilty, and entering his pleas.

ARREST.

The restraining of the liberty of a man's person in order to compel obedience to the order of a Court of Justice or to prevent the commission of a crime or to ensure that a person charged or suspected of a crime may be forthcoming to answer it.

ARTICLES OF THE PEACE.

Proceedings consequent upon a complaint by any one who has just cause to fear that someone will burn his house, do him some corporeal hurt, or procure a third person to perpetrate it.

BACKING WARRANTS.

Where a warrant which has been granted in one jurisdiction is required to be executed in another,

as where a felony has been committed in one province and the offender is lurking in another province, then on proof of the handwriting of the Justice who granted the warrant, a Justice in such other county endorses or writes his name on the back of it and then gives authority to execute the warrant in such other province.

BAIL.

To set at liberty a person arrested or imprisoned on security being taken for his appearance on a day and place certain, which security is called bail, because the party arrested or imprisoned is delivered into the hands of those who bind themselves for his appearance on some future date.

BENCH WARRANT.

An attachment issued by order of a criminal Court against an individual either for contempt or for the purpose of arresting a person accused.

CAPTION.

That part of a legal instrument, as a deposition, etc., which shows where, when and by what authority it is taken, found or executed.

CASE STATED.

A narrative (agreed upon by both parties to an action, or drawn up by an impartial person agreed upon by them or settled by the Court or a Judge), setting forth the facts and points in dispute with a view to a prompt decision.

CERTIORARI.

Procedure for the purpose of removing to a higher Court a suit pending in some inferior Court.

COLOUR OF RIGHT.

A plea put forward by a person claiming to exercise what he believes to be a *prima facie* right.

CORROBORATION.

Evidence in support of principal evidence.

ESTOPPEL.

A doctrine or rule of law by which a statement which amounts to a conclusive admission cannot be denied or controverted.

EX OFFICIO.

By virtue of office. Some persons by reason of the office they hold are *ex officio* Justices of the Peace.

EX PARTE.

A proceeding by one party in the absence of the other.

EXTRADITION.

The act of sending by authority of law a person accused of a crime to a foreign jurisdiction, where it was committed, in order that he may be tried there.

FALSE PRETENCES.

This offence, though closely resembling theft, is distinguishable from it, as being perpetrated through the medium of a mere fraud. In order to be convicted under the section governing the same the accused

must have made a false pretence of an existing fact, and the money or goods, &c., must have been obtained by means of such false pretence.

HABEAS CORPUS.

Is a remedy for a person deprived of his liberty. If a probable ground be shown that the party is imprisoned without cause and has a right to be delivered an order or writ will usually be issued.

INDICTABLE OFFENCE.

Is an offence punishable on indictment. That is a written accusation or charge preferred in a Superior Court of Competent Criminal Jurisdiction.

JUSTIFICATION.

A maintaining or showing a sufficient reason in Court why the defendant did what he is called upon to answer.

MANDAMUS.

An order or writ addressed to any person, corporation or inferior

Court of Judicature requiring them to do something therein specified which appertains to their office. It is used principally for public purposes and to enforce performance of public rights and duties.

MISDEMEANOUR.

A species of crime or offence less than a felony. Its importance lies in the manner in which the same are prosecuted. A felony is prosecuted on indictment; a misdemeanour may be prosecuted on indictment or by summary conviction in certain cases.

OUSTER.

Means dispossession.

PRELIMINARY INQUIRY.

A proceeding taken before indictment for a criminal offence. The object is to find out whether there is a *prima facie* case against the accused sufficient to place him on trial before a higher Court.

QUASHING CONVICTION.

To overthrow or annul the conviction. It is usually done by a higher Court on the ground of irregularities or wrong conviction in an inferior Court.

RECOGNIZANCE.

As acknowledgment of a debt owing to the Crown, with a condition to be void if the recognizor shall do some particular act, as if he, or the party for whom he is surety, shall appear at the next Court of competent criminal jurisdiction.

RELEVANT.

Applying to the matter in question.

REMAND.

To send back to prison one charged before a magistrate until a future date named at the time of making the same. There is also a remand on bail, the accused being allowed his liberty until the day named.

STATEMENT OF ACCUSED.

A statement not under oath made by accused on the preliminary hearing.

Transmission of Documents.

This is an important part of the Justice's duties. All documents in his possession relative to *any* criminal case should be forwarded forthwith to the Clerk of the Court for his Judicial District, as he takes the place of the Clerk of the Peace, and must record all such transactions for future reference. Without these papers he cannot make the records required by law.

Points to Note.

1. Absence of accused automatically stops proceedings in Court.
2. Accused must be allowed to give full answer and defence.
3. Actions may be taken against a Justice of the Peace for wilfully exacting unauthorized fees.
4. Actions may be taken against a Justice of the Peace for acting illegally.
5. Actions, both criminal and civil, can be taken against Justices of the Peace who fail to remit moneys collected as fines.

6. Actual bodily harm does not mean common assault.
7. Adjournments should be granted on application by the accused if he is likely to be prejudiced in his defence by a refusal.
8. Arrest should be made on a warrant unless the law otherwise allows.
9. Arrest should be made by a peace officer.
10. Arrest on a telegram is not sufficient authority to hold a prisoner.
11. Articles of the peace are in the form of a recognizance with sureties to keep the peace.
12. Assault may be common, indecent or aggravated.
13. Associate Justices should have their request in writing when sitting with another Justice on any case.
14. Bail *after committal* can be dealt with by a higher Court.
15. Bias is always a ground for objection to jurisdiction.
16. Caption is the heading of a deposition.
17. Civil matters are not dealt with in a Justice's of the Peace Court.

18. Colour of right may be a good defence.
19. Commitments can only be made by warrant under seal.
20. Convictions must be under seal and on proper forms.
21. Convictions are void for duplicity.
22. Corrections where a fine is imposed must contain the words "forfeit and pay."
23. Corroboration is necessary for certain offences on conviction.
24. Corroboration does not appear to be absolutely necessary to warrant a commitment for trial in such offences.
25. Costs can be given against the Justice of the Peace if the Court is of the opinion that the irregularities were due to his carelessness.
26. Costs can only be charged according to tariff.
27. Costs should not be given against the defendant if he is acquitted.
28. Costs, where no other tariff is provided, are regulated by section 770 of the Criminal Code.

29. Courts should be "opened" before commencing proceedings.
30. Depositions should be forwarded *immediately* to the Clerk of Court.
31. Depositions should be signed by Justice, and by the witness in presence of accused.
32. Depositions should be read over to witness before he is asked to sign.
33. Depositions are incomplete without proper heading at the beginning and proper conclusion at the end.
34. Disagreement between Justices means dismissal for accused on preliminary hearing.
35. Distress can be issued for fine and costs.
36. Documents produced as exhibit should be marked.
37. Fines are to be remitted forthwith to the Attorney-General's Department, or where otherwise disposed of a receipt should be taken and sent there.
38. Forms when complete have no blank spaces.

39. Indictable offences cannot be tried by a single Justice in any case, but the law allows this to be done by two Justices for certain offences only.
40. Informations and complaints should be sworn.
41. Irregularities may upset the conviction.
42. Jurisdiction is an important matter for consideration.
43. Jurisdiction should appear on the face of the documents.
44. Limitation of time for commencing summary conviction matters is 6 months.
45. Lord's Day cases require fiat or consent of the Attorney-General before any proceedings are taken.
46. Names should be written out in full in all cases.
47. Objections should be noted on records.
48. Offences should not be tried together but separately.
49. Preliminary inquiry is a hearing.
50. Preserving of order in Court can be done through the constable.

51. Prisoner should be present in Court during proceedings.
52. Quashed convictions are a source of expense both to Crown and accused.
53. Remands should always be in writing.
54. Remands should be marked on the information.
55. Returns are required from Justices of all matters dealt with.
56. Returns are important as they affect future disposition of the case.
57. Returns which are false are punishable.
58. Seals should appear on all warrants.
59. Seals should be affixed to every conviction.
60. Seals should be placed where the following appears [L.S.]
61. Statements of accused must never be omitted on preliminary inquiry.
62. Summary conviction is different from summary trial.
63. Summary trials are trials for indictable offences.
64. Summonses are served by constables.

65. Tariff of fees is contained in sec. 770 Code.
66. Telegrams are not sufficient authority to hold a person after arrest.
67. Warrants are required to be sealed.
68. Witness must be first sworn.
69. Witness fees are regulated by sec. 770 Code.
70. Witness fees are not paid on preliminary inquiries usually, as by the Code there are no fees allowed on preliminary hearings.

INDEX.

A.

PAGE

Abandoning child 13
Abduction 16
Abortion 16
Accessories 30, 155
Accused to be present 32
Acts of Parliament 84
Acquittal 66
Adjournment 32, 55
Adjudication 45, 58, 72
Administering drugs 14, 16
Affidavit 86
Affirmation 79, 157
Age of consent 11
Aggravated assault 15
Aiders and Abettors to Suicide 14
Alphabetical list of Crimes 4-30
Amendment 157
Animals 28
Appearance 157
Application 157
Arrest 158
Arson 26
Articles of peace 158
Assault 15
Attempts 30

B.

Backing warrants 158
Bail 32, 47, 131, 159
Bank notes 29
Betting 13
Bodily harm 14
Bribery 8
By-laws 95
Burglary 23

PAGE

C.

Cattle 28
Caption 160
Certiorari 140, 160
Childbirth 14
Children 134
Civil cases 1
Colour of right 160
Code offences 4-90
Commitment 47
Common assault 15
Common errors 139
Consent age 11
Conspiracy 30
Constable fees 70
Conviction 72, 103
Costs tariff 67, 68
Court room 34
Crimes 3, 90, 91
Criminal Code offences 3, 90, 91
Cross-examination 43, 63
Crown officers 3
Cruelty to animals 28

D.

Decision 58
Defects 143
Delinquents 135
Depositions 44, 86
Dismissal 66
Disorderly house 12
Documents 49, 84
Dominion law 94
Driving motor car 15
Drugs 14, 16

E.

Escape 10
Evidence 42, 63, 77, 78
Examination in chief 80

PAGE
Exhibits 43
Expenses 51
Explosives 6
Extortion 22

F.

Fees 67, 68
Females 11
Fines to be remitted 59, 60
Fine 58, 59, 60
Food and lodging 20
Forgery 24
Forms 98
Fraud 20
Furious driving 15

G.

Gambling 12
Gardens 18
Girls 16
Grievous harm 14

H.

Habeas Corpus 140
Heading on depositions 86, 160
Hearing 34
Holding Court 31
Housebreaking 23

I.

Incest 11
Indecency 11
Indictable offences 3, 35, 124
Infants 134
Information 54, 75, 100
Injuries 14
Interpreter 71

J.

Jurisdiction 1, 122
Juveniles 134

PAGE

L.

Leading questions 42
Letters 23

M.

Mail thefts 17
Manslaughter 14
Memorandum of adjudication 58
Minute of conviction 58
Mischief 27
Municipal By-laws 95

N.

Neglected children 134
Nuisances 12

O.

Oath 78
Objections 88
Offences 3, 90, 91
Opening Court 35

P.

Payment of fine 59
Perjury 9
Place of trial 31
Preliminary enquiry 1, 37, 45, 109
Prima facie case 38
Procedure 31
Provincial law 93

Q.

Quashing conviction 140, 160
Questions 88

R.

Rape 15
Receipt for fine 59
Recognizance 164
Religious belief 40, 41

PAGE
Remands 47, 112
Reporting 48
Returns 67

S.

Seals 98, 99, 100
Seduction 16
Shorthand 48
Statement of accused 44
Stealing 123
Stenographer 83
Summary conviction 52
Summary trial 36, 119
Summons or warrant 54
Swearing witnesses 40
Synopsis of offences 3-30

T.

Table of Code offences..... 3-30
Taking down evidence 77
Theft under $10 123
Threats 28
Transmission of papers 165
Treason 4
Trials 52
Two Justices 119

U.

Uttering 24

V.

Vagrancy 12, 13

W.

Warrant 110
Weapons 6, 7
Witnesses 71
Women 16
Words and Phrases 155
Wounding 14